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EASTERN CAPE PROVINCIAL LEGISLATURE

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02 May 2017

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NEGOTIATING MANDATE

To:	The Chairperson: Select Committee on Land and Mineral Resources
Name of Bill:	Mineral and Petroleum Resources Development Amendment Bill
Number of Bill:	[B15D-2013]
Date of Deliberation	02 May 2017

1. Vote of the Legislature

The province votes in favour of the Bill and mandates the Eastern Cape delegate to the NCOP to negotiate in favour of the Bill within the following parameters:

1. **Preamble to the Bill**

(a) The Preamble must be augmented with foundational principles:

- Communities should determine land use and provided the space to solicit ideas and input, from relevant sources, about possibilities for how to use their land, the impacts on the community and environment, and potential positive outcomes of that land use vs. costs.
- Free prior and informed consent (FPIC) is seen as a collective right held by

all in a community and this assumes participation by the whole community and consent from as an absolute minimum the majority of the community. The exercise of FPIC must be participatory in nature. This means decisions can't be made by leaders on behalf of a group, nor by men for women. The group itself must decide and here democratic principles are important. As such it is an inclusive right and enjoyed by women and men equally.

- The Act documents the aspirations of communities to defining their own development paths with due regard to their land and culture through enshrining the first principles of consent, respect, dignity and self determination
- The Act serves as a basis to guide elements of land and minerals regulation to result in a developing rural economy where various development alternatives are explored in the interests of people and future generations.

2. Clause 1 of the Bill – Definitions

(a) It is proposed that the following new definitions be inserted:

- customary law" means the rules and principles that communities use to govern themselves and their access, governance, development, allocation, conservation and disposal of shared resources. The customary law as practiced by communities today shall prevail over any written account of a community's customary law, particularly any account written by colonial administrators or their functionaries;
- 'directly affected community' means a community or part of a community directly affected by mining on communal land occupied or used by members of such community or part of the community, and where a directly affected community was dispossessed of its rights in land as a result of mining on its communal land, the community shall have the meaning corresponding to the meaning ascribed in the Restitution of Land Rights Act 1994;
- 'communal land' means land in respect of which a community holds rights including informal rights as defined in Interim Protection of Informal Land Rights Act 1998;
- Community shall be defined as a group of persons who have chosen or

choose to adhere to and enforce shared rules of access to their land, minerals and other resources, owned by them through long occupation and or grant or other means regardless of whether title is formally held by the State or another person, provided that the community shall:

- practice a system of customary land tenure; or,
- be indigenous people or descendant; or,
- live on trust land under statute law.

(b) There is a concern that the inclusion of the Codes, the Standards and the Charter into the definition of "*this Act*" in section 1 of the Bill would transform these instruments as developed by the Minister into Parliamentary legislation thus offending against the constitutionally enshrined separation of powers between the legislature and the executive, and cannot elevate them to even subordinate legislation let alone parliamentary legislation.

(c) It is submitted that the definition of "*mine gate price*" arguably does not allow for export parity pricing, so that the producer will suffer a loss by being compelled to subsidise local beneficiators. It is submitted that the exercise of the Minister's powers in terms of these provisions will constitute an expropriation of property within the meaning of section 25(2) and (3) of the Constitution and hence oblige the state to pay compensation to the holder in respect of the resultant loss of income.

(d) It is proposed that the commencement date of the right should be on the effective date as currently defined, and that accordingly the definition of "effective date" should read:

" 'effective date' means the date on which the relevant permit is issued or the relevant right is executed, and on which date, notwithstanding the date of grant of the application for such permit or right or the date of notification to the applicant of such grant, the duration of the relevant permit or right shall commence and which issue or execution shall occur within a prescribed period after such notification".

(e) It is suggested that a definition of "shale gas" should be included in the Bill to address a few shale gas specific challenges and provisions.

3. **Clause 2**

(a) It is submitted that "women and communities" be retained as there is no motivation, legally or constitutionally for removing women and children as a designated group identified for mining development.

(b) It is proposed that the following paragraphs after paragraph (i) be inserted as follows:

"(j) ensure that applicants for and holders of prospecting and mining rights are required to obtain community consent prior to and during the development or implementation of projects;

(k) provide for a contribution to the reparation for the dislocation of affected communities on communal land that were dispossessed of their rights in land due to mining or otherwise directly affected;

(l) communities and members of communities owning or possessing land in terms of any custom or practice shall have a right to property and the protection thereof, including the use and disposal of both surface and subsurface rights."

4. Clause 5

(a) It is submitted that an essential element of the first come first served basis in applications was to give security to persons who had incurred the costs of identifying such land and mineral or petroleum so that such persons would be first in line for a right. Without such a provision it is very unlikely that such persons would risk undertaking the operations. It is therefore submitted that the new section 9(5) referring to such preference should be retained.

5. Clause 5A

(a) It is proposed that Clause 5A should be amended to make it illegal to start mining without community consent under customary law and complying with Interim Protection of Informal Land Rights Act, 1996 (Act No.31 of 1996).

(b) It is therefore further proposed that the clause be amended by the insertion after paragraph (c) of the following paragraph:

"(d) on communal land, without the prior written consent of the directly affected community in terms of customary law as applicable and the Interim Protection of Informal Land Rights Act, 1996: Provided that if a prospecting right, mining right

or mining permit had been granted after 16 January 2015 in respect of communal land and such consent is not given within 6 months of any grant, such right will lapse."

6. **Clause 7**

10B

(a) It is submitted that the clause be amended by the insertion after paragraph (b) of the following paragraph:
"(c) consider reports on negotiations in respect of communal land, and report thereon to the Minister."

10C

(a) It is proposed that the clause be amended by inserting at the end of section 10C (1) the following words:
"and the development needs of communities"
(b) It is further proposed that the clause be amended by inserting a paragraph after paragraph (c) in subsection (2)
"the regional land claims commissioner"

10H

(a) It is submitted that a new section be inserted as follows:

Meetings of the Regional Mining Development and Environmental Committee

10H The meetings of the RMDEC shall be open to the public and that the reports and recommendations of the committee, minutes of meetings and comments, objections and agreements considered by the committee shall be available for public inspection.

7. **Clause 8(1)**

(a) More detail in regard to precisely when such Ministerial consent would be required and a period for the furnishing of such consent will be set out in regulations is required.

8. **Section 10 of the Act**

(a) It is proposed that the section be amended by the insertion in subsection (1) after paragraph (b) of the following paragraph:

"Provided that if the application relates to communal land,

The directly affected community must be invited to negotiate and seek agreement on the application;

Prior to seeking consent, the applicant must approach the community to have an independent expert appointed;

The independent expert shall first facilitate a process in which the community decides whether to consent to the access required for the completion of impact assessments;

Once a decision concerning access and impact assessment has been made, the independent expert shall facilitate a process in which the community shall make an informed decision regarding whether to consent to the granting of the mining right. This process shall be transparent, democratic and participatory, and shall at minimum include the following steps:

A widely publicised public meeting where the independent investigator summarises the likely effects of the proposed mining activities, including the results of any impact assessment conducted, in a manner that is accessible to the community and at a convenient venue and time. The independent investigator must also summarise the proposed terms under which the applicant proposes to compensate the community and its members for the proposed mining activities, and advise the community regarding the extent of the applicant's compliance with the statutory requirements.

At such a meeting, community members shall be entitled to comment freely and to seek further information.

At or after such a meeting, the community may appoint community representatives to represent the community in engagements with the independent investigator and the applicant in terms of that community's

customary law, provided that such representatives shall not be empowered to give binding undertakings on behalf of the community.

After such a meeting, the independent investigator shall furnish all information sought by community members in an accessible form.

While the applicant and the independent expert may engage with the community throughout the application process, the decision regarding community consent shall only be taken after the integrated assessment report is finalised."

(b) A further proposal is that whenever the Minister receives an application for a mining permit in area falling under traditional leadership, the first person to be consulted should be the traditional leader (King/Queen/any member of the royal family) of the area. It is also suggested that the Minister should, when approaching an affected community regarding any proposed mining do so together with the applicant so that the community is in a position to clarify whatever issues it may have in the presence of the Minister and the applicant.

9. Clause 21

(a) It is submitted that the proposed sections 26(2B) and (3) appear to be unconstitutional as being inconsistent with South Africa's international trade obligations. There is a concern that the effect of these provisions is that a quantity of designated minerals would have to be made available for local beneficiation, the result being that there is a quantitative limit which is placed on the designated minerals which are available for export.

10. Clause 22

(a) It is submitted that some mining companies are not all Black owned or controlled. Some of them, including the members of ASPASA (the Aggregate and Sand Producers Association of South Africa) for quarrying purposes and the members of the South African Diamond Producers Association (SADPO) for alluvial diamond digging purposes, sometimes do need to apply for mining permits since the minerals in question can be mined optimally within three years and the relevant mining areas do not exceed five hectares, within the meaning of section 27(1) of the MPRDA.

An unintended consequence could be that if there is no Black owned or controlled company which his interested in applying for or is a qualifying applicant for the relevant mining permit, the mining opportunity will go to waste, which would not accord with the object in section 2(e) of the MPRDA of promoting mineral resource development in South Africa.

Furthermore the Mining Charter's empowerment ownership target is 26% and which target is and should remain applicable to mining permits.

The proposal to reserve for 51% black owned South African companies the competence to acquire mining permits is unconstitutional in that it contravenes the right to equality in section 9 of the Constitution, the right to freedom of trade, occupation and profession in section 22 of the Constitution, and the parliamentary procedure in section 76 of the Constitution.

In essence, it is submitted that permits should be reserved for black owned and controlled companies.

11. Clause 27

(a) It is submitted that the clause should be amended by the insertion after subsection (9) of the following subsections:

"(10) the Minister shall, after consulting the Council, develop a Charter

a) to protect and promote customary and artisanal small scale miners,

b) that will set the framework for effecting the participation of members of communities in the exploitation of the resources of their communal land.

(11) the Minister may, with reference to the Charter envisaged in subsection (10) exempt persons who are members of communities or categories of such persons from certain of the provisions of this section."

12. Clause 31 of the Bill

(a) There is a concern that clause 31 of the Bill in its current form, which will prohibit collection of prescribed debt, was not put to public comment.

45A

(a) The following section is proposed for inclusion in the Bill:

"Minister's power to recover costs in event of urgent measures to prevent safety and security risks at abandoned and closed mines

45A. (1) If, in the Minister's opinion, any closed or abandoned mine or any cessation of operations as a result of relinquishment, abandonment or cancellation of a right or permit poses a risk to the security, health and safety of the public, or is used for illegal mining activities, and requires urgent remedial safety and security measures to be taken, the Minister may direct the holder or previous holder of the relevant right, permit or permission or the previous holder of an old order right to---

(a) investigate, evaluate, assess and report on the impact of any safety or security risk;

(b) take such measures as may be specified in such directive; and

(c) complete such measures before a date specified in the directive.

(2) (a) If the holder fails to comply with the directive, the Minister may take such measures as may be necessary to protect the public or secure the abandoned or closed from illegal activities.

(b) Before the Minister implements any measure, he or she must afford the holder an opportunity to make representations to him or her.

(c) In order to implement the measures contemplated in paragraph (a), the Minister may by way of an *ex parte* application apply to a High Court for an order to seize and sell such property of the holder as may be necessary to cover the expenses of implementing such measures.

(d) In addition to the application in terms of paragraph (c), the Minister may use funds appropriated for that purpose by Parliament to fully implement such measures.

(e) The Minister may recover an amount equal to the funds necessary to fully implement the measures from the holder concerned.

(3) If the Minister directs that measures contemplated in this section must be taken to protect or secure but establishes that the holder of the relevant right or permit or old order right, or his or her successor in title, is deceased or cannot be traced or, in the case of a juristic person, has ceased to exist, has been liquidated or cannot be traced, the Minister may instruct the Regional Manager concerned to take the necessary measures to make the area safe and secure.

(4) The measures contemplated in subsection (3) must be funded from the financial provision made by the holder of the relevant right or permit or if there is

no such provision or if it is inadequate, from money appropriated by Parliament for that purpose."

13. **Clause 35**

(a) It is submitted that section 47(1)(c) be amended by the insertion of the following paragraph:
"(c) is contravening any condition in the environmental authorisation, approved social and labour plan or undertaking by a holder or condition imposed in respect of the housing and living conditions standard for the minerals industry, codes of good practice for the minerals industry and the broad-based socio-economic empowerment charter envisaged in section 100."

(b) It is also proposed that paragraph (d) dealing with misrepresentations by mining companies be retained.

14. **Clause 44 (56C)**

(a) There is a concern that the memorandum to the Bill and the Department give no explanation why civil society and communities should lose the representation that they had on the Board which is now being replaced by the Council. It is therefore proposed that the clause be amended to include the following categories:

"One representative from non-governmental organisations;
Two persons from community based organisations;
The Chief Land Claims Commissioner"

15. **Clause 58**

(a) It is submitted that time sensitive activities for onshore shale gas programme include compliance with technical regulations, extensive public participation, EIAs etc. An amendment is therefore proposed to section 81(4) that the exploration timelines be for an initial 5 years with an additional 2 to 3 years with a total of 11 years.

16. **Clause 65 (86A)**

(a) It is proposed that there should be incorporation of the necessary flexibility for downward adjustment of the State carried interest during the exploration phase to support shale gas exploration investments and ultimately a more competitive gas production cost and consequential market price.

17. **Clause 74**

(a) It is submitted that this clause be amended so that communities that historically and currently lost their land rights in homelands and on communal land as a result of mining get the full benefit, ie 26%, of ownership and control targets in the BBSEE Charter and communities that are considering giving consent to new mining on their land in terms of section 5A to at least get the full benefit, ie 26%, of ownership and control targets in the BBSEE Charter.

(b) It is therefore proposed that Section 100 of the principal Act be amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:
"(a) To ensure the attainment of the Government's objectives of redressing historical, social and economic inequalities as stated in the Constitution, the Minister must within six months from the date on which this Act takes effect develop a broad-based socio-economic empowerment Charter that will set the framework for targets and time table for effecting
a) reparation and redress to directly affected communities on communal land who have not benefitted from mining on their land;
b) the entry into and active participation of historically disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of the mining and mineral resources and the beneficiation of such mineral resources:
Provided that the target set in respect of mining on communal land shall be exclusively for the benefit of the directly affected community, and any equity associated with such target shall be held by an entity in which the community holds a controlling interest."

(c) It is further proposed that section 100(2)(b) be amended as follows:

"the Charter must set out, amongst others how the objects referred to in section 2(c), (d), (e), (f), (i), (j) and (k) can be achieved"

18. **General**

(a) It is submitted that Bill 15D and the 57 further amendments proposed by the Department of Mineral Resources must be rejected because the joint rules of Parliament provide that no amendments can be made when a Bill is returned to Parliament by the President on the procedural ground of lack of participation.

(b) The Bill inserts the words "where necessary" in 16 places in the Bill. This gives an applicant mining company and the regional manager of the Department of Mineral Resources the discretion to decide whether there must be a

simultaneous application for a water use licence under the National Water Act. The authority of the Department of Water Affairs is undermined. It is proposed that the offending words [where necessary] be removed from the Bill.

(c) It is submitted that there should be financial provision for the communities that have interest in mining.

(d) There was a proposal that the Bill should await the finalisation of the land claims processes.

(e) A concern was raised about the benefits of the Eastern Cape Province as it has the highest percentage of mine workers, which makes it a labour sending area.

(f) It was also submitted that suitable housing should be provided for the people working in the mines.

(g) A concern was raised that the Bill the local beneficiation in its current format is vague and does not seem to advance the radical economic transformation that the Bill seeks to achieve. A further proposal with respect to beneficiation is a 5% to the directly affected community as a means of compensation for loss of grazing land and the resultant pollution to the environment.

(h) A proposal was raised that the social and labour plans should be strictly a product of deliberations between the directly affected community, the mining company and other relevant stakeholders.

(i) A concern was also raised about the proposed 20% free carried interest to the State while the company will be paying the tax to the State.

(j) Emphasis was made on the importance of community involvement in the consultation processes.

(k) A suggestion was also raised with respect to the fact that the Department should take responsibility and assist the communities when there is proposed mining to guard against incorrect submissions being made by mining companies regarding consent having been given by affected communities when that is not the case.

(l) A further suggestion was made that environmental impact assessment reports should be presented directly to affected communities in the presence of the Department and the proposed RMDEC.

(m) A concern was also raised about the short and/or late notice about the public hearing to some stakeholders.

(n) Of all the communities visited, the Xolobeni community advised that it was vehemently opposed to mining.

(o) There were a number of other general comments raised and these are outlined in the attached report of the Portfolio Committee on Economic Development, Environmental Affairs and Tourism for consideration by the Select Committee.

02 May 2017

HON T DUBA (MPL)
CHAIRPERSON OF THE PORTFOLIO COMMITTEE ON ECONOMIC DEVELOPMENT, ENVIRONMENTAL AFFAIRS & TOURISM

DATE

FREESTATE-VRYSTAAT-FORESTATA

FREE STATE LEGISLATURE

PORTFOLIO COMMITTEE ON ECONOMIC DEVELOPMENT
NEGOTIATING MANDATE

TO: Chairperson of the Select Committee on Land and Mineral Resources

NAME OF BILL: Minerals and Petroleum Resources Development Amendment Bill

NUMBER OF BILL: [B 15D-2013]

DATE OF DELIBERATION: 14 June 2017

VOTE OF THE LEGISLATURE:

The Portfolio Committee on Economic Development as designated by the Free State Legislature:

a) MINERALS AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL [B15B-2015]

1. WAMUA (Women affected by Mining United in Action)

MPRDA and MPRD Amendment Bill No. 15 of 2013 proposals

Definitions
Insert new definition:
"Customary law" means the rules and principles that communities used to govern themselves and their access, governance, development, allocation, conservation and disposal of shared resources. The customary law as practiced by communities today shall prevail over any written account of a community's customary law, particularly any account written by colonial administrators or their functionaries.
Insert new definition:
"directly affected community" means a community or part of a community directly affected by mining on communal land occupied or used by members of such community or part of the community,

And where a directly affected community was dispossessed of its rights in land as a result of mining on its communal land, "the community" shall have the meaning corresponding to the meaning ascribed in the Restitution of Land Rights Act 1994

Insert new definition:

"Communal land" means land in respect of which a community holds rights including informal rights as defined in Interim Protection of Informal Land Rights Act 1998.

Purpose and objective

Community shall be defined as a group of persons who have chosen or chose to adhere to and enforce shared rules of access to their land, minerals and other resources, owned by them through long occupation and or grant or other means regardless of whether title is formally held by the State or another person.

Subsection 2(d)

Retain "women and communities"

Purpose and objective

There is no motivation, legally and constitutionally for removing women and children as a designated group identified for mining development.

By insertion of the following paragraph after paragraph (i):

(j) Ensure that applicants for and holders of prospecting and mining rights are required to obtain community consent prior to and during the development or implementation of projects;

(k) Provide for contribution to the reparation for the dislocation of affected communities on communal land that were dispossessed of their rights in land due to mining or otherwise directly affected;

(l) Communities and members of communities owning or possessing land in terms of any custom or practice shall have a right to property and the protection thereof, including the use and disposal of both surface and subsurface rights.

Purpose and objective

Unless the consent and reparation standards are adopted in practice and as the foundational principles to address the 1913 land law legacy, history will be repeated.

Section 5A: Prohibition relating to illegal act.

By the insertion after paragraph (c) of the following paragraph:

(d) on communal land, without the prior written consent of the directly affected community in terms of customary law as applicable and in the Interim Protection of Informal Land Rights Act 1996: Provided that if a prospecting right, mining right or mining permit had been granted after 16 January 2015 in respect of communal land and such consent is not given within 6 months of any grant, such right will lapse.

Purpose and objective

Under section 10, any applicant and the department must invite a community on communal land to negotiate with a view to find agreement. An applicant for a mining right without community consent or pending consent, can proceed with an application at his own risk but cannot start mining until consent is given and the department's grant will lapse after six months if community consent is not given.

Under section 100, communities that are considering giving consent to new mining on their land in terms of section 5A will at least get the full benefit, i.e. 26%, of ownership and control targets BBSEE Charter.

Section 10: consultation with interested and affected parties

By the insertion in subsection (1) after paragraph (b) of the following paragraph:

"Provided that if the application relates to communal land,

(i) The directly affected community must be invited to negotiate and seek agreement on the application;

(ii) Prior to seeking consent, the applicant must approach the community to have an independent expert appointed;

(iii) The independent expert shall first facilitate a process in which the community decides whether to consent to the access required for the completion of impact assessment;

(iv) Once a decision concerning access and impact assessment has been made, the independent expert shall facilitate a process in which the community shall make an informed decision regarding whether to consent to the granting of the mining right. This process shall be transparent , democratic and participatory, and shall at minimum include the following:

(a) a widely publicised public meeting where the independent investigator summarises the likely effects of the proposed mining activities, including the results of any

impact assessment conducted, in a manner that is accessible to the community and at a convenient venue and time. The independent investigator must also summarise the proposed terms under which the applicant proposes to compensate the community and its members regarding the extent of the applicant's compliance with statutory requirements.

(b) At such meeting, community members shall be entitled to comment freely and to seek further information.

(c) At or after such a meeting, the community may appoint community representatives to represent the community in engagements with the independent investigator and the applicant in terms of that community's customary law, provided that such representatives shall not be empowered to give binding undertakings on behalf of the community.

