SEKHUKHUNE COMBINED MINING AFFECTED COMMUNITIES

(SCMAC)

SEKHUKHUNE REGION

LIMPOPO PROVINCE

**The Chairperson**

**Select Committee on Land and Mineral Resources**

**National Council of Provinces**

**Parliament of the Republic of South Africa**

**Cape Town**

**ORAL SUBMISSIONS TO THE SELECT COMMITTEE on LAND AND MINERAL RESOURCES on MPRDA AMENDMENT BILL B15D -2013**

**PREAMBLE**

SEKHUKHUNE COMBINED MINING AFFECTED COMMUNITIES (SCMAC) is the non-profit community based organisation for communities and members whose environmental and human rights are affected, directly or indirectly, by mining and mining-related activities. We are conducting its work of environmental activism, mining community mobilization and capacity building within the region of Sekhukhune in Limpopo province.

SCMAC’s goal is to elevate community voices in mining decision and policy making and to facilitate community engagement, sharing and unification around the environmental and socio-economic impacts of mining on host mining communities.

Our vision is to promote the human rights of communities affected by mining and to capacitate, empower and unite mining affected communities through training and activism to enable them to defend their rights to a healthy environment and to benefit from their own land.

We are also making these Oral submissions against the recently developed narrative that mining is done for the national interest and therefore no single community must be allowed to make decisions on where and how mining should happen. We view this as inappropriate because host communities are the ones endure the brunt of negative impact of mining. Mining undermines their livelihoods in that they are not allowed to decide on their own form of development. Mining is simply imposed upon them are they are forced to adapt themselves and the plans they had for their communities.

The country’s Mineral and Petroleum Resource Development Act (MPRDA) of 2002 which was brought into effect in 2004 was deeply flawed from the start excluding mine-host community inputs and thus making them second class citizens in their own backyard. Since then changes either implemented in the pipeline continue to make far worse.

Reading through both the existing and the current MPRDA Bill you will only find few lines about the mining communities. Both this documents instead of talking more about the legitimacy of the mine-host communities they are failing to recognize us as the legitimate stakeholders.

Taking a trip down the Rural Limpopo Province and a cursory view on its infrastructural development and the rate of unemployment one will thinks the mining activities are just there for a visit but in actual fact they been in existence for more than four decades.

For many years we have always put the blame solely on the mining companies but the truth of the matter lies with the department if not with the entire government. Mine-Host Communities suffers significantly from this damaging documents that continuously regulates the mining communities whilst protecting the mine investors at community’s expense.

Taking a look at the current MPRDA BILL you will notice that the bill has plenty of flaws

* The bill envisioned the creation of mining advisory council, comprising of representative from the department, labour and business, while mine-host communities will have no representations at all.
* The bill also state that government would have an automatic 20% free-carry interest in all new explorations and production rights. And they will also be entitled to a further participation interest in the form of acquisition at an agreed price or in the form of production sharing agreements and all this will happen at the expense of the poor mine-host communities. This will make the department a player and a referee at the same time thus protecting its interest above those of the poor communities. The free carry shares should also be made a mandatory application to mine host communities.
* The other disturbing factor with the partially redrafted MPRDA amendment bill is that it gives the minister the “massive powers” to invite applications for various available, based on information at hand to the minister regarding actual or potential availability of minerals to be extracted or very least prospected for. This bill is actually taking a wrong turn of which it infringes the rights of mine-host communities. One example of its disempowering character is the scrapping of mandatory conditions for community participation in mining. The department want the minister to set conditions for mining on community land but now wishes to delete participation conditions. This is but one example of watering down of community recognition in mining sector.
* The bill in terms of section 10(2) of the MPRDA says if a person objects to the granting of prospecting right, mining right, or mining permit, the regional manager must refer the objection to the Regional Mining Development and Environmental Committee (RMDEC) so that the validity of the objection can be considered before committee advises the minister on how to proceed. However, no further detail is provided and no indications given as to what type of objection will be regarded as appropriate valid objection. Communities should have a bigger say in the granting of mining licenses, prospecting rights and environmental matters.
* Social and Labour plans

Members of mine-host communities have a right to be included in decision - making pertaining SLPs and all aspects of mining that affect.

* The social and labour plan is the mandatory requirement to obtain the mining license but it does not weigh the same mass when comes to implementation and in the process revoking the license. In this case it should be a matter of law that if the license holder fails to implement the commitments on their slp then the license should be revoked. Should not be left within the powers of the minister to do so.
* There is no clear standard guidelines of how the acceptable SLPs should look like and all the powers in this regard lies with the departmental officials to determine by using the checklist not the expertise
* The mining application are approved without checking whether the applicant has the resources to implement SLP commitment. It should be required that the applicant disclose their financial capacity and sources to implement their commitment from their first year of operation
* The Act should actually requires the department to ensure Capacity in the form of inspectors and community interface forums to monitor implementation not just to rely on the written annual report. The department must also introduce an on-line monitoring and inspections with the committee that is comprised of Mine-Host communities representatives, DMR, Labour and the mining company as this is vital to verify compliance.
* It should be required by law that drafting the social and labor plans should include communities, this will ensure that real and necessary projects are indeed meant to uplift the lives of communities affected by the mining activities
* The IDP(LED) projects should not be adopted in to the SLPs but rather be taken in to account when drafting the Social plans, The local municipalities should use their own budget to undertake their own projects.
* DMR must after receiving the SLPs collaborate with the Mine-Host communities and other relevant stakeholders to ensure that the communities which the SLPs are intended for are familiar with the SLPs and the its implementation process.

* Consultation Process
* The MPRDA is a solid piece of legislation compared to other countries but we have identified quite extensive loopholes and key vulnerabilities like lack of efficient community consultation, the public participations are often carried out through or with the traditional authorities excluding the most affected people which are communities. Not even one traditional authority in Limpopo is constituted in accordance to the provisions of the National traditional authority framework Act which then renders this processes unlawful.
* Direct consultation with affected and impacted communities must be required by law
* The process of consultation should be inclusive, extensive and fair
* REMDEC

The provisions relating to the composition of the Regional Mining Development and Environmental Committee (RMDEC) must be radically reformed to ensure that at least some of the members of RMDEC have the expertise to deal with community concerns, interests and issues.

In conclusion

The irony is then that, despite 20 years of democracy, the people who should benefit most from democratic dispensation are still denied the very core fundamental demand of being able to participate in the process of making laws that directly affect them. This changes reflect also a fundamental failure to recognize mining –host communities as legitimate stakeholders in the mining cycle even where the industry is affecting every aspects of their lives.

We reject this bill in its current form and suggest that the scope of the process of consultation to mining communities and community based organisations be broaden to allow for

* Fair and transparent process of consultation
* The practice of prior, free and informed consent principle
* We also recommend that the Select Committee on Land and Minerals must form a task team that will be comprised by Mining Host Community Representatives, Mine Companies, Labour and other government departments such as DWS, Defence and DMR you do social audits on mining activities and try to find out what which parts of the previous MPRDA where not followed and not implemented before redrafting and or amending the previous MPRDA.

The Select Committee on Land and Minerals can't just go on changing laws when and if it suits them without actually looking into what went wrong with the previous MPRDA.

Mining Host communities must be given a proper platform in all the process that will affect their day to day living.

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