(d) After such a meeting, the independent investigator shall furnish all information sought by the community members in an accessible form.

(v) While the applicant and the independent expert may engage with the community throughout the application process, the decision regarding community consent shall only be taken after the integrated assessment report is finalised."

6. Section 10B: RMDEC

By the insertion after paragraph (b) of the following paragraph:

(c) Consider reports on negotiations in respect of communal land, and report thereon to the Minister.

Section 10C: composition of RMDEC and expertise of members

By inserting at the end of section 10C (1) the following words:

"the development needs of communities"

By inserting a paragraph after (c) in subsection (2)

"the regional land commissioner"

Proceedings of RMDEC meetings

Proceedings of the RMDEC

The meetings of the committee shall be open to the public.

The reports and recommendations of the committee, minutes of the meetings and comments, objections and agreements considered by the committee shall be available for public inspection.

Purpose and objective

Whether or not the right to attend meetings and the right to access to information are implied in the PAJA or PAIA is neither here nor there. The fact is that in the extractives industry extraordinary efforts must be made in the statutory instruments to address the perception that the department and regional managers do not promote transparency and accountability in a manner that fosters trust between stakeholders. The right to attend meetings and get access to information in particular in relation to RMDEC should be stated in terms of the Act itself.

Section 27 clause 22 small scale mining and mining permits

By the insertion after subsection (9) of the following subsections:

(10)the Minister shall, after consulting the Council, develop a Charter

(a) to protect and promote customary and artisanal small scale miners,

(b) that will set the framework for affecting the participation of members of communities in the exploitation of the resources of their communal land.

(11) the Minister may, with reference to the Charter envisaged in subsection (10) exempt persons who are members of communities or categories of such persons from certain of the provisions of this section.

Purpose and objective

Regarding the legitimate activities of small scale onerous customary and artisanal miners on communal land who cannot comply with the onerous provisions relating to small scale mining in section 27 which are too cumbersome on the one hand or too restrictive on the other hand, the above provisions will allow for a flexible small scale policy, without sacrificing certainty and security.

Section 45A Minister's power to recover costs in the event of urgent measures to prevent safety and security risks at abandoned and closed mines

45A. (1) If, in the Minister's opinion, any closed or abandoned mine or any cessation of operations as a result of relinquishment, abandonment or cancellation of a right or permit poses a risk to the security, health and safety of the public, or is used for illegal mining activities, and requires urgent remedial safety and security measures to be taken, the Minister may direct the holder or previous holder of the relevant right, permit or permission or the previous holder of an old right to-

(a) Investigate, evaluate, assess and report on the impact of any safety or security risk;
(b) Take such measures as may be specified in such directive; and
(c) Complete such measures before a date specified in the directive.

(2)(a) if the holder fails to comply with the directive, the Minister may take such measures as may be necessary to protect the public or secure the abandoned or closed mine from illegal activities.
(b) Before the Minister implements any measure, he or she must afford the holder an opportunity to make representations to him or her.
(c) in order to implement the measures contemplated in paragraph (a), the Minister may by way of an ex parte application apply to a High Court for an order to seize and sell such property of the holder as may be necessary to cover the expenses of implementing such measures.
(d) In addition to the application in terms of paragraph (c), the Minister may use funds appropriated for that purpose by Parliament to fully implement such measures.
(e) The Minister may recover an amount equal to his or her funds necessary to fully implement the measures from the holder concerned.

(3) if the Minister directs that measures contemplated in this section must be taken to protect or secure but establishes that the holder of the relevant right or permit or older right, or his or her successor in title, is deceased or cannot be traced or, in the case of a juristic person, has ceased to exist, has been liquidated or cannot be traced, the Minister may instruct the Regional Manager concerned to take the necessary measures to make the area safe and secure.
(4) The measures contemplated in subsection (3) must be funded from the financial provision made by the holder of the relevant right or permit or is there is no such provision or if it is inadequate, from money appropriated by Parliament for that purpose.
Section 47(1)(c) Minister's power to suspend or cancel rights, permits or permissions
"(c) is contravening any condition in the environmental authorisation, approved social and labour plan or undertaking by a holder or condition imposed in respect of the housing and living conditions standard for minerals industry, codes of good practice for the minerals industry and the brad-based socio-economic empowerment charter envisaged in section 100.

Purpose and objective

The enforceability of SLPs and mining charter undertakings and targets are undermined in that there is no real sanction for non-compliance. A fine as provided for in section 99 has little if any deterrent value. Non-compliance with the detailed provisions of SLPs and BEE undertakings should in terms be punishable with cancellation of the right, as in the case of environmental authorisations.
Retain paragraph (d) dealing with misrepresentations by mining companies.

Purpose and objective

The memorandum and the departments give no explanation why after the Act has been in operation for 11 years, why the offence and remedy must now be repealed.
Section 56C: Establishment of Ministerial Advisory Council (the composition of the Council)
Include the following categories
One representative from non-governmental organisations
Two persons from community based organisations
The Chief Land Claims Commissioner

Purpose and objective

The memorandum and the departments give no explanation why civil society and communities should lose the representation that they had on the Board which is now being replaced by the Council.
Section 100 Transformation of minerals industry (empowerment and reparation)
Section 100 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:
"(a) To ensure the attainment of the Government's objectives of redressing historical, social and economic inequalities as stated in the Constitution, the minister must within six months from the date on which this Act takes effect develop a broad-based socio economic empowerment Charter that will set the framework for targets and time table for effecting:
(a) Reparation and redress to directly affected communities on communal land who have not benefited from mining on their land.

(b) The entry into and active participation of historically disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of the mining and mineral resources and the beneficiation of such mineral resources:
Provided that the target set in respect of mining on communal land shall be exclusively for the benefit of the directly affected community, and any equity associated with such target shall be held by an entity in which the community holds a controlling interest."

Purpose and objective

The proposal above means that

a) Communities that historically and currently lost their land rights in homelands and on communal land as a result of mining will get the full benefit, i.e. 26%, of ownership and control targets in the BBESEE Charter.

This does not mean that communities with land claims under the Restitution Act will be limited to this grant in their restitution packages, but it could make a significant contribution to the integration of the reparation aims of the land reform programme and the redistribution aims of the MPRDA

b) Communities that are considering giving consent to new mining on their land in terms of section 5A will at least get the full benefit, i.e. 26%, of ownership and control targets in the BBSEE Charter.

By the amendment of section 100(2)(b):

the Charter must set out, amongst others how the objects referred to in section 2(c),(d),(e),(f)), (i), (j) and (k) can be achieved.

Guidelines for community consent processes
The following conditions for community consent processes shall be incorporated into the regulations and participation codes.
Communities and members of communities owning or processing land in terms of any custom or practice shall have a right to property and protection thereof, including the use and disposal of both surface and subsurface rights.
Community governance

1. Communities shall have the choice to practice customary forms of governance in matters internal to the community and involving relations external to the community.
2. Such practice shall be recognised as a living and changing form of governance.
3. Such practice shall not be defined or bound by colonial constructions of customary ownership, decision-making and governance.
4. Customary decision-making processes shall be as defined by the communities' living practice, subject to the realisation of equality and democracy enshrined in the African Charter on Human Rights and People's Rights, especially the promotion of the rights of women to participate in and lead such processes.

Community Rights
The continued existence of a community shall be considered inviolable

1. The rights of a community include, amongst others, the right to:
2.2. Pursue their own development path;
2.3. The natural resources on and below the surface of their land; and
2.4. Collectively benefit from the use of the natural resources on and below the surface of their land.

10.3 no community may be arbitrarily deprived of these rights through mining or associated activities.
10.4 the State must facilitate and support the chosen development path of such a community, including supporting the community in considering all viable forms of development.

Community consent required

1. Should a proposed mining activity require access to a portion of land owned, occupied or used by a community in terms of that community's custom or practice, or if an existing

mining activity should require a significant change in the scope or nature of operations, the affected community's consent shall be required.

2. The affected community shall have the right to grant consent unconditionally or subject to conditions that the community considers necessary to protect their socio-economic rights or interests, or their natural or cultural heritage.
3. The affected community shall have the right to refuse to grant such consent.
4. Should the affected community's consent not be granted, the State shall not permit the proposed mining activity to proceed until such consent is granted.
5. Should mining commence or a mining right without the consent of their community, the community shall have the choice to:
   5.1. Have the right set aside and to be paid compensation for their full damages suffered by the community including the value of any minerals extracted and the value of rehabilitating the land to the condition it was prior to any mineral exploitation; or
   5.2. Consent to the mining retrospectively though the process set out in this Chapter, including the negotiation of compensation, and to recover all compensation that would have been owed to it had the community's consent been received from the outset.
6. Communities shall have the right to revoke their consent should mining activities be conducted in a manner contrary to this law, with communities then entitled to compensation for the full damages suffered by all mining activities.
7. If more than one community is affected by a proposed mining activity, each community shall have the right to independently decide whether to grant or refuse its consent.

Free, Prior and Informed consent

1. Community consent may only be granted on the terms set out in this Chapter, and must be:
   1.1 free from any form of manipulation, coercion, or pressure;
   1.2 prior to the commencement of the activity; and
   1.3 with full, detailed and accurate information on the nature and scope of the proposed mining activity, on the reasonably possible impact on the community's economic, social and environmental wellbeing, including the impact on women informed by the precautionary principle that the burden of proof falls on the application to establish that an activity is not harmful, and on development alternatives.

Customary decision-making

1. When a community's consent is required, a community shall decide whether to grant its consent in terms of that community's customary law and practice, provided that such processes shall:
   1.1. be transparent, democratic, and participatory;
   1.2. ensure the participation of all persons directly affected by the proposed mining activities; and
   1.3. Protect and promote the right of women to participate, lead, and make decisions.
2. Where the proposed mining activity requires the relocation of specific community member's homes, the majority of the specific persons affected by the relocation must consent to the mining activity.
3. A decision to provide consent must include an agreement regarding compensation payable to the community and its members compliant with the standards set out in CHAPTER 6.
4. Notwithstanding any timeframes provided for in terms of any statute law, communities have the right to sufficient time to give effect to decision making processes required by their customary law.

Outcome

1. Where consent is granted for a mining activity, it is mandatory that the applicant and the community conclude a written agreement setting out the terms of exactly what has been consented to in plain language, including the terms of compensation payable to the community and its members, provided that the community may nominate representatives to sign such agreement in terms of its customary law and practice after the final draft has been made available to the public.
2. This agreement may be amended with the consent of all parties where it is necessary to change the project plan for the proposed mining activity which is likely to affect or change the impact of such activity.

(2) The same applies to the proposed new ss25 (2)(fA) and 100(3) in the MPRDA and the apparently newly proposed s47(1)(f), the effect of which would be to elevate what are only guidelines into a form of subordinate legislation.
(3) The above issues are, as the President pointed out, exacerbated by the proposed s100(4) which would, read with the proposed new definition of "this Act", empower the Minister to amend or repeal the Parliamentary legislation now by definition constituted by the Codes, the Standards and the Charter.
(4) In terms of ss44, 55 and 239 of the Constitution, national legislative authority is vested in Parliament, including to amend legislation, and the definition of national legislation includes subordinate legislation made in terms of Parliamentary legislation, and Parliament may delegate its power to make delegated legislation to the executive. However, Parliament may not delegate its function to make nation legislation.

Clauses 1(g) and 21(c) and (d) of the Bill: proposed definition of "mine gate price" and ss26 (2B) and (3) on beneficiation

3.1. The definition of "mine gate price" arguably does not allow for export parity pricing, so that the producer will suffer a loss by being compelled to subsidise local benefactors. The Chamber submits that the exercise of the Minister's powers in terms of these provisions will constitute an expropriation of property within the meaning of ss25 (2) and (3) of the Constitution and hence oblige the State to pay compensation to the holder in respect of the resultant loss of income.

(1) In terms of s5 (1) of the MPRDA, a registered mining right is a limited real right in respect of the mineral and the land. Such mining right, including income derived from the exercise of such mining right, constitutes property.
(2) The Constitutional Court has held that a one-size-fits-all determination of what acquisition for purposes of expropriation, is inappropriate and that a case-by-case determination is necessary by reference inter alia to the source, nature and content of the affected rights. The above provisions deal with the enforced diversion of income from the holder of the mining right to another (being the local beneficiator) in promotion of the State's industrial and economic policies. It follows when the Minster prescribed by regulation the aspects dealt with in the above provisions, an expropriation will result, and for which, in terms of item 12 in Schedule II to the MPRDA read with ss25 (2) and (3) of the Constitution, the State will have to pay compensation to the holder of the mining right for the loss suffered by such holder in being forced to sell at a price lower than export parity price. In other words, the State will in any event ultimately pay for the subsidisation of local beneficiaters.
(3) In addition, investors who enjoy the benefit of Bilateral Investment Treaties (BITs) will still have claims for compensation in terms of now non-renewed or terminated BITs to which South Africa was a party. BITs tend to contain a broad definition of "investment" and "expropriation". Notwithstanding such non-renewal and withdrawal by South Africa, BITs normally contain a provision that in respect of investments made while the BIT was in force its provisions continue in effect with respect to such investment for a period such as 20 years after termination.
(4) All the above of course also constitutes a considerable deterrent to investment in the mining industry in South Africa.

3.2 The Chamber further submits that the proposed ss26(2B) and (3) would indeed, in accordance with the President's reservations in that regard, be unconstitutional as being inconsistent with South Africa's international trade obligations.

(1) Subsection 26 (2B) and (3) would cause some producers to have to breach their long-term export contracts.
(2) The proposed ss26 (2B) and (3) would violate South Africa's above-mentioned international trade agreements.

(3) In conclusion therefore:

(a) the proposed amendments entail quantitative restrictions on exports;
(b) such export restrictions breach South Africa's international law obligations;
(c) South Africa's international law obligations are of Constitutional relevance in that :

3. Where consent is granted or refused, the independent investigator shall produce a report documenting the decision-making process, with a particular emphasis on the following:

3.1 the steps taken to notify the members of the community about the meetings convened by the independent investigator;

3.2 the quality of the information provided by the applicant and the extent of its cooperation;

3.3 indications of manipulation, coercion or pressure from outside actors during the decision-making process.

3.4 The extent of community participation, including the extent of participation by vulnerable members of the community and minority groups;

3.5 Where consensus was not reached, the reasons why consensus was not reached, the views of those opposed to the mining activity including and especially minority and vulnerable households, and full details on the meeting at which the decision was taken.

3.6 The extent of the participation of and leadership by women in the process;

3.7 Where the relocation of members of the community had been proposed by the applicant, the steps that were taken to solicit the view of the persons affected by the relocation; and

3.8 Any other information that may be relevant to explaining the extent and quality of the public participation process and the decision of the community.

2. CHAMBER OF MINES OF SOUTH AFRICA

PART A: CONSTITUTIONAL ISSUES

1.1. In terms of s79 (1) of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), the President of the Republic of South Africa referred back the Bill to Parliament on two substantive grounds of unconstitutionality, namely:

"a. The definition of "***This Act***" is likely unconstitutional in that the amended definition elevates the Codes of Good Practice for the South African Minerals Industry, the Housing and Living Conditions Standards for the Minerals Industry and the Amended Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry to the status of national legislation. In addition, in terms of section 74 of the Amended Act, the Minister is given the power to amend or repeal these instruments as and when the need arises effectively by-passing the constitutionally mandated procedures for the amendment of legislation;

b. As amended, sections 26(2B) and 26(3) appear to be inconsistent with South Africa's obligations under the General Agreement on Trade and Tariffs (GATT) and the Trade, Development and Cooperation agreement (TDCA) insofar as they appear to impose quantitative restrictions on exports in contravention of GATT and TDCA and in doing so render the state vulnerable to challenges in international fora;"

1.2 The National Assembly has however dismissed the abovementioned Presidential reservations.

1.3 The Chamber submits that the above Presidential reservations were correct, for the reasons which follow and has obtained opinions from Adv. CDA Loxton SC and Adv D Unterhalter SC on such reservations agreeing with the views of the President. If the Bill remains unchanged in these respects the President should in terms of s79(4)(b) of the Constitution refer the Bill to the Constitutional Court for a decision on the Bill's constitutionality. The need for this would be avoided if the Bill were amended in the manner suggested by the Chamber below.

Clauses 1(zD), 20(e), apparently newly proposed 35(b), and 74 of the Bill: "This Act" and related issues, be deleted from the Bill.

Clauses 1(g) and 21(c) and (d) of the Bill: proposed definition of "mine gate price" and ss26 (2B) and (3) on beneficiation.

In regard to the above clauses the Chamber submits the following.

(1) The inclusion of the Codes, the Standards and the Charter into the definition of "this Act" in s1 of the MPRDA would transform these instruments as developed by the Minister into Parliamentary legislation thus offending against the constitutionally enshrined separation of powers between the legislature and the executive, and cannot elevate them to even subordinate legislation.

(i) they must be considered for the purpose of interpreting legislation;
(ii) international law obligations discipline the exercise of powers granted under primary legislation to make subordinate legislation; and
(iii) where an empowering statute compels the exercise of powers in a manner that breaches international law, the challenge lies against the statute itself whereby a challenge to a statute under the Bill of Rights in the Constitution recognises the importance of international law because in terms of s7(2) of the Constitution the State is under an obligation to respect its binding commitments under international law.

3.3 In the Chamber's submissions on the Bill it had at all times submitted that the proposed ss26(2B) and (3) are unconstitutional. During the consultative process undertaken by the Department of Mineral Resources the Chamber reserved its position on unconstitutionality while discussing the wording of ss26(2B) and (3). Although therefore the wording was discussed, this was subject to the Chamber's reservation of its position on unconstitutionality as outlined above and which has now again come to the fore to the President's reservations as outlined above and which now again come to the fore due to the President's reservations on constitutionality of these provisions as mentioned in paragraph 1.3 above.

3.4 The Chamber therefore respectfully requests the Provincial Legislature to recommend that the above clauses be deleted from the Bill.

PART B: OTHER KEY ISSUES

The Chamber recommends the retention of the following clauses:

Clause 5: invitations for applications (substituted s9)

The current **"first come, first served"** order of processing of applications will be replaced with a system of Ministerial invitations.

An essential element of the new system is that the Minister, when processing applications, would be obliged to give preference to an application lodged by a person who had applied by invitation. The reason for such preference was to give security to persons who incurred the costs of identifying such land and mineral or petroleum so that such persons would be first in line for a right. Without such a provision it is unlikely that such persons would risk undertaking the operations. The Chamber therefore submits that a new s9(5) referring to such preference should be retained.

Clause 8: Ministerial approval for changes in shareholding of companies (s11)

Clause 75(b): Extension of areas (s102)

Clauses 28, 29 and 30: Environmental legislation (ss37, 38B and 43)

Clause 30: Historic residue stockpiles and residue deposits

PART C: TABLE OF OTHER PROPOSED AMEDMENTS PUT FORWARD BY THE DEPARTMENT OF MINERAL RESOURCES

Clause 1(i): Amended definition of "effective date" in section 1 of the MPRDA

(1) In the *Mawetse* judgement the Supreme Court of Appeal held that the duration of a right granted in terms of the MPRDA commences when the applicant receives notice from the Department of Mineral Resources of the grant of the applicant's application for such right, and not on the effective date as defined.

The Chamber submits that the commencement date of the right should be on the effective date as currently defined, and that accordingly the definition of **"effective date"** read:

"'effective date" means the date on which the relevant permit is issued or the relevant right is executed, and on which date, notwithstanding the date of grant of the application for such permit or right or the date of notification to the applicant of such grant, the duration of the relevant permit or right shall commence and which issue or execution shall occur within a prescribed period after such notification."

Clause 5: Proposed deletion of s9 (5) in the MPRDA: invitations for applications

The Chamber requests the retention rather than the deletion of the proposed s9(5) as in s9 above.

Clause 12(e): deletion of s17 (2)(b): concentration

The Chamber respectively agrees with this clause but submits that a new sub clause needs to be inserted into clause 26 of the Bill to the effect that s33(c) of the MPRDA, which also refers to concentration, also be deleted.

However, the Portfolio Committee noted that section 17(2)(b) is not the subject of proposed amendment in the Bill. Furthermore, clause 26 proposes to omit "Board" and to substitute "Regional Manager". It does not deal with "concentration" as contemplated in section 17(2)(b).

Clause 20(c), Proposed s25(2)(fA) and further proposed amendment thereto: codes, standards and Charter.
For the reasons given on Constitutional issues, the Chamber submits that the proposed s25 (2)(fA) should be deleted and hence also that the above further proposed amendment thereto not proceed.
Clause 22: proposed s27 (1)(c): Mining permits
An unintended consequence could be that if there is no Black owned or controlled company which is interested in applying for or a qualifying applicant for the relevant mining permit, the mining opportunity will go to waste, which would not accord with the object in s2(e) of the MPRDA of promoting mineral resource development in South Africa.
The Chamber therefore does not agree that such permits should be reserved for black owned and controlled companies.
However, the Portfolio Committee noted that section 27 does not have subsection (1)(c).

Clause 35: Proposed new s47 (1) (f): contravention of Codes, Standards or Charter
For the reasons given on Constitutional issues, the Chamber respectively requests that this proposed amendment not be adopted.
Clause 57: proposed new s80 (2A): Exploration rights
The Chamber respectively agrees with the proposed s80 (2A) but submits that in clause 57(b) the reference in s80 (2) to the Mining Charter needs to be replaced with a reference to the Petroleum Charter which is proposed in the new s100 (5) in clause 74.
However, the Portfolio Committee noted that clause 57 does not propose a new section 80(2A) and section 100 referred to by the Chamber of Mines does not have a new section 100(5).

3. SOUTH AFRICAN OIL AND GAS ALLIANCE(SAOGA)

MPRDA Amendment Bill proposals
The Shale Gas Industry very much supports the MDR amendment proposal with the following few key additional requirements:
Incorporation of a **"Shale Gas"** definition to allow for addressing a few Shale Gas specific challenges and provisions.

Section 86A(9) and (10)- Incorporate the necessary flexibility for downward adjustment of the State Carried Interest during the Exploration Phase to support Shale Gas exploration investments and ultimately a more competitive gas production cost and consequential market price.
However, section 86A does not have new subsections (9) and (10).
Section 81(4)-Time sensitive activities for an onshore shale gas programme include compliance with technical regulations, extensive public participation, EIA and permitting. Process to amend the exploration timelines for an initial 5 years with an additional 2* 3 years (total of 11 years) rather than an additional 3* 2 years (also a total of 11 years). The overall timelines remains unchanged.
BEE participation in the Petroleum Industry and especially Shale Gas Industry need to reflect the required State Carried Participation Interest(not applicable for Mining) and be commensurate with the level of commercial risk and scale of continuous and long term investment requirements (far greater chance of failure and investment levels compared to Mining)

However, the Portfolio Committee noted that section 81(4) is not the subject of amendments in the Bill.

MPRDA Amendment-Negotiation scope for an Early Downward Adjustment

Insert a new subsection (10) in Section 86A-State participation in exploration and production rights:
(10) The Minister may make the downward adjustment referenced above in subsection (9) prior to the notarial execution of an exploration right granted in terms of section 80 or a renewal thereof in terms of section 81 for a Shale gas project, in respect of a corresponding production right, after consultation with the applicant and the Minister of Finance, where such earlier adjustment is shown to be necessary by the applicant with specific reference to the following factors:

However, the Portfolio Committee noted that section 86A in the Bill only has subsections 1-5. The submission by SAOGA proposes subsection (10) when the Bill does not have sub-clause (9).

The nature and scope of the project;
Financial and economic profile of the project;
The degree of risk assumed by the holder throughout the projects; and
National interests.

4. OFFSHORE PETROLEUM ASSOCIATION OF SOUTH AFRICA (OPASA)

Clause 1, page 3 before line 28, to insert before the definition of **"community"** the following definition:
"carried interest" means the interest allocated to the State in an exploration or production right, which interest shall inure exclusively to the benefit of the State and the costs of which shall be borne by the non-state holder and shall be recoverable by such holder in accordance with the terms and conditions determined in accordance with section 86A".
Purpose and objective
The purpose and objective of the proposal is to give effect to the outcomes of operation oceans Phakisa, the negotiations between DMR and the petroleum industry and provide for State carried interest in the exploration in exploration or production rights. This is a change from the notion of **"free carried interest"** currently proposed in the Bill.
Clause 1, page 4, before line 1, to insert after the definition of **"controlling interest"** the following definition:

"corresponding production right" in relation to an exploration right means the production right for which a holder of an exploration right shall apply covering the area relating to such exploration right".
Purpose and objective
The purpose and object of the proposal is to reinforce the notion of certainty of project terms by linking exploration and production rights and to give effect to the outcomes of Operation Oceans Phakisa.

Clause 1 page 4 before line 14, to insert before the definition of **"exploration work programme"** the following definition:

"existing exploration right" means an exploration right granted in terms of section 80 prior to the commencement of Act".
Purpose and objective
The purpose and objective of the proposal is to address the applicability of the concept of State participation in respect of existing exploration rights.

Clause 1 page 4 from line 16 to 18, to delete the definition of **"free carried interest"** ["free carried interest" means interest allocated to the State in exploration or production operations without any financial obligation on the State;]
Purpose and objective
The purpose and objective of the proposals is to delete the definition of **"free carried interest"** since this concept has been replaced with **"carried interest"**.
However, the Portfolio Committee noted that the definition of "free carried interests" has not been replace by "carried interests" in the Bill.
Clause 1 page 5 after line 56 to insert the definition of **"pending application"** after the definition of **"organ of State"**:
"pending application" means an application in terms of section 79 of the Act that was submitted-

(a) Before the commencement of Act; or
(b) After the commencement of the Act, provided the applicant is the holder of a valid technical co-operation permit in respect of the proposed exploration area prior to commencement of the Act."

Purpose and objective

The purpose and objective of the proposal is to provide for applicability of State participation in respect of applications that are on the pipeline as from the date of the Bill is finalised and proclaimed into law.

Clause 1 page 6 after line 31, to insert after the definition of "residue stockpile" the following definition:

"right of pre-emption" means the right of the State in the event of a sale of participating interest, to purchase the participating interest to be disposed of by the holder on terms and conditions equal to those offered by the purchaser selected by the holder, which right shall expire unless accepted by the designated State entity within a period of 90 days following delivery of a notice setting out the final terms and conditions of the proposed transaction".

Purpose and objective

The purpose and objective for the proposal is to provide for a right of pre-emption in favour of the State in the event that a right holder decides to sell its participating interest. The State will have a right of first refusal which must be exercised within the prescribed timeframe.

Clause 1 page 6 from line 37 to 43, to substitute the definition of **"State participation"** means the right of the State to participate in petroleum exploration and production operations, including through:

(a) Participating interest in exploration and production rights and may include production sharing agreements and
(b) Representation at the joint operating committee of the exploration or production operation commensurate with the State's proportionate participating interest.

Purpose and objective
The purpose and objective of the proposal is to change the definition of State participation to remove reference to **"free carried interest"** and replace same with carried interest.

Clause 57 page 33 after line 14, to insert the following subsection (2A) as follows:
"(2A). The Minister shall when granting a production right under this section give effect to the terms and conditions agreed to in a corresponding production right in terms of section 84 and shall record those terms and conditions of the exploration right."
Purpose and objective
The purpose and object of the proposal is to reinforce the notion of certainty of project terms by linking exploration and production rights and to give effect to the outcomes of operation oceans Phakisa.

Clause 62 page 35 after line 52, to insert the following subsection (1A) as follows:
"(1A) The Minister shall when granting a production right under this section give effect to the terms and conditions agreed to in a corresponding exploration right that relates to the production right; and".

Purpose and objective
The purpose and object of the proposal is to reinforce the notion of certainty of project terms by linking exploration and production rights.

Clause 63 page 36 line 24, to insert the following paragraph after subsection (3) paragraph (d) of the following paragraph:
"(e) the applicant and the Minister have concluded the negotiating process referred to in subsection (3A)."
"(3A) Notwithstanding the provisions of section 84(1A) and section 80 (2A), any application for renewal of a production right, shall initiate a negotiating process between the Minister and the applicant relating to technical, financial and commercial terms and conditions of the production project".

Purpose and objective
The purpose and objective of this proposal it to provide for renegotiation of project terms when an application for renewal of a production right is made.

Clause 65 page 36 and 37 from line 49 to 55, and from line 1 to 9, to substitute section 86A for the following section:
"86A. (1) The State has, through the designated organ of State, a right to a 20 percent carried interest in exploration and production rights, from effective date of such rights.

(2) In existing exploration rights and exploration rights granted in respect of pending applications, The State is in addition to the State carried interest referred to in subsection (1) and in accordance with terms and conditions agreed upon and recorded in the exploration right, entitled to a right of pre-emption in the event of a sale of a participating interest by the holder of an exploration or corresponding production right, entitling it to purchase the participating interest on terms and conditions equal to those offered by the purchaser selected by the holder.
(3) The right of pre-emption shall within a period of 90 days from the date of delivery of a notice setting out he final terms and conditions of the proposed transaction expire, entitling the holder a right to offer such participation interest to a third party.
(4) Where an existing exploration right application not contemplated in sub-section (2) is received after commencement of Act, the State is, in the prescribed manner, entitled to an additional participation interests of up to 30 percent taking into account the size of the discovery and rate of production, in the form of-
(a) carried interest;
(b) acquisition at an agreed price; or
(c) production sharing agreements.
(5) The holder of a production right shall recover developments costs of the State carried interest referred to in subsection (1) or (4) where applicable, from the proceeds generated from the production right, as may be prescribed in the terms and conditions of such right.
(6) The State shall upon acquiring interest in terms of subsections (1) and or (4) enter into a joint operating agreement with the right holder or become a party to an existing operating agreement if one is in place in respect of such right.
(7) The Minister must, acting on behalf of the State, appoint two representatives to the joint operating committee of the exploration or production operation to represent the interest of the State."
(8) The State is entitled to exercise its rights held in the joint operating agreements through-
(a) representation as a non-voting participant in the joint operating committee in accordance wit the joint operating agreement during exploration; and
(b) corresponding percentage of voting rights to the interests held in the joint operating agreements during production.
(9) Notwithstanding subsection (1), the Minister must before granting a production right in terms of section 84 and after consultation with the applicant and the Minister of Finance, determine whether the percentage or terms and conditions of the State carried interest referred to in subsection (1) may be adjusted downwards, taking into account-
(a) the nature and scope of the project;
(b) financial and economic profile of the project;
(c) the degree of risk assumed by the holder throughout the projects; and
(c) National interests.

(10) the State carried interest shall not be adjusted below 10 percent.
(11) The holder of an existing exploration right in respect of which terms and conditions for a productions for a production right have not been agreed to and attached in such exploration right, shall within a period of three years of the coming into effect of the Act, apply to the Minister for a determination of the terms and conditions which will be applicable to a corresponding production right, including State participation in the manner contemplated in subsection (9).
(12) Notwithstanding anything to the contrary in the Act, the terms and conditions of an existing exploration right granted before the commencement of the Act in respect of which terms and conditions for a production right have been agreed to and attached in such exploration right shall, remain unchanged in as far as it relates to State participation and participation by historically disadvantaged South Africans and shall where necessary be amended to comply with section 81 and 82 of the Act.
(13) Upon making the determination in terms of sub-section (11), the Minister shall record the terms and conditions of the corresponding production right determined in terms of subsection (11) in the exploration right;".

Purpose and objective

The purpose and objective for the proposal is to provide for State carried interest in exploration and production right with a cost recovery mechanism. The State has a right of pre-emption in the event that a holder disposes of its interest. There is also provision for downward adjustment of the interest to not below 10% after consultation with the Minister of Finance. The State has a right to representation at joint operating committee of the exploration or production operation. Provision is also made for transitional arrangements for existing rights and pending applications.

5. DEMO

CRATIC ALLIANCE MALUTI CONSTITUENCY FREE STATE PRESENTATION ON THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL TO THE FREE STATE LEGISLATURE PORTFOLIO COMMITTEE FOR ECONOMIC DEVELOPMENT: 23 MARCH 2017

Allow us the opportunity to draw attention to the major areas of objection that we have to the Bill. In summary, the major problems with the Bill are as follows:

- In too many places the Bill replaces laid-down timelines and instead inserts "the prescribed period ". This is vague and subject to change.
- The Bill introduces the concept of strategic minerals, which amount to the forcing of cheap mineral sales to benefit local industry. In effect this implies that mining will subsidize manufacturing. This may violate our international trade obligations and be unconstitutional.
- The Bill changes the process of obtaining mining rights from first-come first served to one where government can allocate rights to people with ulterior motives.
- The Bill requires the Minister to approve the transfer of any interest in an unlisted company, as well as a controlling interest in a listed company that own a mining or prospecting right.
- The Mining Charter is given the force of law. This allows the Minister to change law without going through Parliament. This may be unconstitutional.
- The Bill imposes an unrealistic burden on oil and gas companies. If the wording is not rephrased, there will never be a viable oil and gas industry.

The following concrete proposals are made:

Section 1 **DEFINITIONS**

(b) beneficiation: The "baselines are to be determined by the Minister" We are wary of the amount of regulatory vs legislated power to the Minister. This cumulatively amounts to a reduction in certainty.

(h) designated minerals

We oppose the whole concept of designated minerals. It gives the Minister far too much discretion to arbitrarily add mineral to the list on which mineral exports will be interrupted , banned or made less economic.

(j) free carried interest

We have two objections to this:

This description may amount to the free carried interest falling under the definition of a tax. The Bill imposing taxes are section 79 Bills and can only be introduced by the Minister of Finance. If that is found to be the case, it will mean this Bill has been wrongly tagged and processed and is thus unconstitutional.

The concept of the State not having to carry its share of exploration costs is alien to most oil and gas dispensations worldwide. In other words, this is prejudicial to oil and gas companies in an unprecedented degree. The procedure for these changes may be unconstitutional.

(q) mine gate price

This definition should be changed to be quite clear and not subject to legal challenge.

(zA) refers again to the term "free carried interest" which is problematic. Any change to this concept that may appear later in the revised Bill will probably have to be changed here.

(zB)" strategic minerals"

The entire designation of strategic minerals is problematic. We believe it is part of a plan to limit exports which is probably unconstitutional and will definitely be economically harmful.

(zD) (b)

The "Codes of Good Practice" means the mining Charter. We do not believe the Charter should be part of this Bill.

AMENDMENT OF SECTION 9 OF THE PRINCIPAL ACT

This deals with the new system for issuing mining licenses. It says a person intending to obtain a mining right must request the Minister to invite applications for permission to mine. There is no guarantee that the applicant will be the person granted the right. In our opinion this removes the incentive to discover new deposits and allows the Minister to direct all new mineral finds into the hands of people whom the Minister finds acceptable.

AMENDMENT OF SECTION 10

This removes the legislated time by which the DMR must respond to an application by making it regulated rather than legislated time. In practice this means a lack of certainty which will make it less attractive to mine. The removal of set down times and their substitution by the phrase (the "prescribed period " is a key weakness that appears in any places in the Bill.

AMENDMENT OF SECTION 11

This amendment seeks to make anybody trying to sell, even part of a mining right, to get written permission to do so from the Minister. This will delay and make mining transactions more difficult.

Exactly how this will affect the trading of mining shares is not clear. It may make this almost impossible.

AMENDMENT OF SECTION 13 AND 14

More uses of the phrase "the prescribed period" which will open door to poor administrative processes keeping applicants waiting indefinitely or alternatively for this period to be changed at the Minister's whim.

AMENDMENT OF SECTION 19

This change implies that somebody requesting a renewal of a right will not automatically have it granted, even though they may have invested heavily in mining they stand to lose that investment. This will reduce security of tenure and act as a deterrent to investment.

AMENDMENT SECTION 23 (d)

The old Act gave the Minister the option of requiring community participation in a mining license. We would like this to stay because we would prefer community participation in mining in their community to be mandatory.

AMENDMENT OF SECTION 25

We oppose the amendments that remove the security of tenure of rights holders by removing the guarantee of the renewal rights.

AMENDMENT OF SECTION 26 – BENEFICIATION

This is another subject of major concern in this Bill. The Bill will in effect force beneficiation by limiting exports of mined minerals and by forcing miners to sell what they mine at cut prices to local industry. Ultimately this means mining will be less profitable because it will be expected to subsidize industry.

Similar government attempts to interfere in the economy in other countries have always ended in failure.

In this section we object to:

- The phrase "national development imperatives" we don't know what these are and there is no definition so it could mean anything on any particular day.
- The whole concept of the Minister "designating" any mineral in preparation for limiting its export. We believe this will impact on mines profitability and will likely contravene South Africa's obligations under international trade law. This was one of the reasons why the President sent the Bill back but his reservation has been ignored in the Bill, leaving this unchanged.

AMENDMENT OF SECTION 43(1) – ENVIRONMENTAL LIABILITY

Thus makes the holder of a mining right liable for future environmental damage even after the issuing of a closure certificate. Currently the right holder is indemnified from liability that may occur or become apparent years in the future. If the issuing closure certificate was done properly, this would not be necessary. This would negate the closure certificate. It would also introduce confusion about who was liable if there have been more than one holder of a mineral right.

The effective imposition of endless liability will obviously have a dampening effect on investment.

Section 43 (6) proposes allowing the retention of rehabilitation funds for latent impacts which may only become apparent later. This should be sufficient to cover any subsequent damage.

AMENDMENT OF SECTION 70, 80, 84 etc.

This effectively does away with the Petroleum Agency of South Africa, a body which successfully promoted and regulated the issuing of drilling license on and offshore. The powers are given to regional managers who are not knowledgeable enough to exercise them. PASA was sufficiently independent to have the confidence of the industry. It will not have similar confidence in the Regional Managers of the DMR.

AMENDMENT OF SECTION 86

This deals with the insertion of 86A which imposes an impossible burden on oil and gas companies.

AMENDMENT OF SECTION 100

This section includes the Mining Charter as part of the MPRDA. What this implies is that it gives force of law to a charter that can be changed by the Minister at his whim.

He has unlimited powers to change these transformation policies, in the words of the Bill, "as and when the needs arises".

We believe this is unconstitutional. The Constitutional Court has consistently upheld legal challenges against legislation that gives the executive the power to make law. If the new version of the mining

Charter is the version that is incorporated, then the mining sector will shrink as investors withdraw their capital and jobs are lost.

The Portfolio Committee votes in favour of the Bill.

HON. T.P. MEEKO
CHAIRPERSON OF PORTFOLIO COMMITTEE ON ECONOMIC DEVELOPMENT
FREE STATE LEGISLATURE

14 June 2017

GAUTENG
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NEGOTIATING MANDATE

TO: The Chairperson of the Select Committee on Land and Mineral Resources

Hon. O Sefako

NAME OF BILL: MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL

NUMBER OF BILL : [B 15D—2013]

DATE OF DELIBERATION: 4 May 2017

VOTE OF THE LEGISLATURE:

The Gauteng Provincial Legislature supports the principle and the detail of the bill with the proposed amendments.

- Mineral and Petroleum Resources Development Amendment Bill

HON. E Magerman

Chairperson of Economic Development, Environment, Agriculture and Rural Development Portfolio Committee

GAUTENG PROVINCIAL LEGISLATURE

Date: 5 May 2017

GAUTENG
LEGISLATURE
Your View — Our Vision

ECONOMIC DEVELOPMENT, ENVIRONMENT, AGRICULTURE AND RURAL DEVELOPMENT PORTFOLIO COMMITTEE

COMMITTEE REPORT ON THE NEGOTIATING MANDATE

ON THE:

MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL [B 15D—2013]

4th May 2017

1. INTRODUCTION

The Chairperson of the Economic Development, Environment, Agriculture and Rural Development Portfolio Committee, Mr. Errol Magerman, tabled the Committee's report on the Negotiating Mandate on the Mineral and Petroleum Resources Development Amendment Bill [B15D-2013]. .

2. PROCESS FOLLOWED

The Speaker, on 3rd November 2016, formally referred the Mineral and Petroleum Resources Development Amendment Bill [B15D-2013] Section 76, to the Portfolio Committee on Economic Development, Environment, Agriculture and Rural Development referred to as the Committee, for consideration in terms of Rule 248 (1)(a) read with 250 (1) and 251.

On the 31st January 2017, the Permanent Delegate from the National Council of Provinces (NCOP), Honourable E. Mlambo gave a briefing to the Committee on the Bill. This was followed by a presentation by the National Department of Mineral Resources on the detail of the Mineral and Petroleum Resources Development Amendment Bill [B15D-2013]. Subsequent to that, the Gauteng Department of Agriculture and Rural Development (GDARD) made a presentation on the views of the Executive on matters related to the Minerals and Petroleum Resources Development Amendment Bill [B15D-2013].

In the same meeting, a research analysis focusing on the socio economic impact of the Bill was presented respectively by the Research Unit from the Gauteng Provincial Legislature.

In fulfilling its constitutional mandate the Committee published adverts in the following newspapers: The Star and the Sowetan on the 22nd February 2017. Other adverts were placed on the Business Day on the 23rd February 2017 and on the City Press on the 26th February 2017. Furthermore live reads related to the Bill were run on Kaya FM from the 27th February 2017 to the 1st March 2017. This was to enable the Committee to request members of the public and stakeholders to attend the public hearing on the bill and further make comments on the Bill. Following that, the Committee convened one public hearing in the City of Johannesburg at the Johannesburg City on the 2nd March 2017.

The Portfolio Committee deliberated and adopted the draft report on the Negotiating Mandate of the Mineral and Petroleum Resources Development Amendment Bill [B15D-2013] in a meeting that convened on Thursday, 4th May 2017.

3. PRINCIPLES AND DETAILS OF THE BILL

To amend the Mineral and Petroleum Resources Development Act, 2002, as amended by the Mineral and Petroleum Resources Development Act, 2008 (Act No.49 of 2008); so as to remove ambiguities that exist within the Act; to provide for the regulation of associated minerals, increasing the socio-economic impact through mining, partitioning of rights and enhance provisions relating to the regulation of the mining industry through beneficiation of minerals or mineral products; to promote national energy security; to streamline administrative processes; to align the Mineral and Petroleum Resources Development Act with the Geoscience Act, 1993 (Act No. 100 of 1993), as amended by the Geoscience Amendment Act, 2010 (Act No. 16 of 2010); to provide for enhanced sanctions; to improve the regulatory system; and to provide for matters connected therewith.

4. OBJECTIVES OF THE BILL

The objects of the Mineral and Petroleum Resources Amendment Bill are to strengthen the current construct of the legislation, fortify the penalty provisions, to streamline the administrative process and to provide for a single regulatory system.

5. OVERVIEW OF THE PUBLIC HEARING

The Public hearing were attended by stakeholders and members of the public who engaged on all matters related to the Bill. Various sentiments were echoed by all who attended and a summary of all inputs are highlighted below.

6. SUMMARY OF STAKEHOLDERS SUBMISSIONS MADE DURING THE PUBLIC HEARING

As part of its functions and obligation in line with the Constitution, the Committee held a public hearing where written and oral submissions were made for possible consideration. The Committee received the following submissions from:

Anglo American, Chamber of Mines of South Africa, South African Institute for Race Relations, South African Oil and Gas Alliance Mining Affected Communities United in Action, Legal Resources Centre, South African Mining and Beneficiation Co-ops, Offshore Petroleum Association of South Africa, Thabo Lietsiso Tours and Projects (PTY) LTD, Ekurhuleni Environmental Organization, Reedville Environmental Task Team, Blysoor Community Forum and Merafong Black Business Chamber

Written submissions by stakeholders have been attached to the negotiating mandate for ease of reference.

7. POSITION BY THE GAUTENG DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

In line with the GPL Standing Rule 248 (1) (b) the Committee sought the views of the relevant Member of the Executive on the Bill. The Gauteng Department of Agriculture and Rural Development supports the Mineral and Petroleum Resources Amendment Bill [B15D-2013] Section 76 based on the following reasons:.

- Strengthen the architecture of the mining and minerals regulatory framework and direct a shift towards local mineral value addition;
- Contribute towards national developmental imperatives;
- Streamline licensing processes;
- Provide for state participation in the petroleum sector; and
- Significantly boost the energy security programme through extractive industries that span mining, minerals and upstream petroleum industry.

8. SOCIO-ECONOMIC FINANCIAL IMPLICATIONS

The benefits of the Mineral and Petroleum Resources Development Amendment Bill have been severely contested, with its critics indicating that it could result in South Africa losing billions in investment for the nascent oil and gas sector. However the proponents of the Bill maintain that it has huge benefits for South Africa's masses. It is argued that the Bill will encourage investment as it has the ability to speed up the process of securing water, environmental and mining licenses.

The Committee noted that the mostly contested issues on the Bill is the insertion of section 86A which indicates that the state has the right to a 20 per cent free carried interest in all new exploration and production. This is largely seen as being too high, and having the potential to create anxiety in the economy as it will ensure that projects become uneconomical. The huge risk that is taken by exploration companies can be compounded by the 20 per cent that need to be given to the state without it having contributed to the risk capital. This may create uncertainty which may be seen as a major deterrent to oil and gas investors.

The Committee noted that amongst others the objectives of the Bill are to augment and substantially increase socio-economic development impact through mining and the provision for the implementation of beneficiation. These objectives are clearly without doubt of good intent, as beneficiation become dominant in the country's public discourse, it has received more criticism relating to its cost and technicality. It has also been acknowledged by the South Africa government through the National Development Plan (NDP) that beneficiation is not a fix-all solution for the country's growth and employment creation. On the other hand, beneficiation may be crucial for the benefit of the people as it aims to create employment and local skills for the economy. The Bill entails that specific categories of minerals will be designated for domestic beneficiation, and this is also being bolstered through the insertion of the new definition for beneficiation. In addition, although mentioned in the argument, the 20 per cent state intervention in special mineral resources incites fears; it has also benefits aimed at increasing the socio-economic impact of mining in the country.

The Committee noted that the with regard to financial implications that there are no explicit financial implications for the province outside the normal budgetary allocations through the Treasury.

9. COMMITTEE'S RECOMMENDATIONS

The Portfolio Committee recommends that –

- the definition of "the Act" be amended to delete the following part of the definition; "the Codes of Good Practice for the South African Minerals Industry Housing and Living Conditions Standards for the Minerals Industry and the Amended Broad Based Socio Economic Empowerment Charter for the South African Mining and Minerals Industry".
- Section 26(2B) and (3) be deleted

- Timelines that were prescribed in the 2002 and 2008 Acts have been substituted with "the prescribed period". This leaves the administration of processes such as approvals open to interpretation, and subject to change without notice.
- The bill gives the Minister too much power including deciding and declaring any minerals as "strategic", interfering with free market principles by forcing local beneficiation, being empowered to allocate mining rights arbitrarily, and the duty to approve any and all transfers of interest in listed and unlisted companies locally and abroad.
- The Mining Charter is given the force of law. This is probably unconstitutional because it gives the Executive the power to make laws, instead of the Legislature. In existing case law, the Constitutional Court has upheld the separation of powers. The Attorneys Malan Scholes will be challenging this aspect in court to have the mining charter set aside
- The Department of Mineral Resources, in the interests of streamlining processes is now being made responsible for the effective implementation of environmental plans according to NEMA, as well as the Water Services Act.
- There was no consultation with rural communities on the 54 amendments now proposed. Even traditional leaders prefer that the rights currently conferred to the Minister must rather vest in an independent body. To this end the Centre for Environmental Rights resolved at the Alternative Mining Indaba held in February 2017 to challenge the Bill in Court.
- The DMR is notoriously bad at monitoring compliance with the provisions of the existing legislation and have recently lost two court cases in this regard against AngloGold (section 54 safety stoppage was irrational) and Aquila Steel (DMR highly incompetent).
- There is no clarification on the obligations of Liquidators to ensure that environmental and socio-economic commitments are fulfilled prior to being granted provisional liquidation status by the Court in terms of the Insolvency Act. At some point, a liquidator must seek approval from the DMR to access financial provisions to initiate redress to mining communities.
- Several of the proposed amendments is inconsistent with the NDP, which explicitly warns against increased state intervention
- The relationship between government and the Mining sector is hostile at the moment. This is illustrated by comments made by the Minister at the Mining Indaba held in February 2017 where he lamented that mining companies must stop taking the DMR to court whenever they cannot have it their way.

Furthermore the Committee highlighted sections on the Bill that are deemed problematic and the reasons thereof and the sections are follows:

Analysis of Problematic Clauses

Section 1:Definitions	
(b)beneficiation	The definition is collapsed to mean transformation, value addition or downstream beneficiation over baselines to be determined by the Minister
(h) designated minerals	New definition giving the Minister total discretion over inclusion of exclusion of minerals in line with "national development imperatives" that is vague and ever changing. We oppose this entire concept
(j) free carried interest	This means interest allocated to the State without any financial obligations on the State. "We have two objections to this: This description may amount to the free carried interest falling under the definition of a tax. Bill imposing taxes are section 79 bills and can only be introduced by the Minister of Finance. If that is found to be the case, it will mean this bill has been wrongly tagged and processed and is thus unconstitutional. The concept of the state not having to carry its share of exploration costs is alien to most oil and gas dispensations worldwide. In other words this is prejudicial to oil and gas companies to an unprecedented degree. It is likely that the DMR will try to change this definition in line with its agreements with the industry. The procedure for these changes may be unconstitutional."
(q) mine gate price	Behind-the-scenes discussions with the Chamber of mines appears to have resulted in agreement that this means more or less the cost of production. This definition does not appear to be clear on that. It should be changed to be quite clear and not subject to legal challenge".
(z) residue stockpile	After a prescribed period ownership automatically vests in the State, with no

	provision for the transfer of old order rights-this could be interpreted as expropriation
Z(A) Security of supply and State Participation	refers again to the term free carried interest, with which we have a problem. Any change to this concept that may appear later in the revised bill will probably also have to be changed here".
(zB) strategic minerals	The Minister is given the responsibility to declare which minerals are strategic. Although the actual bill is silent on which minerals are included, the clues are hidden in an ANC document entitled "State Intervention in the Minerals Sector" released in Feb 2012. It was mentioned at the 2013 Mining Indaba that should coal for instance be declared "strategic" a company such as Anglo which relies heavily on coal exports for profits would no longer be interested to mine coal in South Africa and would have to move their operations. We have a problem with the entire designation of strategic minerals. We believe it is part of a plan to limit exports which is probably unconstitutional and will definitely be economically harmful. We should object to the inclusion of the words in the bill".
zD (b)	"The "Codes of Good Practice" means the mining Charter. We do not believe the Charter should be part of this bill" This would give the Executive the right to make laws, which is inconsistent with the Constitution.
Section 9	This section is changed from the principle of "first in, first assessed" to a system where the Minister invites applications. In essence it means that even if a company incurs all the costs of exploration to find new deposits, they are not guaranteed a right to mine their find, which makes it risky to explore in the first place –IC "This deals with the new system for issuing mining licences. It says a person wanting to get a mining right must ask the Minister to invite applications for permission to mine. There is no guarantee that the applicant will be the person

	granted the right. In our opinion this removes the incentive to discover new deposits and allows the minister to direct all new mineral finds into the hands of cronies of the minister or of the ruling party".
Section 10	This removes the legislated time by which the DMR must respond to an application by making it a regulated rather than legislated time. In practice this means a lack of certainty which will make it less attractive to mine. The removal of set down times and their substitution by the phrase (the prescribed period" is a key weakness that appears in many places in this bill.
Section 11	This amendment seeks to make anybody trying to sell even part of a mining right, get written permission to do so from the Minister. This will delay and make mining transactions more difficult. Exactly how this will affect the trading of mining shares is not clear. It may make this almost impossible.
Section 13, 14	More uses of the phrase "the prescribed period" which will open the door to poor administrative processes keeping applicants waiting indefinitely or alternatively for this period to be changed at the Minister's whim.
Section 19	This change implies that somebody asking for a renewal of a right will not automatically have it granted, even th9ough they may have invested heavily in mining they stand to lose that investment. This will reduce security of tenure and act to deter investment.
Section 23(d)	The old Act gave the minister the option of requiring community participation in a mining licence. We would like this to stay because we would like community participation in mining in their community to be mandatory.
Section 25	We oppose the amendments that remove the security of tenure of rights holders by removing the guarantee of the renewal of rights.
Section 26-	The concept of beneficiation occurring economically is fundamentally changed to

beneficiation	place the onus on the Minister to force beneficiation, and to further determine the percentage per mineral commodity and the price of the mineral as well. This is done in the absence of any business case for the local beneficiation of any mineral in the first instance – IC (Anthea Jeffery, IRR 2013) Furthermore any person wishing to export a mineral must get the permission of the Minister. The NDP warns against the unintended consequences of restrictions on exports, but this is ignored-IC This is another subject of major concern in this bill. The ANC is trying to force beneficiation by limiting exports of mined minerals and by forcing miners to sell what they mine at cut prices to local industry. Ultimately this means mining will be less profitable because it will be expected to subsidise industry. Similar government attempts to interfere in the economy in other countries have always ended in failure. In this section we should particularly object to: • The phrase "national development imperatives' – we don't know what these are and there is no definition so it could mean anything on any particular day. • The whole concept of the minister 'designating" any mineral in preparation for limiting its export. We believe this will impact on mines profitability and will likely contravene South Africa's obligations under international trade law. This was one of the reasons Zuma sent the bill back but his reservation has been ignored by the Portfolio Committee, which has left this unchanged. We believe all amendments to this section should be opposed".
Section 43(1)-Environmental Liability	This makes the holder of a mining right liable for future environmental damage even after the issuing of a closure certificate. Currently the right holder is indemnified from liability that may occur or become apparent years in the future. If the issuing of closure certificates was done properly, this would not be necessary.

	This would negate the closure certificate. It would also introduce confusion about who was liable if there have been more than one holder of a mineral right. The effective imposition of endless liability will obviously have a dampening effect on investment. Section 43(6) proposes allowing the retention of rehabilitation funds for latent impacts which may only become apparent later. This should be sufficient to cover any subsequent damage.
Section 70-81	Effectively does away with the petroleum Agency of South Africa, a body which successfully promoted and regulated the issuing of drilling licences on and offshore. There is discussion that this will be reversed. If there are amendments that restore PASA's position, we would welcome them. The powers are given to regional managers who are not knowledgeable enough to exercise them. PASA was sufficiently independent to have the confidence of the industry. It will not have similar confidence in the Regional Managers of the DMR.
Section 86	This deals with the insertion of 86A which imposes an impossible burden on oil and gas companies. We rejected the concept of free carried interest . We believe the DMR wants to change this section in the NCOP process to a form that it has agreed on in talks with the oil and gas industry.
Section 100	This section includes the Mining Charter as part of the MPRDA. What this means is that it gives force of law to a charter that can be changed by the Minister at his whim. He has unlimited powers to change these transformation policies, in the words of the bill, "as and when the need arises". We believe this is unconstitutional. The Constitutional Court has consistently upheld legal challenges against legislation that gives the executive the power to make law. If the new version of the mining charter is the version that is incorporated, then the mining sector will shrink as investors withdraw their capital and jobs are lost.

10. NEGOTIATING POSITION ADOPTED BY THE COMMITTEE

The Portfolio Committee on Economic Development, Environment, Agriculture and Rural Development supports the principle and details of the Mineral and Petroleum Resources Development Amendment Bill [B15D-2013] Section 76 with the proposed amendments.

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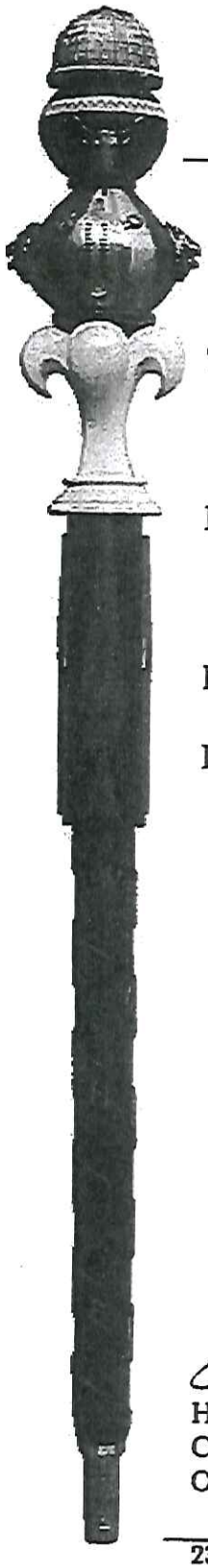

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KWAZULU-NATAL PROVINCIAL PARLIAMENT

NEGOTIATING MANDATE

TO: HON OJ SEFAKO, MP
CHAIRPERSON OF SELECT COMMITTEE ON LAND AND MINERAL RESOURCES

NAME OF BILL: MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL

NUMBER OF BILL: B15D – 2013

DATE OF DELIBERATION: 25 APRIL 2017

VOTE OF THE LEGISLATURE:
The Portfolio Committee on Economic Development met today, Tuesday the 25th of April 2017, and agreed to mandate the KwaZulu-Natal delegation to ***support*** the **Mineral and Petroleum Resources Development Amendment Bill [B15-2013]**; with the following proposed amendments as outlined in the Committee Report, attached hereto.

.....
HON N NTOMBELA, MPL
CHAIRPERSON: PORTFOLIO COMMITTEE
ON ECONOMIC DEVELOPMENT

25.04.2017
DATE

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ECONOMIC DEVELOPMENT & TOURISM PORTFOLIO COMMITTEE REPORT ON PUBLIC HEARINGS ON THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL

The Economic Development & Tourism portfolio committee received the above mentioned bill which is tagged as the section 76 bill in terms of the Constitution of the Republic. The committee agreed to conduct Public hearings on the areas outlined below. The committee also could not conduct education workshops on the bill but did have public hearings as follows:

1. 25 January 2017 : Sbongile Township Hall (Dundee)
2. 26 January 2017 : Osizweni Hall (Newcastle)
3. 27 January 2017 : Bhekuzulu Hall (Vryheid)
4. 31 January 2017 : Old Chamber (Ulundi)
5. 2 February 2017 : Town Hall (Mtubatuba)
6. 7 February 2017 : Mhlathuze Auditorium (Richardsbay)

Attendance at the hearings was not overwhelming due to the fact that the public still need to be educated on the bills process, hence lack of participation on the convened Public Hearings and those that came did not made proposals which are directed into the Mineral and Petroleum Resources Development Amendment Bill but their submissions were on the service delivery complaints. We further requested those who attended the Public Hearings to perused the bill and submit their submissions if any. We have attached hereto a table of proposed amendments to the Mineral and Petroleum Resources Development Amendment Bill from the Department of Mineral Resources and other relevant stakeholders.

TABLE OF PROPOSED AMENDMENTS TO THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL, 2013 (B15D-2013).

FOR CONSIDERATION BY THE NCOP AND PROVINCIAL LEGISLATURES.

LAST UPDATED: 24 NOVEMBER 2016.

CLAUSE	PAGE	LINE	PROPOSED AMENDMENT	PURPOSE & OBJECTIVE
Clause 1.	3.	After line 26.	To insert after the definition of "beneficiation" the following definition: **"Black persons"** is a generic term which means Africans, Coloureds and Indians- (a) Who are citizens of the Republic of South Africa by birth or descent; or (b) Who became citizens of the Republic of South Africa by naturalisation: (i) before 27 April 1994; or (ii) On or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date; (c) a juristic person which- (i) is managed and controlled by a person contemplated in paragraph (a) and (b) and the persons collectively	The purpose and objective of the proposal is to change the use of the term "Historically Disadvantaged South Africans" (HDSA's) to "Black persons" to align with the BBBEE Act and the Dti Codes. The term HDSA has been abused by the industry for exclusive benefit of white women contrary to the objects of the Act.

			or as a group own and control a majority of the issued share capital or members' interest, and are able to control the majority of the members' vote;	
Clause 1	3	Before line 28.	To insert before the definition of "community" the following definition: "'**carried interest**' means the interest allocated to the State in an exploration or production right, which interest shall *inure* exclusively to the benefit of the State and the costs of which shall be borne by the non-state holder and shall be recoverable by such holder in accordance with the terms and conditions determined in accordance with section 86A".	The purpose and objective of the proposal is to give effect to the outcomes of operation oceans Phakisa, the negotiations between DMR and the petroleum industry and provide for State carried interest in exploration or production rights. This is a change from the notion of free carried interest currently proposed in the Bill.
Clause 1	4	Before line 1.	To insert after the definition of "controlling interest" the following definition: "'**corresponding production right**' in relation to an exploration right means the production right for which a holder of an exploration right shall apply covering the area relating to such exploration right".	The purpose and object of the proposal is to reinforce the notion of certainty of project terms by linking exploration and production rights and to give effect to the outcomes of Operation Oceans Phakisa.

Clause 1	4	Before line 14.	After the definition of "discovery" to amend the definition of "effective date" as inserted by section 1 of Act 49 of 2008 as follows: "'**effective date'** means the prescribed timeframe **[date on]** within which the relevant permit is issued or the relevant right is executed;".	The purpose and objective of the proposal is address the issues raised in the Mawetse Court judgment by prescribing a timeframe within which to compute the effective date of a right or permit. The timeframe will be prescribed in the regulations and will ensure that there is no lapsing of time and delays between granting of rights and execution of same.
Clause 1	4	Before line 14.	To insert before the definition of "exploration work programme" the following definition: "**'existing exploration right'** means an exploration right granted in terms of section 80 prior to the commencement of Act [Number of MPRD Amendment Bill B15-B2015];".	The purpose and objective of the proposal is to address the applicability of the concept of State participation in respect of existing exploration rights.
Clause 1	4	From line 16 to 18.	To delete the definition of "free carried interest". **["free carried interest" means interest allocated to the State in exploration or production operations without any financial obligation on the State;]**	The purpose and objective of the proposal is to delete the definition of free carried interest since this concept has been replaced with carried interest.

Clause 1	4	From line 22 to 43.	To delete the definition of **["historically disadvantaged South Africans" refers to South African citizens, a category of persons or a community, disadvantaged by unfair discrimination before the Constitution of the republic of South Africa, 1993 (Act No. 200 of 1993), came into operation which should be representative of the demographics of the country.]**	The purpose and objective of the proposal is to replace the use of the term "Historically Disadvantaged South Africans" (HDSA's) to "Black persons" to align with the BBBEE Act and the Dti Codes. The term HDSA has been abused by the industry for exclusive benefit of white women contrary to the objects of the Act. It is therefore proposed that the term HDSA's be repealed.
Clause 1	5	After line 56.	To insert the definition of "**pending application**" after the definition of "organ of state": "**'pending application'** means an application in terms of section 79 of the Act that was submitted – before the commencement of Act [Number of MPRDA Amendment Bill]; or (a) after the commencement of the [Number of MPRDA Amendment Bill] provided the applicant is the holder of a valid technical co-operation permit in respect of the	The purpose and objective of the proposal is to provide for applicability of State participation in respect of applications that are on the pipeline as from the date the Bill is finalised and proclaimed into law.

			proposed exploration area prior to commencement of the [Number of MPRDA Amendment Bill]'".	
Clause 1	6.	From 1 to 12.	To substitute the definition of "prospecting area" with the following definition: "'prospecting area' (a) in relation to a prospecting right, means the area for which the prospecting right is granted; or (b) in relation to any environmental, health and safety, social and labour matter and any residual, latent or other impact thereto, includes any land or surface within, adjacent or non-adjacent to the area as contemplated in paragraph *(a)* but upon which related or incidental operations are being undertaken and impacting on the environment'"	The purpose and objective of the proposal is to correct grammatical errors in this definition by deleting reference to mining right or a mining permit from this definition.
Clause 1	6	After line 31.	To insert after the definition of "residue stockpile" the following definition: "'**right of pre-emption'** means the right of the State in the event of a sale of participating interest, to purchase the participating interest to be disposed of by the holder on terms and conditions equal to those offered by the	The purpose and objective for the proposal is to provide for a right of pre-emption in favour of the State in the event that a right holder decides to sell its participating interest. The State will have a right of first refusal which must

			purchaser selected by the holder, which right shall expire unless accepted by the designated state entity within a period of 90 days following delivery of a notice setting out the final terms and conditions of the proposed transaction'".	be exercised within the prescribed timeframe.
Clause 1	6	From line 37 to 43.	To substitute the definition of "State participation" for the following definition: "'**State participation'** means the right of the State to participate in petroleum exploration and production operations, including through: (a) participating interest in exploration and production rights and may include production sharing agreements; and (b) representation at the joint operating committee of the exploration or production operation commensurate with the State's proportionate participating interest'".	The purpose and objective of the proposal is to change the definition of State participation to remove reference to "free carried interest" and replace same with carried interest.
Clause 5	8	From line 5 to 8.	To substitute subsection (2) for the following subsection: "'(2) Any person may, after identifying an area of land, block or blocks and the type of mineral, mineral product or form of petroleum in or on such area of land, block or blocks, apply to the Minister for reconnaissance permission, reconnaissance permit, prospecting right, exploration right,	The purpose and objective of the proposal is provide a dual application system which provides for application by invitation and retains the first come first served application process in

			mining right, technical co-operation permit, production right and mining permits. An application in terms of this subsection shall be processed in terms of this Act and granted upon compliance with the terms and conditions of the Act and is not subject to the invitation process contemplated in subsection (1).	respect of minerals discovered by the applicant.
Clause 5	8	From line 19 to 20.	To delete subsection (5). **[(5) The Minister shall, when processing applications, give preference to an application lodged by a person referred to in subsection (2).'']**	The purpose and objective of the proposal is to clarify the retention of the first come first served application process. This process is catered for in subsection (2) subsection (5) therefore becomes irrelevant.
Clause 8	10	Line 29.	To insert the word prior before the words "written consent of the Minister'".	The purpose and objective of the proposal is to emphasise the fact that Ministers consent must precede a transfer, cession or partitioning of rights so as to avoid fronting by mining companies.
Clause 12	12	After line 34.	To delete subsection (2) paragraph (b) which was substituted by Act 49 of 2008 as follows;	The purpose and objective of the proposal is to repeal the notion of concentration of rights from the Act.

			["(b) the granting of such right will- **Result in the concentration of the mineral resources in question under the control of the applicant and their associated companies with the possible limitation of equal access to mineral resources";]**	
Clause 12	12	Before line 35.	To include amend section 17 (4A) inserted by Act 49 of 2008 as follows: "(4A if the application relates to land occupied by a community, the Minister may impose such conditions as are necessary to promote the rights and interests of the community. **[, including conditions requiring the participation of the community".]**	The purpose and objective of the proposal is to delete the requirement for imposition of conditions for community participation to give effect to the objects of the MPRDA which provides that mineral and petroleum resources of this Country belong to all the nation. Issues relating to community interests and benefits are addressed in the SLP and Mining Charter. Community ownership is addressed in section 104 of the Act.
Clause 18	15	Line 23.	To insert after the word" Industry" the following words " and the Housing and Living Conditions Standards";	The purpose and objective of the proposal is to make it compulsory for mining right holders to comply with the Housing and Living conditions

				Standards and to make these Standards enforceable.
Clause 20	17	Line 10.	To insert after the word" Industry" the following words " and the Housing and Living Conditions Standards";	The objective of the proposal is to make it compulsory to comply with the Housing and Living Standards and to make these Standards enforceable.
Clause 22	17	After line 58.	To insert after the word "and" paragraph (c) as follows: (c) The applicant is a 50+1% Black Owned South African company.	The purpose and objective of the proposal is to provide for reservation of mining permits for black owned and controlled companies.
Clause 22	18	From line 55 to 60.	To substitute subsection (9) paragraph (a) and (b) for the following subsection: "'(9) A mining permit issued in terms of subsection (6) shall- (a) Come into effect on the effective date; and (b) Where an appeal against the issuing of the mining permit or approval of the environmental authorisation has been lodged within the prescribed period, the mining permit shall not be executed until such appeal has been finalised"	The purpose and objective of the proposal is to correct grammatical errors by deleting reference to rights instead of permit.

Clause 35	24	After line 20.	To insert paragraph "(f) has contravened the provisions of the Broad Based Black Economic Empowerment Charter for the South African Mining and Minerals Industry and the Housing and Living Conditions Standards Contemplated in section 100 of the Act".	The purpose and objective of the proposal is to make it compulsory for the applicants to comply with provisions of the Broad Based Black Economic Empowerment Charter and the Housing and Living Conditions Standards and to empower the Minister to reinforce the enforceability of these instruments and impose relevant sanctions upon non-compliance by mining right holders.
Clause 47	29	From line 25 to 29.	To omit the proposed amendments to section 70 of the Act.	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 48	29	From line 32 to 38.	To omit the proposed amendments to section 71 of the Act.	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and

				promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 49	29	Line 40 to 46.	To omit insertion of section 71A".	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 49	30	From 1 to 9.	To omit the insertion of section 71A"	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 50	30	From line 10 to 11.	To omit the repeal of sections 72 and 73".	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.

Clause 51	30	Line 21.	To omit the proposed amendment to section 74 (1) (a).	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 51	30	Line 34.	To substitute the words **["Regional Manager"]** for "designated agency".	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 51	30	Line 39.	To substitute the words **["Regional Manager"]** for "designated agency".	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 51	30	Line 43.	To substitute the words **["Regional Manager"]** for "designated agency".	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent

				body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 51	30	From line 47 to 48.	To substitute the words **["Regional Manager"]** for "designated agency".	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 52	31	Line 21 and 22.	To omit the proposed amendment to section 75 (5) (c) of the Act.	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 53	31	From 37 to 50.	To substitute the words **["Regional Manager"]** for "designated agency".	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.

Clause 56	32	From line 23 to 45.	To substitute the words **["Regional Manager"]** for "designated agency".	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 57	33	Line 17.	To substitute the words **["Regional Manager"]** for "designated agency".	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 57	33	After line 14.	To insert the following subsection (2A) as follows: "(2A). The Minister shall when granting an exploration right determine the terms and conditions of a corresponding production right in terms of section 84 and shall record those terms and conditions on the exploration right".	The purpose and object of the proposal is to reinforce the notion of certainty of project terms by linking exploration and production rights and to give effect to the outcomes of operation oceans phakisa.
Clause 58	33	Line 41.	To omit the proposed amendment to section 81 (1) (a).	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent

				body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 58	33	After line 41.	To include the following subsections (2A), (2B), (2C) and (2D) as follows: (2A) The holder of an exploration right shall during application for a renewal relinquish- (a) at the end of the initial term of the exploration right, 40 % of the contiguous initial area; and (b) at the end of each renewal period 10 % of the contiguous remaining area, or such lower percentage as the Minister may determine; (2B) The Minister must exempt the holder from the provisions of subsection (2A) if the holder demonstrates that he or she is in a position to explore a larger exploration area or has made a discovery or demonstrates that relinquishment in terms of sub-section (2A) may render the project uneconomic. (2C) If a holder makes a discovery which it does not wish to appraise (non-commercial discovery), the area of that	The purpose and objective of the proposal is to provide for relinquishment of contiguous portions of exploration areas at renewal stage. This is done to promote optimal exploitation of the nation's petroleum resources for the benefit of all South Africans.

			discovery shall be included in the area to be relinquished in the next relinquishment. (2D) The States' equity must at all relevant times be maintained when contiguous areas are relinquished in terms of subsection (2A).	
Clause 59	34	Line 16.	To omit the proposed amendment to section 82 (2) (e) of the Act.	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 59	34	From line 20 to 24.	To substitute paragraph (g) for the following paragraph: *"(g)* relinquish a contiguous portion of the area to which the right relates as prescribed in section 81".	The purpose and objective of the proposal is to provide for relinquishment of contiguous portions of exploration areas at renewal stage. This is done to promote optimal exploitation of the nation's petroleum resources for the benefit of all South Africans.
Clause 59	34	Line 33.	To insert the words "where appropriate" before the words "apply for".	The purpose and objective of the proposal is to qualify the requirement

				for application for an environmental authorisation as this may not be needed at all times an application of this nature is made.
Clause 61	35	From 9 to 22.	To substitute the words **["Regional Manager"]** for "designated agency".	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 61	35	From 26 to 27.	To substitute the words **["Regional Manager"]** for "designated agency".	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 62	35	After line 52.	To insert the following subsection (1A) as follows: "(1A) The Minister shall when granting a production right under this section give effect to the terms and conditions agreed to in a corresponding exploration right that relates to the production right; and".	The purpose and object of the proposal is to reinforce the notion of certainty of project terms by linking exploration and production rights.

Clause 62	35	Line 55	To substitute the words **["Regional Manager"]** for "designated agency".	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 63	36	Line 14.	To omit the proposed amendment to section 85 (1) (a) of the Act.	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 63	36	Line 24.	To insert the following paragraph after subsection (2) paragraph (d) of the following paragraph: "(e) the applicant and the Minister have concluded the negotiating process referred to in subsection (3A)." "(3A) Notwithstanding the provisions of section 84 (1A) and section 80 (2A), any application for renewal of a production right, shall initiate a negotiating process between the Minister and the applicant relating to technical, financial	The purpose and objective of this proposal is to provide for renegotiation of project terms when an application for renewal of a production right is made.

			and commercial terms and conditions of the production project".	
Clause 65	36 & 37	From line 49 to 55, and from line 1 to 9.	To substitute section 86A for the following section: 86A. (1) The State has, through the designated organ of State, a right to a 20 percent carried interest in exploration and production rights, from the effective date of such rights. (2) In existing exploration rights and exploration rights granted in respect of pending applications, the State is in addition to the State carried interest referred to in subsection (1) and in accordance with terms and conditions agreed upon and recorded in the exploration right, entitled to a right of pre-emption in the event of a sale of a participating interest by the holder of an exploration or corresponding production right, entitling it to purchase the participating interest on terms and conditions equal to those offered by the purchaser selected by the holder. (3) The right of pre-emption shall within a period of 90 days from the date of delivery of a notice setting out the	The purpose and objective for the proposal is to provide for State carried interest in exploration and production right with a cost recovery mechanism. The State has a right of pre-emption in the event that a holder disposes of its interest. There is also provision for downward adjustment of the interest to not below 10% after consultation with the Minister of Finance. The State has a right to representation at joint operating committee of the exploration or production operation. Provision is also made for transitional arrangements for existing rights and pending applications.

			final terms and conditions of the proposed transaction expire, entitling the holder a right to offer such participation interest to a third party. (4) Where an exploration right application not contemplated in sub-section (2) is received after commencement of Act [Number of MPRD Amendment Bill B15-B2013], the State is, in the prescribed manner, entitled to an additional participation interest of up to 30 percent taking into account the size of the discovery and rate of production, in the form of— (a) carried interest; (b) acquisition at an agreed price; or (c) production sharing agreements. (5) The holder of a production right shall recover development costs of the State carried interest referred to in subsections (1) or (4) where applicable, from the proceeds generated from the production right, as may be prescribed in the terms and conditions of such right. (6) The State shall upon acquiring interest in terms of subsections (1) and or (4) enter into a joint operating	

			agreement with the right holder or become a party to an existing joint operating agreement if one is in place in respect of such right. (7) The Minister must, acting on behalf of the State, appoint two representatives to the joint operating committee of the exploration or production operation to represent the interest of the State.". (8) The State is entitled to exercise its rights held in the joint operating agreements through- (a) representation as a non-voting participant in the joint operating committee in accordance with the joint operating agreement during exploration; and (b) corresponding percentage of voting rights to the interest held in the joint operating agreements during production. (9) Notwithstanding subsection (1), the Minister must before granting a production right in terms of section 84 and after consultation with the applicant and the Minister of Finance, determine whether the percentage or terms and conditions of the State carried interest referred to in	

			subsection (1) may be adjusted downwards, taking into account- (a) the nature and scope of the project; (b) financial and economic profile of the project; (c) the degree of risk assumed by the holder throughout the projects; and (d) national interests. (10) The State carried interest shall not be adjusted below 10 percent. (11) The holder of an existing exploration right in respect of which terms and conditions for a production right have not been agreed to and attached in such exploration right, shall within a period of three years of the coming into effect of Act Number of MPRD Amendment Bill apply to the Minister for a determination of the terms and conditions which will be applicable to a corresponding production right, including State participation in the manner contemplated in sub-section (9). (12) Notwithstanding anything to the contrary in Act [Number of MPRD Amendment Bill B15-B2015], the	

			terms and conditions of an existing exploration right granted before the commencement of Act [Number of MPRD Amendment Bill B15-B2015] in respect of which terms and conditions for a production right have been agreed to and attached in such exploration right shall, remain unchanged in as far as it relates to State participation and participation by black persons and shall where necessary be amended to comply with Sections 81 and 82 of the Act. (13) Upon making the determination in terms of sub-section (11), the Minister shall record the terms and conditions of the corresponding production right determined in terms of subsection (11) in the exploration right;	
Clause 66	37	Line 17.	To omit the proposed amendment to section 87 of the Act.	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.

Clause 67	27	Line 40.	To substitute the words **["Regional Manager"]** for "designated agency".	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 68	38	Line 1.	To omit the proposed amendment to section 89 of the Act.	The purpose and objective of the proposal is to retain the designated agency (PASA) as the competent body to manage the licensing and promotional aspects of the upstream petroleum industry in terms of the Act.
Clause 71	38	Line 46.	To insert the words "subject to subsection (1A)" before the words "Any person".	The purpose and objective of the proposal is to provide for a special appeal process for applications relating to the Mining Company of South Africa.
Clause 71	39	Line 6.	By the insertion after subsection (1) of the following subsection: (1A) (a) if the appeal in terms of subsection (1) is as a result of the performance by the Mining Company of South Africa SOC Limited, established by section 3(1) of	The purpose and objective of the proposal is to provide for a special appeal process for applications

			the Mining Company of South Africa Act 2017, of any function performed by the Mining Company of South Africa SOC Limited in terms of section 7 of the said Act, that appeal must be heard by an appeals panel appointed by the Minister in terms of paragraph *(b)*. (b) The Minister must appoint as members of the appeals panel- (i) an advocate or attorney with at least ten years' experience; and (ii) two persons with knowledge of mineral and environmental regulation. (c) Whenever the Minister is required to nominate persons for appointment to the appeals panel in terms of paragraph *(b)*, the Minister must- *(i)* publish in the *Gazette* and by any other widely circulated means of communication, a notice calling for nominees and stating the criteria for nominations; *(ii)* consider all nominations submitted in response to the notice and compile a short-list of nominees; and	relating to the Mining Company of South Africa.

			(iii) appoint successful nominees as members of the appeals panel; (d) Regulations made in terms of section 107 (1) (c) regarding the procedure in respect of appeals under this Act apply with the necessary changes required by the context to appeals by the appeals panel in terms of this subsection. (e) The terms and conditions of appointment of members of the appeals panel must be prescribed by the Minister. (f) The Minister may, in consultation with the Minister of Finance, determine the remuneration, allowances and other benefits of the persons contemplated in paragraph *(b)*.	
Clause 71	39	Line 10.	To insert after the words "subsection (1) the following words "or subsection (1A)".	The purpose and objective of the proposal is to provide for a special appeal process for applications relating to the Mining Company of South Africa.
Clause 71	39	Line 11.	To insert after the words "the Minister" the following words "or the appeals panel, as the case may be".	The purpose and objective of the proposal is to provide for a special

				appeal process for applications relating to the Mining Company of South Africa.
Clause 71	39	Line 27.	To insert after the words "subsection (1)" the following words "or subsection (1A)".	The purpose and objective of the proposal is to provide for a special appeal process for applications relating to the Mining Company of South Africa.
Clause 74	41	Line 12.	To insert the following subsection: "(5) The Minister must within six months from the date on which this Act [Number of MPRD Amendment Bill B15-B2015] took effect develop a Broad-Based Socio-Economic Empowerment Charter for the upstream petroleum industry which sets out the framework, targets and time frames effecting the entrance of black persons into the upstream petroleum industry.".	The purpose and objective of the proposal is to empower the Minister to develop and upstream petroleum Charter and provide for its applicability.

MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL, 2017 ANALYSIS OF SUBMISSIONS				
	PARTY MAKING COMMENT	**CLAUSE**	**COMMENT**	**DEPARTMENT OF MINERAL RESOURCES RESPONSE, INCLUDING PROPOSED NEW AMENDMENTS**
	South African Oil & Gas Alliance (SAOGA)		The Shale Gas industry very much support the DMR amendment proposal with the following few key additional requirements: • Incorporation of a Shale Gas definition to allow for the addressing of a few Shale Gas specific challenges and provisions • Incorporate the necessary flexibility for downward adjustment of the State Carried Interest during the exploration Phase to support Shale Gas exploration investments and ultimately a more competitive gas production cost and consequential market price • Proposed to amend the exploration timelines for an initial 5 years with an additional 2*3 years (total of 11 years) rather than an additional 3*2 years (also a total of 11 years). The overall timeline remains unchanged • HDSA participation in the Petroleum Industry and especially Shale Gas Industry need to reflect the required State Carried Participation Interest (not applicable for Mining) and be consummate with the level of commercial risk and scale of continuous and long term investment requirements (far greater chance of failure and investment levels compare to Mining) • Insert a new subsection (10) in Section 86A – State participation in exploration and production rights: (10) The Minister may make the downward adjustment referenced above in subsection (9) prior to the notarial execution of an exploration right granted in terms of section 80 or a renewal thereof in terms of section 81 for a Shale gas project, in respect of a corresponding production right, after consultation with the applicant and the Minister of Finance, where such earlier adjustment is shown to be necessary by the applicant with specific reference to the following factors:	

MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL, 2017 ANALYSIS OF SUBMISSIONS				
	PARTY MAKING COMMENT	**CLAUSE**	**COMMENT**	**DEPARTMENT OF MINERAL RESOURCES RESPONSE, INCLUDING PROPOSED NEW AMENDMENTS**
			• the nature and scope of the project; • financial and economic profile of the project; • the degree of risk assumed by the holder throughout the projects; and • national interests.	
	Offshore Petroleum Association of South Africa (OPASA)			Support the proposed amendment by the Department of Mineral Resources
	Vusi Mdluli Bhekuzulu Hall Vryheid		Proposal to increase a 10% BEE shareholding to 30%	

S.

LIMPOPO.

NEGOTIATING MANDATE

Limpopo Legislature

OFFICE OF THE SECRETARY

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NEGOTIATING MANDATE

To	:	The Chairperson: SC on Land and Mineral Resources
Name of Bill	:	**Mineral and Petroleum Resources Development** Amendment Bill
Number of the Bill	:	[B15D - 2013]
Date of Deliberation	:	02 May 2017
Vote of the Legislature	:	Provincial NCOP Permanent Delegates to consider inputs by stakeholders and to negotiate in favour of the Bill.

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HON. F.T. DAU
CHAIRPERSON
PORTFOLIO COMMITTEE ON ECONOMIC DEVELOPMENT,ENVIRONMENT AND TOURISM
LIMPOPO LEGISLATURE

02/05/2017.
DATE

REPORT OF THE PORTFOLIO COMMITTEE ON ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM ON THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL [B 15D – 2013]

1. INTRODUCTION

Mineral and Petroleum Resources Development Amendment Bill [B 15D- 2013] was introduced in the august House from the National Council of Provinces (NCOP) and the Bill was subsequently referred to the Portfolio Committee on Economic Development ,Environment and Tourism for consideration and inputs.

2. OBJECTS OF THE BILL

The main objects of the Bill are therefore to amend the Mineral and Petroleum Resources Development Act, 2002, as amended by the Mineral and Petroleum Resources Development Act, 2008 (Act No. 49 of 2008); so as to remove ambiguities that exist within the Act; to provide for the regulation of associated minerals, partition of rights and enhance provisions relating to the regulation of the mining industry through beneficiation of minerals or mineral products; to promote national energy security; to streamline administrative processes; to align the Mineral and Petroleum Resources Development Act with the Geoscience Act, 1993 (Act No. 100 of 1993), as amended by the Geoscience Amendment Act, 2010 (Act No. 16 of 2010) ; to provide for enhanced sanctions; to improve the regulatory system; and to provide for matters connected therewith.

3. CONSIDERATION OF THE BILL

The Committee was briefed by the National Council of Provinces permanent delegate Hon. Smith together with officials from the National Department of Mineral Resources on the 17th February 2017.The Committee resolved in this meeting to conduct Public Hearings at all provincial districts namely Capricorn, Waterberg, Sekhukhune, Vhembe and Mopani. The Public Hearings were conducted on the 18th & 22nd March at Lebowakgomo legislative chamber and Thohoyandou Sport and Cultural Centre respectively.

4. STAKEHOLDER'S PARTICIPATION AT THE PUBLIC HEARING

Amendment of section 1 of Act 28 of 2002, as amended by section 1 of Act 49 of 2008)

Clause 1

(k)It is suggested that the definition of historically disadvantaged South African must refer specifically to a Black person or community disadvantaged by unfair discrimination before the Constitution of the Republic of South Africa,1993(Act 200 of 1993),came into operation.

Amendment of section 2 of Act 28 of 2002, as amended by section 2 of Act 49 of 2008

Clause 2

(d) substantially and meaningfully expand opportunities for historically disadvantaged persons, including women and communities to enter into and actively participate in the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral resources. (Retain specific reference to women as in the principal act)

Amendment of section 9 of act 28 0f 2002, as amended by section 6 of act 49 of 2008

Clause 5

It is suggested that the following provision be inserted in section 9: "If the application received relates to communal and state land, then the application must be kept in abeyance until a determination is made whether or not the lawful occupiers of the land in question or communities communally owning the land in terms of customary land tenure are interested in lodging a competitive application in terms of section 104 of the MPRDA for the same mineral, associated minerals and any other mineral found in their land".

Substitution of section 10 of Act 28 of 2002, as amended by section 7 of act 49 0f 2008

Clause 6 subsection 1

Consultation with interested and affected parties should include the Minister for Department of Rural Development and Land Reform as custodian and trustee of communal land since most minerals are in communal land.

Clause 6 subsection 2

With regard to the process of prospecting rights, it is suggested the number of days be extended from 30 to 90 days to enable effective community involvement in the public participation process.

Clause 6 subsection 3

(a)The DMR, should ensure that the applicant has the relevant community's Traditional Council Resolution as proof of consultation and Minister's approval before being given the mining right. In terms of public consultation before awarding the rights the department should also consider the inputs of the relevant community.

(b)There is a need for proper consultation before granting mining rights especially where there is intention to mine on land with unresolved land claims issues. The bill has to take into consideration the customary land ownership

(c)Section 10(2)(b) insertion of the following "…; provided that consultation with informal or customary land rights holders shall be in accordance with the holders' living customary law and in compliance with prescribed procedures and ministerial consent by the Minister of Rural Development and Land Reform".

Amendment of section 22 of act 28 of 2002, as amended by section 18 0 of Act 49 of 2008

Clause 17

The Environmental Management Plans and Social Labour Plans must be developed and be availed to communities so that they can participate in monitoring the progress of their implementation by mining houses.

Amendment of section 23 of Act 28 of 2002, as amended by section 19 of Act 49 of 2008

Clause 18

The department should consider the input of the community on the report of the mining house on the implementation of the Social and Labour Plans before renewing mining rights.

Amendment of Section 38B of act 28 of 2002, as amended by section 32 of Act 49 of 2008

Clause 29

Environmental management plans should be publicized and distributed to empower monitoring of environmental impact of mining by affected communities.

Insertion of 56A,56B,56C,56D,56E,56F,56G of Act 28 of 2002

Clause 44

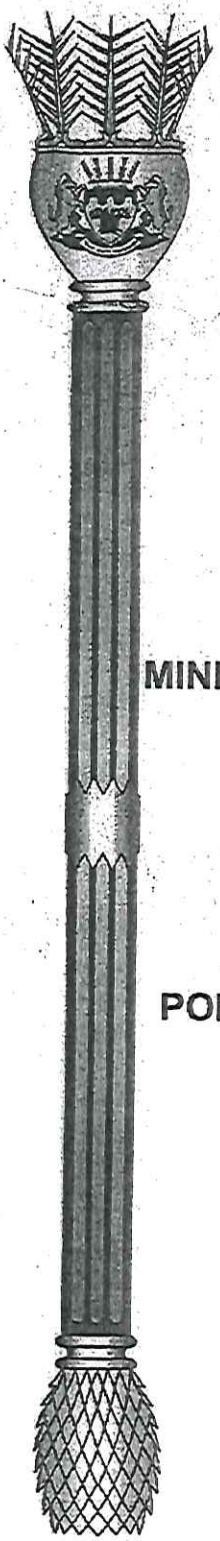
Section 56A should provide that the Minister also appoints to the Ministerial Advisory Council, representative members from directly affected communities who are not employed by a mining company.

5. NEGOTIATING MANDATE

The Committee, having considered the Bill and proposed amendments therefore recommends to the NCOP Permanent Delegates to vote in favour of the Bill as amended.

HON. F.T. DAU
CHAIRPERSON
PORTFOLIO COMMITTEE ON ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM
LIMPOPO PROVINCIAL LEGISLATURE

REPORT OF PUBLIC HEARINGS



LIMPOPO LEGISLATURE

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REPORT ON THE PUBLIC HEARING

FOR THE

MINERAL AND PETROLEUM RESOURCES DEVELOPMENMT AMENDMENT BILL 15 of 2013 (MPRDA)

(B 15D- 2013)

PORTFOLIO COMMITTEE ON ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM

MARCH 2017

LIMPOPO PROVINCIAL LEGISLATURE

1. BACKGROUND

The Department of Minerals Resources is in the process of finalizing the Minerals and Petroleum Resources Development Amendment Bill, Development Agency Bill, 2016, and in accordance with the processes Limpopo Legislature is conducting public hearings for the Bill. The Limpopo Legislature is guided by the Section 118 of the constitution which requires that members of the public be consulted when making laws. It is for this reason that the Portfolio Committee on Economic Development, Environment and Tourism organized the Public Hearings. The purpose of the Public Hearings was to get input from the public and stakeholders on the Minerals and Petroleum Resources Development Amendment Bill, 2013.

2. PROCESS

Prior to the public hearings, the bill was introduced to the Portfolio Committee by the National Department of Mineral Resources and National Council of Provinces for stakeholder consultation in the province. The public hearings were hosted in two different dates in order to accommodate different communities: namely; on 17 March 2017 at the Limpopo Legislature, public hearing for stakeholders and mining communities around Waterberg, Sekhukhune and Capricorn District. Then on 22 March 2017, the public Hearings were held in Thohoyandou for the stakeholders and mining communities from Mopani and Vhembe Districts. The stakeholders were given two weeks to submit their written submissions, pending consultation with the communities they represent. Amongst the public stakeholders, there were mainly representatives from mining communities groups; mining houses; unions and municipalities. These stakeholders present included those from key mining areas such as Lephalale, Sekhukhune, Musina, Mopani etc, which are include areas that earmarked for different economic development initiatives such as the Special Economic Zones in order to stimulate sustainable economic growth and create jobs.

3. PURPOSE OF THE BILL

The main objective of the bill is "To amend the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), as amended by the Mineral and Petroleum Resources Development Act, 2008 (Act no. 49 of 2008); so as to remove ambiguities that exist within the Act; to provide for, inter alia, strengthening of existing provisions relating to the implementation of Social and Labour Plans (SLPs) to augment and substantially increase the socio-economic development impact of through mining, enhance provisions relating to regulation of mining industry through beneficiation of minerals or mineral products aa outlined in the approved beneficiation strategy; to promote national energy security; to streamline and integrating administrative processes relating to the licensing or rights to provide for regulatory certainty as well as providing for the State's active participation in petroleum development.. The bill further seeks to amend the principal act to align the Mineral and Petroleum Resources Development Act with the Geoscience Act, 1993 (Act no 100 of 1993), as amended by the Geoscience Amendment Act , 2010 (Act no. 16 of 2010.

4. STRATEGIC OBJECTS OF THE BILL

The Department of Mineral Resources representatives made a presentation on the Mineral and Petroleum Resources Development Amendment Bill, addressing, amongst others, the strategic objects of the bill which are as follows:

- To Improve the ease of doing business in the mining and petroleum industry , including the streamlining and intergration of mining, environmental and water authorization processes, thus in alignment with National Environmental Management Act and National Water Act
- To strengthen its content in order to further enhance and continue creating a conducive environment for investment, growth and job creation.

- To augment and substantially increase socio-economic development through mining
- To balance the needs with national development imperatives
- To further entrench the principle of security of tenure and protection of the sanctity of investments as an integral part of South Africa's mining regulatory framework
- To provide for radical economic transformation in the mining , minerals and upstream petroleum industry as well as to entrench and embed transformation through the Mining Charter
- To bring the administration of historical stockpiles created prior to the promulgation of the MPRDA in to ambit with the Act.
- To provide for the designation of minerals for national developmental imperatives such as security of energy supply, food security and industrialization
- To enhance provisions relating to regulation and implementation of Social and Labour Plans
- Provide for partitioning of rights and enhanced sanctions
- To provide for the enforcement of Housing and Living Conditions Standards for mineworkers; and
- To address certain shortcomings identified in particular court cases including Macsand, Mawetse and Bengwenyama.

5. CONTRIBUTION BY STAKEHOLDERS

Following the presentation by the representatives of the Department of Minerals Resources, the stakeholders, especially those from different mining communities were given opportunity to present their submissions. The stakeholders raised some of the following inputs with regards to the contents of the bill.

5.1. Contribution regarding the MPRDA Bill

- In streamlining the administration and licensing processes, the Minister for Department of Rural Development and Land Reform should be include since most minerals are in communal land.
- The DMR, should ensure that the applicant has the relevant village's Traditional Council Resolution and Minister's approval before being given the mining right. In terms of public consultation before awarding the rights the department should also consider the inputs of the relevant community.
- With regard to the process of prospecting rights, it is suggested the number of days be extended from 30 to 90 days for community involvement.
- There is a need for proper consultation before granting mining rights especially where there is intention to mine on land with unresolved land claims issues. The bill has to take into consideration the customary land ownership.
- The administration of funds for community development should not be left to the mining houses as it leads to noncompliance particularly regarding corporate social investment development protests in mining communities.
- The Environmental Management Plans and Social Labour Plans must be developed and be availed to communities so that they understand and monitor the mining house.
- The department should consider the input of the community on the report of the mining house on the implementation of the SLP's and CSI to get the accurate picture.
- There should be a structure which is responsible for engaging the mining house on implementation of development projects and there should be a dedicated institution to address community issues.
- The MPRDA bill should clarify its national target and objectives in terms of community development in mining communities.
- On clause 1, page 23, the definition of the historical disadvantaged person should specifically refer to a black person.

- The government should enforce the implementation of SLP's and provide reports to the communities.
- The bill should enforce the rehabilitation of the mine even after the mine has closed.
- In terms of mining of sand in local villages, the bill should ensure that the moneys collected are utilized for the development of the community.

6. CONCLUSIONS

The public hearings were conducted following appropriate process of the Legislature in two different areas. The bills were also sent to different municipalities so that they can reach the affected communities in those regions. Given the fact that a large number and a variety of community groups were represented at the public hearings, as well as the inputs made, the public consultation process was effective in obtaining public inputs for the Mineral and Petroleum Resources Development Amendment Bill.

02/05/2017

HON. FR. DAU **DATE**

CHAIRPERSON OF THE PORTFOLIO COMMITTEE ON ECONOMIC DEVELOPMENT, ENVORONMENT AND TOURISM

6.

MPUMALANGA
PROVINCIAL LEGISLATURE

Office of the Chairperson

Ad-hoc Committee on the Mineral and Petroleum Resources Development Amendment Bill

Enquiries: Hon SPD Skhosana-KaMahlangu Email: SPDskhosana@mpuleg.gov.za Tel. No: 013 766 1037/ 1402

NEGOTIATING MANDATE

To	:	The Chairperson: Select Committee on Land and Mineral Resources
Name of the Bill	:	Mineral and Petroleum Resources Development Amendment Bill
Number of the Bill	:	[B15D- 2013]
Date of Deliberation	:	20 October 2017
Vote of the Legislature	:	

The Ad-hoc Committee on the Mineral and Petroleum Resources Development Amendment Bill (the Committee) supports the Mineral and Petroleum Resources Development Amendment Bill [B15D - 2013] (the Bill), and confers on the permanent delegate representing the Province of Mpumalanga in the National Council of Provinces, the mandate to vote in favour of the Bill, with amendments as proposed below:

CLAUSE	PAGE	LINE	PROPOSED AMENDMENT
Clause 1.	3.	After line 26.	To insert after the definition of "beneficiation" the following definition: **"Black persons"** is a generic term which means Africans, Coloureds and Indians- (a) Who are citizens of the Republic of South Africa by birth or descent; or (b) Who became citizens of the Republic of South Africa by naturalisation: (i) before 27 April 1994; or (ii) On or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date; (c) a juristic person which- (i) is managed and controlled by a person contemplated in paragraph (a) and (b) and the persons collectively or as a group own and control a majority of the issued share capital or members' interest, and are able to control the majority of the members' vote;
Clause 1	3	Before line 28.	To insert before the definition of "community" the following definition: "'**carried interest**' means the interest allocated to the State in an exploration or production right, which interest shall *inure* exclusively to the benefit of the State and the costs of which shall be borne by the non-state holder and shall be recoverable by such holder in accordance with the terms and conditions determined in accordance with section 86A".
Clause 1	4	Before line 1.	To insert after the definition of "controlling interest" the following definition: "'**corresponding production right**' in relation to an exploration right means the production right for which a holder of an exploration right shall apply covering the

			area relating to such exploration right".
Clause 1	4	Before line 14.	After the definition of "discovery" to amend the definition of "effective date" as inserted by section 1 of Act 49 of 2008 as follows: "'**effective date**' means the prescribed timeframe **[date on]** within which the relevant permit is issued or the relevant right is executed;".
Clause 1	4	Before line 14.	To insert before the definition of "exploration work programme" the following definition: "'**existing exploration right**' means an exploration right granted in terms of section 80 prior to the commencement of Act [Number of MPRD Amendment Bill B15-B2015];".
Clause 1	4	From line 16 to 18.	To delete the definition of "free carried interest". **["free carried interest" means interest allocated to the State in exploration or production operations without any financial obligation on the State;]**
Clause 1	4	From line 22 to 43.	To delete the definition of **["historically disadvantaged South Africans" refers to South African citizens, a category of persons or a community, disadvantaged by unfair discrimination before the Constitution of the republic of South Africa, 1993 (Act No. 200 of 1993), came into operation which should be representative of the demographics of the country.]**
Clause 1	5	After line 56.	To insert the definition of **"pending application"** after the definition of "organ of state": "'**pending application**' means an application in terms of section 79 of the Act that was submitted – before the commencement of Act [Number of MPRDA Amendment Bill]; or (a) after the commencement of the [Number of MPRDA Amendment Bill] provided the applicant is the holder of a valid technical co-operation

			permit in respect of the proposed exploration area prior to commencement of the [Number of MPRDA Amendment Bill]".
Clause 1	6.	From 1 to 12.	To substitute the definition of "prospecting area" with the following definition: "'prospecting area' (a) in relation to a prospecting right, means the area for which the prospecting right is granted; or (b) in relation to any environmental, health and safety, social and labour matter and any residual, latent or other impact thereto, includes any land or surface within, adjacent or non-adjacent to the area as contemplated in paragraph *(a)* but upon which related or incidental operations are being undertaken and impacting on the environment'"
Clause 1	6	After line 31.	To insert after the definition of "residue stockpile" the following definition: "'**right of pre-emption**' means the right of the State in the event of a sale of participating interest, to purchase the participating interest to be disposed of by the holder on terms and conditions equal to those offered by the purchaser selected by the holder, which right shall expire unless accepted by the designated state entity within a period of 90 days following delivery of a notice setting out the final terms and conditions of the proposed transaction'".
Clause 1	6	From line 37 to 43.	To substitute the definition of "State participation" for the following definition: "'**State participation**' means the right of the State to participate in petroleum exploration and production operations, including through: (a) participating interest in exploration and production rights and may include production sharing agreements; and (b) representation at the joint operating committee of the exploration or production operation

			commensurate with the State's proportionate participating interest"'.
Clause 5	8	From line 5 to 8.	To substitute subsection (2) for the following subsection: "'(2) Any person may, after identifying an area of land, block or blocks and the type of mineral, mineral product or form of petroleum in or on such area of land, block or blocks, apply to the Minister for reconnaissance permission, reconnaissance permit, prospecting right, exploration right, mining right, technical co-operation permit, production right and mining permits. An application in terms of this subsection shall be processed in terms of this Act and granted upon compliance with the terms and conditions of the Act and is not subject to the invitation process contemplated in subsection (1).
Clause 5	8	From line 19 to 20.	To delete subsection (5). **[(5) The Minister shall, when processing applications, give preference to an application lodged by a person referred to in subsection (2).'']**
Clause 8	10	Line 29.	To insert the word prior before the words "written consent of the Minister"'.
Clause 12	12	After line 34.	To delete subsection (2) paragraph (b) which was substituted by Act 49 of 2008 as follows; **["(b) the granting of such right will- Result in the concentration of the mineral resources in question under the control of the applicant and their associated companies with the possible limitation of equal access to mineral resources";]**
Clause 12	12	Before line 35.	To include amend section 17 (4A) inserted by Act 49 of 2008 as follows: "(4A if the application relates to land occupied by a community, the Minister may impose such conditions as are necessary to promote the rights and interests of the community. **[, including**

			conditions requiring the participation of the community".]
Clause 18	15	Line 23.	To insert after the word" Industry" the following words " and the Housing and Living Conditions Standards";
Clause 20	17	Line 10.	To insert after the word" Industry" the following words " and the Housing and Living Conditions Standards";
Clause 22	17	After line 58.	To insert after the word "and" paragraph (c) as follows: (c) The applicant is a 50+1% Black Owned South African company.
Clause 22	18	From line 55 to 60.	To substitute subsection (9) paragraph (a) and (b) for the following subsection: "'(9) A mining permit issued in terms of subsection (6) shall- (a) Come into effect on the effective date; and (b) Where an appeal against the issuing of the mining permit or approval of the environmental authorisation has been lodged within the prescribed period, the mining permit shall not be executed until such appeal has been finalised"
Clause 35	24	After line 20.	To insert paragraph "(f) has contravened the provisions of the Broad Based Black Economic Empowerment Charter for the South African Mining and Minerals Industry and the Housing and Living Conditions Standards Contemplated in section 100 of the Act".
Clause 47	29	From line 25 to 29.	To omit the proposed amendments to section 70 of the Act.
Clause 48	29	From line 32 to 38.	To omit the proposed amendments to section 71 of the Act.

Clause 49	29	Line 40 to 46.	To omit insertion of section 71A".
Clause 49	30	From 1 to 9.	To omit the insertion of section 71A"
Clause 50	30	From line 10 to 11.	To omit the repeal of sections 72 and 73".
Clause 51	30	Line 21.	To omit the proposed amendment to section 74 (1) (a).
Clause 51	30	Line 34.	To substitute the words **["Regional Manager"]** for "designated agency".
Clause 51	30	Line 39.	To substitute the words **["Regional Manager"]** for "designated agency".
Clause 51	30	Line 43.	To substitute the words **["Regional Manager"]** for "designated agency".
Clause 51	30	From line 47 to 48.	To substitute the words **["Regional Manager"]** for "designated agency".
Clause 52	31	Line 21 and 22.	To omit the proposed amendment to section 75 (5) (c) of the Act.
Clause 53	31	From 37 to 50.	To substitute the words **["Regional Manager"]** for "designated agency".
Clause 56	32	From line 23 to 45.	To substitute the words **["Regional Manager"]** for "designated agency".
Clause 57	33	Line 17.	To substitute the words **["Regional Manager"]** for "designated agency".
Clause 57	33	After line 14.	To insert the following subsection (2A) as follows: "(2A). The Minister shall when granting an exploration right determine the terms and conditions of a corresponding production right in terms of section 84 and shall record those terms and conditions on the exploration right".
Clause 58	33	Line 41.	To omit the proposed amendment to section 81 (1) (a).

Clause 58	33	After line 41.	To include the following subsections (2A), (2B), (2C) and (2D) as follows: (2A) The holder of an exploration right shall during application for a renewal relinquish- (a) at the end of the initial term of the exploration right, 40 % of the contiguous initial area; and (b) at the end of each renewal period 10 % of the contiguous remaining area, or such lower percentage as the Minister may determine; (2B) The Minister must exempt the holder from the provisions of subsection (2A) if the holder demonstrates that he or she is in a position to explore a larger exploration area or has made a discovery or demonstrates that relinquishment in terms of sub-section (2A) may render the project uneconomic. (2C) If a holder makes a discovery which it does not wish to appraise (non-commercial discovery), the area of that discovery shall be included in the area to be relinquished in the next relinquishment. (2D) The States' equity must at all relevant times be maintained when contiguous areas are relinquished in terms of subsection (2A).
Clause 59	34	Line 16.	To omit the proposed amendment to section 82 (2) (e) of the Act.
Clause 59	34	From line 20 to 24.	To substitute paragraph (g) for the following paragraph: "(g) relinquish a contiguous portion of the area to which the right relates as prescribed in section 81".
Clause 59	34	Line 33.	To insert the words "where appropriate" before the words "apply for".
Clause 61	35	From 9 to 22.	To substitute the words **["Regional Manager"]** for "designated agency".
Clause 61	35	From 26 to 27.	To substitute the words **["Regional Manager"]** for "designated agency".
Clause 62	35	After line 52.	To insert the following subsection (1A) as follows: "(1A) The Minister shall when granting a production right

			under this section give effect to the terms and conditions agreed to in a corresponding exploration right that relates to the production right; and".
Clause 62	35	Line 55	To substitute the words **["Regional Manager"]** for "designated agency".
Clause 63	36	Line 14.	To omit the proposed amendment to section 85 (1) (a) of the Act.
Clause 63	36	Line 24.	To insert the following paragraph after subsection (2) paragraph (d) of the following paragraph: "(e) the applicant and the Minister have concluded the negotiating process referred to in subsection (3A)." "(3A) Notwithstanding the provisions of section 84 (1A) and section 80 (2A), any application for renewal of a production right, shall initiate a negotiating process between the Minister and the applicant relating to technical, financial and commercial terms and conditions of the production project".
Clause 65	36 & 37	From line 49 to 55, and from line 1 to 9.	To substitute section 86A for the following section: "86A. (1) The State has, through the designated organ of State, a right to a 20 percent carried interest in exploration and production rights, from the effective date of such rights. (2) In existing exploration rights and exploration rights granted in respect of pending applications, the State is in addition to the State carried interest referred to in subsection (1) and in accordance with terms and conditions agreed upon and recorded in the exploration right, entitled to a right of pre-emption in the event of a sale of a participating interest by the holder of an exploration or corresponding production right, entitling it to purchase the participating interest on terms and conditions equal to those offered by the purchaser selected by the holder.

			(3) The right of pre-emption shall within a period of 90 days from the date of delivery of a notice setting out the final terms and conditions of the proposed transaction expire, entitling the holder a right to offer such participation interest to a third party. (4) Where an exploration right application not contemplated in sub-section (2) is received after commencement of Act [Number of MPRD Amendment Bill B15-B2013], the State is, in the prescribed manner, entitled to an additional participation interest of up to 30 percent taking into account the size of the discovery and rate of production, in the form of— (a) carried interest; (b) acquisition at an agreed price; or (c) production sharing agreements. (5) The holder of a production right shall recover development costs of the State carried interest referred to in subsections (1) or (4) where applicable, from the proceeds generated from the production right, as may be prescribed in the terms and conditions of such right. (6) The State shall upon acquiring interest in terms of subsections (1) and or (4) enter into a joint operating agreement with the right holder or become a party to an existing joint operating agreement if one is in place in respect of such right. (7) The Minister must, acting on behalf of the State, appoint two representatives to the joint operating committee of the exploration or production operation to represent the interest of the State.". (8) The State is entitled to exercise its rights held in the joint operating agreements through-

			(a) representation as a non-voting participant in the joint operating committee in accordance with the joint operating agreement during exploration; and (b) corresponding percentage of voting rights to the interest held in the joint operating agreements during production. (9) Notwithstanding subsection (1), the Minister must before granting a production right in terms of section 84 and after consultation with the applicant and the Minister of Finance, determine whether the percentage or terms and conditions of the State carried interest referred to in subsection (1) may be adjusted downwards, taking into account- (a) the nature and scope of the project; (b) financial and economic profile of the project; (c) the degree of risk assumed by the holder throughout the projects; and (d) national interests. (10) The State carried interest shall not be adjusted below 10 percent. (11) The holder of an existing exploration right shall within a period of three years of the coming into effect of Act Number of MPRD Amendment Bill apply to the Minister for a determination of the terms and conditions which will be applicable to a corresponding production right, including State participation in the manner contemplated in sub-section (9). (12) Notwithstanding anything to the contrary in Act [Number of MPRD Amendment Bill B15-B2015], the terms and conditions of an existing exploration right granted before the commencement of Act [Number of MPRD Amendment Bill B15-B2015] in respect of which

			terms and conditions for a production right have been agreed to and attached in such exploration right shall, remain unchanged in as far as it relates to State participation and participation by historically disadvantaged South Africans. (13) Upon making the determination in terms of sub-section (11), the Minister shall record the terms and conditions of the corresponding production right determined in terms of subsection (11) in the exploration right".
Clause 66	37	Line 17.	To omit the proposed amendment to section 87 of the Act.
Clause 67	27	Line 40.	To substitute the words **["Regional Manager"]** for "designated agency".
Clause 68	38	Line 1.	To omit the proposed amendment to section 89 of the Act.
Clause 71	38	Line 46.	To insert the words "subject to subsection (1A)" before the words "Any person".
Clause 71	39	Line 6.	By the insertion after subsection (1) of the following subsection: (1A) (a) if the appeal in terms of subsection (1) is as a result of the performance by the Mining Company of South Africa SOC Limited, established by section 3(1) of the Mining Company of South Africa Act 2017, of any function performed by the Mining Company of South Africa SOC Limited in terms of section 7 of the said Act, that appeal must be heard by an appeals panel appointed by the Minister in terms of paragraph *(b)*. (b) The Minister must appoint as members of the appeals panel- (i) an advocate or attorney with at least ten

			years' experience; and (ii) two persons with knowledge of mineral and environmental regulation. (c) Whenever the Minister is required to nominate persons for appointment to the appeals panel in terms of paragraph *(b)*, the Minister must- *(i)* publish in the *Gazette* and by any other widely circulated means of communication, a notice calling for nominees and stating the criteria for nominations; *(ii)* consider all nominations submitted in response to the notice and compile a short-list of nominees; and *(iii)* appoint successful nominees as members of the appeals panel; (d) Regulations made in terms of section 107 (1) (c) regarding the procedure in respect of appeals under this Act apply with the necessary changes required by the context to appeals by the appeals panel in terms of this subsection. (e) The terms and conditions of appointment of members of the appeals panel must be prescribed by the Minister. (f) The Minister may, in consultation with the Minister of Finance, determine the remuneration, allowances and other benefits of the persons contemplated in paragraph *(b)*.
Clause 71	39	Line 10.	To insert after the words "subsection (1) the following words "or subsection (1A)".
Clause 71	39	Line 11.	To insert after the words "the Minister" the following words "or the appeals panel, as the case may be".
Clause 71	39	Line 27.	To insert after the words "subsection (1)" the following words "or subsection (1A)".

Clause 74	41	Line 12.	To insert the following subsection: "(5) The Minister must within six months from the date on which this Act [Number of MPRD Amendment Bill B15-B2015] took effect develop a Broad-Based Socio-Economic Empowerment Charter for the upstream petroleum industry which sets out the framework, targets and time frames effecting the entrance of black persons into the upstream petroleum industry.".

02/11/2017

HON SPD SKHOSANA KAMAHLANGU (MPL) **DATE**

CHAIRPERSON: AD-HOC COMMITTEE ON THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL

REPORT OF THE AD-HOC COMMITTEE ON THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL [B15D-2013]

1. INTRODUCTION

The Speaker referred the Mineral and Petroleum Resources Development Amendment Bill [B15D-2013] (the Bill) to the Portfolio Committee on Agriculture, Rural Development, Land and Environmental Affairs for consideration and report back to the House in accordance with Rule 201 of the Rules and Orders of the Mpumalanga Provincial Legislature, 2013 edition.

The Legislature has a mandate to consider, pass, amend and reject any bill before it as per Section 114(1)(a) of the Constitution of the Republic of South Africa, 1996 (the Constitution). It is also required in terms of Section 118(1) of the Constitution, to facilitate public involvement in the legislative and other processes of the Legislature and its Committees. Therefore, the Committee was required to conduct public hearings to solicit inputs or views of the public on the above-mentioned Bill and to report back to the House.

2. OBJECTIVES OF THE BILL

The objectives of the Bill are to:

- Amend the Mineral and Petroleum Resources Development Act, 2002, amended by the Mineral and Petroleum Resources Development Act, 2008 (Act No.49 of 2008); so as to remove ambiguities that exist within the Act;
- Provide for the regulation of associated minerals, partitioning of rights and enhance provisions relating to the regulation of the mining industry through beneficiation of minerals or mineral products;
- Promote national energy security;

- To streamline administrative processes;
- Align the Mineral and Petroleum Resources Development Act with the Geoscience Act, 1993 (Act No. 100 of 1993), as amended by the Geoscience Amendment Act, 2010 (Act No. 16 of 2010);
- Provide for enhanced sanctions;
- Improve the regulatory system; and to provide for matters connected therewith.

3. METHOD OF WORK

The Committee interacted on the Bill as follows:

a) The National Council of Provinces (NCOP) Permanent Delegate, Hon AJ Nyambi; Mr S Kobese and Mr J Rapela from the Department of Mineral Resources briefed the Committee on the Bill on 29 November 2016.

b) The Legislature decided to establish the Ad-hoc Committee on the Mineral and Petroleum Resources Development Amendment Bill in terms of Rule 152 due to the overlap of issues relating to the Bill between the Portfolio Committee on Agriculture, Rural Development, Land and Environmental Affairs and the Portfolio Committee on Premier's Office, Finance; Economic Development and Tourism. The House subsequently approved the establishment of the Ad-Hoc Committee (the Committee) during the sitting of 2 December 2016.

c) The Committee determined that public inputs should be solicited on the Bill and Public Hearings as well as Stakeholder Engagement Sessions were conducted on 01 March 2017 and 03 May 2017, respectively.

d) The Committee met on 13 June 2017 to consider the draft Committee Report on the Bill; and to finalize the Negotiating Mandate on the Bill.

The South African Local Government Association (SALGA) in Mpumalanga and the Mpumalanga House of Traditional Leaders were invited to the meeting; however, they were not present at the briefing of 29 November 2017.

4. BRIEFING ON THE BILL

4.1. Presentation by the NCOP Permanent Delegate, Hon Nyambi

The NCOP Permanent Delegate, Hon AJ Nyambi presented the Mineral and Petroleum Resources Development Amendment Bill 15 of 2013 (MPRDA) to the Committee Members and reported that:

The Bill was initially processed in 2014 and referred to the President for assent and signature. The Bill was however referred back to Parliament for reconsideration by the President of the Republic in terms of section 79(1) of the Constitution since he had reservations about its constitutionality. The President had reservations about the substantive and procedural issues regarding the Bill which included the following:

a) Procedural issues in that the NCOP and provincial legislatures did not facilitate sufficient public involvement when passing the Bill, as required by sections 72 and 118 of the Constitution.
b) Procedural issues in that the Bill was not referred to the National House of Traditional Leaders for comments in terms of section 18 of the Traditional Leadership and Governance Framework Act, 2003 yet the Bill impacted upon customary law or the customs of traditional communities.
c) Substantive issues regarding the definition of "This Act" in reference to various instruments including the Codes of Good Practice for the South African Minerals Industry and the Housing and Living Condition Standards for the Minerals Industry.
d) Substantive issues regarding sections 26(2B) and 26(3) which appeared to be inconsistent with certain international agreements or treaties to which South Africa is a party.

Hon Nyambi further indicated that upon the return of the Bill to Parliament the substantive issues and referral of the Bill to the National House of Traditional Leaders were addressed by the National Assembly and the Bill was amended accordingly. The

other part that remained was the public involvement element which was supposed to be facilitated by the NCOP and the provincial legislatures.

4.2. Presentation by the Department of Mineral Resources.

Mr S Kobese made a presentation on the Bill and also comprehensively covered the proposed amendments to the Bill. He mentioned that the proposed amendments (which were in a separate annexure) were for consideration by the NCOP and provincial legislatures. He also clarified that these additional proposed changes to the Bill were informed by certain developments that took place after the Bill was referred to the President's office for assent and signature such as the Mawetse judgment and Operation Phakisa.

The following were highlighted as a background on the Bill:

a) The Mineral and Petroleum Resources Development Act, 2002 gave effect to the internationally accepted right of the State to exercise sovereignty over all its mineral and petroleum resources and vested custodianship of mineral and petroleum resources with the State.
b) The Act separated surface rights (land ownership) from mineral rights ownership.
c) Large portions of land in South Africa are still owned and controlled by the previously advantaged South Africans and foreign nationals.
d) In the first decade of promulgation, the Act created an enabling environment for growth and transformation in the mining industry.
e) In 2008, the Act was amended to amongst others give effect to the "one environmental management system".

He further reported that, notwithstanding tremendous progress to date on the reform of the mining industry through the MPRDA, the first decade since the promulgation of the Act has provided the benefit of jurisprudence and on this basis; inherent weaknesses in the MPRDA are being addressed.

4.2.1. PROPOSED AMENDMENTS

The Department reported on the following proposed amendments to the Bill:

i) Application by Invitation (Section 9)

The Bill introduces a dual application system. The Minister is also empowered to invite applications for a defined period through a Gazette on unknown terrains (where the State has generated the knowledge). The Bill also makes provision for the first come first serve process on known terrains (where knowledge is independently generated), which will ensure orderly and optimal development of the Country's mineral and petroleum resources and it will further optimise the transformation and developmental impact.

ii) Stakeholder Consultation (Sections 10 and 16)

In terms of the two sections, the Bill proposes provisions aimed at strengthening consultation with affected communities, including traditional leaders and provides for separation of consultation for directly affected stakeholders and interested stakeholders. It further provides for Department of Mineral Resources to facilitate the consultation process, which will to ensure that the applicant engages meaningfully with directly affected stakeholders. Furthermore, it provides affected parties with an opportunity to submit their comments and objections and gives the Regional Manager powers to forward the comments and objection to the applicant for further consultation with affected stakeholders.

iii) Partitioning of Rights (Section 11)

Section 11 is amended to provide for partitioning of rights by enabling holders thereof, to dispose of part of their rights subject to the requirements of the Act. The Ministerial

prior consent is a requirement for the transfer of rights for both listed and unlisted companies as prescribed in the regulations. Also, mining companies are required to request the Minister's consent prior to the transfer of any interests in unlisted companies and change in controlling interests in listed companies.

iv) Change Of Ownership (Section 11)

The purpose of these provisions is to discourage the dilution of BEE ownership in mining companies. On section 11 is granting the Minister consent to reaffirm the rights and interests of affected groups including workers and communities. The Bill further provides for national development finance institutions like IDC to finance exploration, prospecting and mining projects through mortgage bonds without Minister's consent.

v) Social Labour Plans (SLP's) (Section 23)

The Bill provides for SLP's as follows:

- Submission and approval within the prescribed timeframe.
- Review of the approved SLP within a five year period for the duration of a mining right.
- A percentage of the holders' contribution towards mine community development is accordingly prescribed in the reviewed mining charter 2016.

The objects of the Act are amended to include "labour sending areas", where the concept is defined.

vi) Beneficiation (Section 26)

Section 26 empowers the Minister to designate certain minerals in consultation with a relevant Minister for national developmental purposes in order to:

- support national development imperatives such as industrialisation, energy security, food security, infrastructure development and fiscal stability and bring optimal benefit for the Country;

- ensure transformation of the mining industry and related sectors; and
- ensure cost competitive security of supply.

In so doing, the Bill requires mining operations to set aside a certain percentage of their production for local beneficiation. These resources are to be acquired by beneficiators at mine gate price or at an agreed price.

vii) BEE (Sections: 1, 17 and 28)

The Bill requires not merely the extent of the holder's compliance with the Amended Charter but actual compliance from right holders. Emphasis is on "effective Black ownership", which marks a shift from the vaguely defined definition of BEE. The definition of this Act has been revised to expressly incorporate the Amended Charter into the ambit of the Act and BEE requirements have been extended to prospecting right applications.

viii) State Participation (Clause 86A)

The Bill provides for the active participation of the State in the petroleum industry; where the State has a right to a 20% free carried interest in all new exploration and production rights and is entitled to a further participation interest in the form of acquisitions at either agreed price or through production sharing agreements and a right to board representation.

ix) Sanctions (Section 99)

The Bill provides for enhanced sanctions, which are linked to a percentage of the annual turn-over of the right holder consistent with the Competition Act. Provision is also made for administrative fines which will be payable to a designated fund and used to promote exploration activities and matters incidental thereto. These sanctions are intended to serve as sufficient deterrent to right holders and encourage compliance with the Act.

x) Streamlining of Inter-Departmental Processes

In 2010, Minister of Mineral Resources adopted the "Strategy for Sustainable Growth and Meaningful Transformation of South Africa's Mining Industry", which identified amongst others, fragmented licensing mechanisms as one of the key binding constraints to the global competitiveness of the industry. Consequently, the Ministers responsible for the Department of Mineral Resources, the Department of Environmental Affairs and the Department of Water Affairs agreed on modalities to streamline licensing requirements for mining (in line with the 2008 amendment of the MPRDA).

The Joint PPC on Mineral Resources and Environmental Affairs was briefed prior to the commencement of the public hearings on the alignment of the MPRD Bill and the NEMLA Bill in 2013. After the conclusion of the public hearings, a Joint PPC meeting was held to ensure that the necessary amendments have been effected to the various pieces of legislation.

xi) Environmental Management (Sections 39, 40, 41 and 42)

Prior to 2008, mine environmental management was provided for under the MPRDA. Section 39 provided for the process for approval of mine environmental management plans and programmes (EMPs). The following Sections provided for:

- Section 40: consultation process with State departments on approval of EMP's.
- Section 41: financial provision for EMPs.
- Section 42 : management of residue deposits and stock piles.
- Section 43 : mine closure.

Applicants had to comply with these provisions in order to be granted rights and permits and in addition comply with the requirements of NEMA. The requirement to comply with various pieces of legislation proved cumbersome and further contributed towards non-compliance with NEMA. Macsand judgment reinforced the view that holders of mining rights must comply with all other relevant prescripts.

Further proposals in order provide regulatory certainty were on:

- Certainty of project terms by providing for the determination of terms for both exploration and production rights for the duration of the right;
- Renegotiation of terms when renewing a production right;
- Relinquishment of contiguous portions of exploration rights at the renewal stage;
- The Minister to be given powers to develop a Petroleum Charter to make provision for transformation issues for the oil and gas sector.
- The proposal to provide for a 10% BEE shareholding.

xii) Additional Proposals

- **Outcomes of Operation Phakisa (Ocean economy)**

Based on the outcomes of the Operation Phakisa, the Department has engaged the upstream petroleum industry to relook at clause 86A and find a win-win solution for the sector taking into account its frontier nature. In this regard clause 86A of the Bill has been reworked to propose the following:

- 20% State carried interest;
- A cost recovery mechanism of the carried interest during the production stage;
- Downward adjustment at production stage in consultation with the Minister of Finance;

DMR identified loopholes relating to the application of small scale mining and thus proposes that the applicability of small scale mining be limited to 50+1% South African owned companies and also proposed that the definition of historically disadvantaged South Africans be replaced with the definition of black persons as per the alignment of the transformation policies in line with the BBBEEA and the generic codes. It is further proposed that non-compliance with section 100 be included in section 47, so as to empower the Minister to suspend and/or cancel rights should the applicant fail to comply with the requirements of the mining charter and the housing and living

conditions standards. An amendment of the definition of "effective date" is proposed so as to give effect to the Mawetse Judgment.

- **Technical Errors**

Post the adoption of the Bill by Parliament, DMR identified grammatical errors in the Bill. The errors were found in the definition of prospecting right and clarity is also provided in the proposed section 9 to clarify the dual application system. Clause 22 and section 27 grammatical errors are also corrected to provide clarity that the section refers to mining permits. An amendment is further proposed to section 100, clause 74 to empower the Minister with powers to develop a petroleum charter and section 9, to provide for the dual application system.

Further amendments are proposed to the following:

- Section 23 regarding rights and obligations of the mining right holder.
- Section 25 to include compliance with the housing and living conditions standards in order to ensure that the standards are a condition of the mining right.
- Section 27 (small scale mining) be amended to limit its application to qualifying 51% Black South African persons owned.
- The proposed amendments in the Bill relating to the replacement of the designated agency (PASA) with Regional Manager be omitted.
- Section 96 to provide for the appointment of an appeals panel relating to the processing of an appeal involving the State owned mining company.

4.3. Inputs by Provincial Departments

- **Department of Agriculture, Rural Development, Land and Environmental Affairs.**

The department reported that it was part of the aligning on environmental and water affairs in 2008 and reiterated that the Minister of Mineral Resources is the competent authority to implement the National Environmental Management Act (NEMA) and the

Minister of Environmental Affairs is the competent authority for legislation and policy development. Furthermore, the department reported that as a result of the streamlining agreement between the two departments, provisions relating to environmental management have since been moved to the NEMA and the Minister of Mineral Resources is the one who deals with appeals relating to mining. The department was therefore in support of the Bill.

- **Department of Economic Development and Tourism**

The department supported the bill with all the amendments as presented by the Department of Mineral Resources.

5. PUBLIC HEARING AND STAKEHOLDER ENGAGEMENT

5.1. Public Involvement

In order to adhere to Section 118(1) of the Constitution that mandates the Legislature to facilitate public involvement in the legislative and other processes of the Legislature and its Committees, the Committee resolved to conduct public hearings which were held as follows:

a)

DATE	VENUES
Wednesday, 01 March 2017	Ehlanzeni District: City of Mbombela – Emjindini Community Hall - Barberton
	Gert Sibande District: Govan Mbeki Local Municipality Sijongile Ndamase Community Hall - eMbalenhle
	Nkangala District: eMalahleni Local Municipality Thubelihle Community Hall - Kriel

b) Date : 3 May 2017

Venue : Hendrina, Cosmos Multipurpose Centre, Steve Tshwete Local Municipality

Invitations to the public hearing were extended to a broad segment of stakeholders, including among others:

- Community Members
- Department of Agriculture, Rural Development, Land and Environmental Affairs (DARDLEA)
- Department of Economic Development and Tourism (DEDT)
- Mpumalanga Youth Foundation
- Sasol Mining
- Total S&P South Africa
- Norton Rose Fulbright
- Brimis Engineering
- Pembani Coal
- Stuart Coal
- Corobrik
- Anglo American Coal SA
- Kanya Coal

The Committee also made a call for attendance of the public hearing and to submit written submissions by using the Daily Sun Newspaper in February 2017 and also uploaded the Bill on the website of the Legislature.

5.1.1. Comments by the Public

During the public hearings the Committee Members conducting the public hearing explained that the Legislature seeks input and opinion on the legislation at hand from specific stakeholders and communities in the province. It was emphasised that the inputs by stakeholders and communities are very important to the Legislature and they

will be considered and conveyed to the NCOP and National Government through the relevant channels.

The public was provided with a thorough overview on the Bill; and the Legal Services officials from the Legislature and the officials deployed by the Department of Mineral Resources assisted the Committee at the public hearings. The Bill was presented and explained in the local languages that are spoken in the particular areas where the public hearings took place. The proposed amendments that were received from DMR for consideration by the NCOP and provincial legislatures were also presented during the public hearings.

The inputs made by individuals representing the community and stakeholders took place in a very constructive and informative manner. The members of the public were afforded an opportunity to make their submission in the official language of their choice. The following inputs and comments were made by the public:

a) On the definition of Locality, the definition of community should also include the specific definition of **"Mining Community"**, as the definition in its current form is not inclusive.
b) With regard to beneficiation, issues of **"Monitoring"** should be included in the Bill and the monitoring should be at the **Regional level.**
c) There must be a provision to force mines to fund research centres that will benefit the youth in learning more about the minerals that are produced by different mines.
d) With regard to rehabilitation, it was emphasised that hefty fines must be paid by mining companies that cause environmental degradation and thereafter fail to rehabilitate the mines.
e) The fine that is paid by mining companies for failing to comply with the Act must be used for the developmental programmes within the community where the offences were committed by the mining companies.

f) The word "labour sending areas" is no longer relevant in the current democratic dispensation and should be removed from the Bill and instead reference should be made to "mining community".
g) Authority should be assigned to Local and Provincial Government (Intergovernmental relations) to have a role and to take actions in cases where there is non-compliance by companies. Amendment should be included to clearly capture the roles of each sphere of government.
h) A clause indicating a percentage of the annual returns of the company that should be given to employees must be included in the Bill.
i) Local communities must benefit from the mining operations in terms of employment and business opportunities (specific reference was made to young people from mining communities who remain unemployed despite having the necessary qualifications).
j) Mining affected communities must have a shareholding percentage in the mine.
k) The provision that gives effect to the Mining Charter must be specific regarding the definition of "locality".
l) Blasting by the mining companies causes damage to the environment, houses, clothing (laundry) and illness in the communities that are in the mines and there is no compensation for damaged houses or persons who contract illness due to mining operations.

Clarity seeking questions were duly responded to by members of the Committee and the relevant officials from the Legislature and the DMR and provincial department of Agriculture, and this was done in the local languages spoken in the specific communities.

The public agreed in general on the proposed objectives of the Bill and agreed that the Bill should be passed as an Act.

5.1.2. Written Submissions

The following Stakeholders made written submissions:

a) Pembani Coal
b) BRIMIS – MP Steel Development Forum
c) Mining Affected Communities United in Action (MACUA) And Women Affected By Mining United in Action (WAMUA)
d) Offshore Petroleum Association of South Africa (OPASA)
e) Mpumalanga Provincial House of Traditional Leaders (MPHTL)

The written submissions contain the following proposed amendments:

i. Amending of definition

An insertion should be made to include "social group of persons under the jurisdiction of a traditional council".

ii. Section 11

- Amendment to the Section 11 refers, "mining companies to seek the Minister's consent prior to the transfer of any interest in unlisted companies",
- Proposal to set a minimum percentage (%) transfer at 5% for unlisted mining companies that would require the Minister's consent,
- Any transfer below 5% would not be significant and/or impact on the BEE dilution significantly,
- This will also assist in the administration of DMR to be effective unlike processing a number of insignificant transfers.
- Applications for licenses and related matters must be managed by an independent body which will be impartial to eliminate conflict of interest.

iii. SLPs (Sec 23)

- Introduction/ Addition of effective regionally based appropriately representative monitoring structures; supported with clear targets, at least quarterly reviews to

be introduced and strictly implemented in order to enhance impact and reinforce compliance.

iv. Beneficiation (Sec 26)

- In so doing the Bill requires mining operations to set aside a certain percentage of their production for local beneficiation. That shall be achieved through experimentation and deeper knowledge of materials; by locals; especially the Youth. To be given effect through; establishment and funding of regionally based Innovation/ Research centres; meant for the promotion of innovation and development of new products and uses for relevant resources that shall be coupled with Business Incubation. To be funded by mines for their establishment.

v. Section 27(5)(a): Application for issuing and duration of mining permit

The traditional community that resides on the land that the mining permit has been issued, must also be consulted.

vi. Environment

The negative impact to the environment and with direct impact to communities needing to be somehow 'compensated' i.e.:

- **Damage to local roads**; mines to make meaningful financial contribution.
- **Water pollution/contamination**; tap water is accepted as not healthy for daily drinking; to a point that bottled water are very common; BUT only to those who can afford. The majority maybe needing some form of subsidy in order to also access safe drinking water.
- **municipal rates/taxes**; there are reports that most municipalities are allegedly charging mines lower farm rates; as opposed to fitting higher industrial/commercial rates; at the expense and disadvantage of municipalities revenue collection systems.

vii. Amendment of Chapter 7

Traditional Leaders should form part of the Mineral and Mining Development Council. Furthermore, the Minister should ensure that traditional communities benefit as intended.

viii. Other proposals

The provisions that direct no less than 50% of royalties and Tax allocations from mining activities, for development of directly affected communities, to counteract the disproportionate losses suffered by mining communities and labour sending areas.

4. FINDINGS BY THE COMMITTEE

The Committee made the following findings:

a) The President's substantive and procedural reservations regarding the constitutionality of the Bill have been addressed. Further, written comments from the National House of Traditional Leaders were duly considered by the National Assembly hence the Bill was amended accordingly.

b) The reconsidered Bill also gave rise to amending the definition of "communities" which is now more inclusive and covers wall to wall municipalities and areas that fall within the jurisdiction of traditional leaders, which would enable consultation of interested and affected persons and communities on any matter required by the Bill (such as during consideration of applications for licences, mining rights and prospecting rights) to be done in an inclusive and effective manner.

c) The Department's proposed amendments that were presented to the NCOP and provincial legislatures relating to developments in case law, Operation Phakisa and other technical corrections are critical and necessary for the

proper implementation of the legislation and they were also supported during the public hearings.

d) The Bill is important for the economic growth of the country by among others, strengthening the linkages between the mining and manufacturing sectors (such as through beneficiation), and will thus contribute to the government's objective of eliminating the triple developmental challenges of unemployment, inequality and poverty.

e) The critical comments and inputs made by the public regarding the Bill were duly considered and should be incorporated in the negotiating mandate to the NCOP.

f) Some of the submissions from the public were covered in the Bill or the principal Act and some matters will be covered by means of Regulations after the Bill becomes an Act.

g) During the public hearing process, the majority of members of the community supported the Bill and that it should be passed as an Act.

h) Public awareness on the implementation of the principal Act is lacking – hence the Regional Office of the Department of Mineral Resources should ensure that it conducts workshops and awareness raising sessions to the community of Mpumalanga Province once the Amendment Act is promulgated so that communities can understand how to utilise the Act for their maximum benefit.

7. RECOMMENDATIONS BY THE COMMITTEE

The Committee supports the Bill and made the following recommendations:

a) The Minister of the Department of Mineral Resources must consult provinces when mining rights are issued;
b) Mining Inspectors must strengthen their inspections to mines.
c) The delegation representing the Province of Mpumalanga in the National Council of Provinces (NCOP) is conferred with authority and mandated to vote in favour of the Mineral and Petroleum Resources Development Amendment Bill [B15D-2013] with proposed amendments, taking into account the inputs and observations noted in this report and the proposed amendments articulated in the Negotiating Mandate, attached hereto.

8. CONCLUSION

The Chairperson extends the Committee's gratitude to all invited stakeholders who took the time to meet with the Committee to interact on matters pertaining to the Bill. A word of appreciation is extended to the Committee Members, Department of Mineral Resources, Provincial Departments of Agriculture, Rural Development, Land and Environmental Affairs as well as Economic Development and Tourism who actively participated in the briefing and public hearing to ensure that the objective of the hearing was achieved.

02/11/2017

HON SPD SKHOSANA KA MAHLANGU, MPL
CHAIRPERSON

DATE

AD-HOC COMMITTEE ON MINERAL AND
PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL

7.

Northern Cape
Provincial Legislature

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PORTFOLIO COMMITTEE ON FINANCE, ECONOMIC DEVELOPMENT & TOURISM

Ref 16.6.2.3.8

Hon OJ Sefako
Chairperson: Select Committee on Land and Mineral Resources

NEGOTIATING MANDATE

Name of the Bill: Mineral and Petroleum Resources Development Amendment Bill

Number of the Bill: [B15D-2013]

Date of deliberation: 23 May 2017

Vote of the Legislature: **The Portfolio Committee on Finance, Economic Development & Tourism votes in favour of the Bill**

Hon F Makatong
ACTING Chairperson: Portfolio Committee on Finance, Economic Development & Tourism

2017 -05- 23

Northern Cape
Provincial Legislature

Ref 16.6.2.3.8

PORTFOLIO COMMITTEE ON FINANCE, ECONOMIC DEVELOPMENT & TOURISM

NEGOTIATING MANDATE ON THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL BILL [B15D- 2013]

1. INTRODUCTION

The Acting Chairperson of the Portfolio Committee on Finance, Economic Development & Tourism Hon F Makatong tables the Committee's draft Report on *the Mineral and Petroleum Resources Development Amendment Bill [B15D-2013]*, as adopted by the Portfolio Committee on 23 May 2017.

2. PROCESS FOLLOWED

2.1 The Speaker of the Northern Cape Provincial Legislature has on receipt of the Bill referred the *Mineral and Petroleum Resources Development Amendment Bill [B15D-2013]*, to the Portfolio Committee on Finance, Economic Development & Tourism.

2.2 On the 2nd March 2017, the Portfolio Committee received a briefing on the Bill from the Department of Mineral Resources officials namely Mr S Ngobese and Mr. T Maluleke.

2.3 The Portfolio Committee resolved, to hold public hearings on the referred Bill in all the five (5) regions of the Province, to solicit the views of the affected stakeholders with regard to the *Mineral and Petroleum Resources Development Amendment Bill*. Stakeholders were invited widely.

2.4 The public hearings were held on the 4 and 5 April 2017 in the following districts as per the Committee resolution:

1. Namakwa – Port Norlloth and Aggenys
2. JTGaetsewe –Deben

3. Frances Baard – Kimberley
4. Pixley ka Seme – Douglas
5. ZF Ngcawu - Postmasburg

3. INPUTS FROM THE STAKEHOLDERS

1. Reporting on the implementation of allocations of social and labour plans of mines is not forthcoming and municipalities request that they should be in control of implementation of the funds.
2. Mining houses must be held liable for rehabilitation of the mining area.
3. The Bill must make provision for disabled persons to form part of the process.
4. Bill must be more direct in addressing Social and Labour Plans and what the responsibilities are of the mines vs. local government.
5. Regulations must be included with indicators that will address specific timeframes to mine, and development of areas to ensure economic empowerment in the area. If timeframes are not met, it should result in the retraction of such mining license.
6. It is crucial that regulations must also include stakeholder communication between the established committees and the affected communities.
7. Approval of the Social and Labour Plans of mines must be done at provincial level and not by the Minister because this process takes too long.
8. The IDP as well as the SLP must be transparent in terms of revenue division, owners and royalties.
9. The Bill must ensure that the previously disadvantaged communities benefit from these amendments.
10. Inputs from municipalities and the community must first be sought prior to the advertisement and allocation of a permit considering that land must be made available by a municipality.
11. There must be monitoring and evaluation mechanisms put in place with regard to SLP implementation.
12. The Bill must consider the environmental impact in an area where mining licences are to be awarded.
13. The Bill is silent on the monitoring and evaluation of SLP's.
14. There is no beneficiation directed towards local community.
15. The Bill must promote the ownership of mines by local communities, and Increase the 26% to 30%.

4. WRITTEN INPUTS ON THE BILL

Written submissions were sought from the community including verbal engagements. Written submissions were received from:

1. MACUA: Mining Affected Communities United in Action and WAMUA: Women Affected by Mining United in Action
2. ActionAid South Africa Country Program
3. FAMSA Kimberley and Progressive People Forum
4. Chamber of Mines South Africa

5. COMMITTEE INPUTS ON THE BILL

The Committee considered inputs received during the public hearing and those that are not relevant can be referred to the relevant department as they were not related to the Bill. Some were similar the Committee observations.

6. COMMITTEE OBSERVATIONS:

6.1 The Bill is silent on emerging miners.
6.2 1% for beneficiation is far too little.
6.3 The discretion of the Minister of the Mineral Resources is very wide.
6.4 Approval of mineral rights and permits is currently the sole prerogative of the Minister.
6.5 The unlimited right of mining houses to source labour.

7. COMMITTEE RECOMMENDATIONS

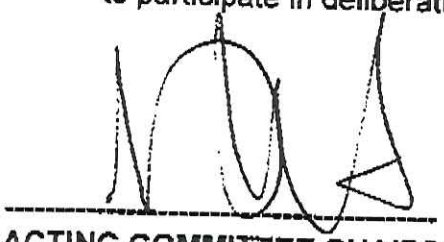
The Committee therefore recommends that:

7.1 The Bill should be explicitly clear on the emerging miners, for support and protection as well.
7.2 The beneficiation percentage from the minerals should be increased to the maximum, to benefit the communities
7.3 The Minister's discretion should be limited in order to avoid the abuse of those powers.
7.4 Approval of mining rights and permits must be done in consultation with the Minister of the DMR and provincial government.
7.5 Labour sending areas be defined and stipulate that a fixed percentage of the labour force be local communities of the area in close proximity with the mine.

8. COMMITTEE ADOPTION OF THE BILL

The Committee adopted this negotiating mandate duly signed by the Acting Chairperson of the Committee, Hon F Makatong.

The Committee recommends to the House to mandate the Permanent Delegates to participate in deliberations at the negotiating stage to **support** the Bill.



ACTING COMMITTEE CHAIRPERSON
HON F MAKATONG

2017 -05- 23

8.

NORTH WEST PROVINCIAL LEGISLATURE

NEGOTIATING MANDATE

TO	:	**CHAIRPERSON OF THE SELECT COMMITTEE ON LAND AND MINERAL RESOURCES**
NAME OF BILL	:	**MINERAL & PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL**
NUMBER OF BILL	:	**B 15D-2013**
DATE OF DELIBERATION	:	**02 MAY 2017**

VOTE OF THE LEGISLATURE:

After deliberations, the Portfolio Committee on Tourism & Agriculture, Rural Development & Environment confers the delegation representing the North West Province with the authority and mandate to negotiate in favour of the Mineral & Petroleum Resources Development Amendment Bill [B15D – 2013]; taking into account the proposed amendments as attached herewith.

JM Maluleke

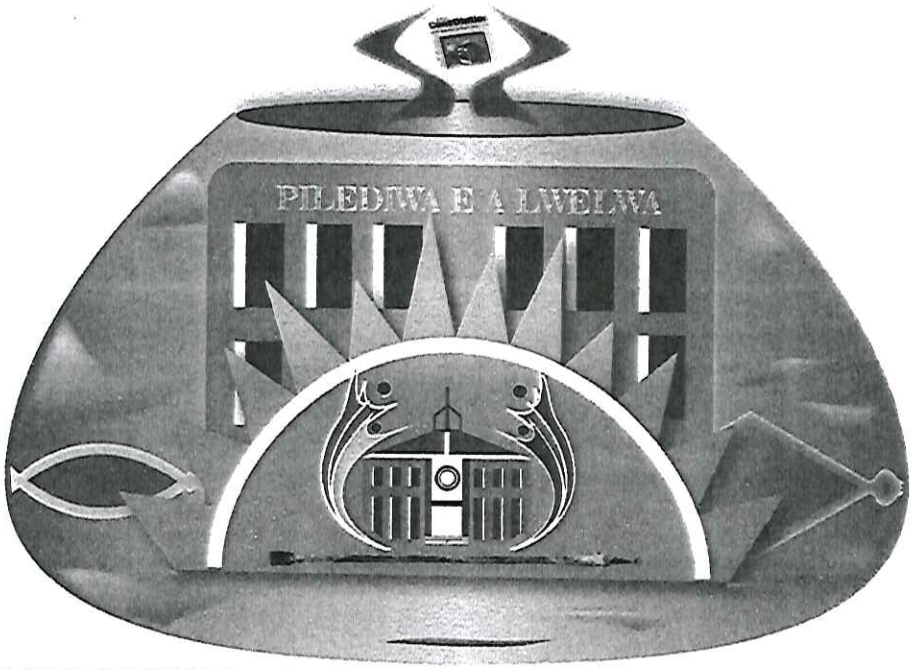
HON. J M MALULEKE

CHAIRPERSON: Tourism & Agriculture, Rural Development & Environment

02/05/2017

DATE

PORTFOLIO COMMITTEE ON TOURISM, AGRICULTURE, RURAL DEVELOPMENT & ENVIRONMENT



NORTH WEST PROVINCIAL LEGISLATURE

PUBLIC HEARING REPORT ON THE MINERAL & PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL [B15D – 2013]

TABLE OF CONTENTS

ACRONYMS

DMR.	Department of Mineral Resources
SLP	Social Labour Plans
IDP	Integerated Development Plans
MPRDA	Mineral and Petroleum Resources Development Amendment Bill
NDP	National Development Plan
READ	Department of Rural, Environment and Agricultural Development

1. INTRODUCTION

The Constitution of the Republic of South Africa enables Legislatures with the responsibility to make laws. Section 76 of the Constitution of the Republic of South Africa further details the process to be followed in processing Bills that affect provinces. This is on the basis on which Public Hearings on the Mineral & Petroleum Resources Development Amendment Bill [B15D – 2013] for the were conducted.

- The Mineral and Petroleum Resources Development Act, 2002:
    - Gave effect to the internationally accepted right of the State to exercise sovereignty over all its mineral and petroleum resources.
    - Vested custodianship of mineral and petroleum resources with the State. The Act separated surface rights (land ownership) from mineral rights ownership.
    - Large portions of land in South Africa is still owned and controlled by the previous advantaged South Africans and foreigners.
    - In the first decade of promulgation, the Act created an enabling environment for growth and transformation in the mining industry.
    - In 2008 the Act was amended to amongst others give effect to the "one environmental management system".
    - Notwithstanding tremendous progress to date on the reform of the mining industry through the MPRDA, the first decade since promulgation of the Act has provided the benefit of jurisprudence on the basis of which inherent weaknesses are being addressed

2. PROCESS FOLLOWED

The Mineral & Petroleum Resources Development Amendment Bill [B15D – 2013]was formally referred by the Speaker, Honourable S.R. Dantjie to the Portfolio Committee on Tourism, Agriculture, Rural Development & Environment, for consideration and reporting.

The Portfolio Committee received a presentation from the Department of Mineral Resources on the Mineral & Petroleum Resources Development Amendment Bill [B15D – 2013 at a meeting held on 24 November 2016.

Public Hearings were conducted throughout the province on 20 April 2017 a total amount of 1 738 people attended.

3. OBJECTIVE OF THE MINERAL & PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL [B15D – 2013]

- To improve the ease of doing business in the industry, including the streamlining and integration of mining, environmental and water authorisation processes i.to.o alignment with NEMA and the National Water Act
- To strengthen its content, in order to further enhance and continue creating a conducive environment for investment, growth and job creation
- To augment and substantially increase the socio-economic development impact through mining
- To balance business needs national development imperatives
- Further entrench the principle of security of tenure and protection of the sanctity of investments as an integral part of South Africa's mining regulatory framework and;
- To provide for radical economic transformation in the mining, minerals and upstream petroleum industry
- To bring the administration of historical stockpiles created prior to the promulgation of the MPRDA into the ambit of the Act.

4. PRESENTATION BY THE DEPARTMENT

4.1 STRATEGIC OBJECTS OF THE MPRDA BILL

- Improve the ease of doing business in the industry, including the streamlining and integration of mining, environmental and water authorisation processes i.t.o alignment with NEMA and the National Water Act.
- Strengthen its content, in order to further enhance and continue creating a conducive environment for investment, growth and job creation.
- To augment and substantially increase the socio- economic development impact through mining.

- Balance business needs with national development imperatives.
- Further entrench the principle of security of tenure and protection of the sanctity of investments as an integral part of South Africa's mining regulatory framework; and
- To provide for radical economic transformation in the mining, minerals and upstream petroleum industry
- To bring the administration of historical stockpiles created prior to the promulgation of the MPRDA into the ambit of the Act.
- Provide for the State's active participation in the development of petroleum resources.
- Provide for the designation of minerals for national developmental imperatives such as security of energy supply, food security and industrialisation.
- Enhance provisions relating to the regulation and implementation of Social and Labour Plans.
- Provide for partitioning of rights and enhanced sanctions.
- Entrench and embed transformation (the Mining Charter).
- Provide for enforcement of Housing and Living Conditions standards for mineworkers; and
- To address certain short comings identified in court cases including Macsand, Mawetse and Bengwenyama.

4.2 PROPOSED AMENDMENTS: APPLICATION BY INVITATION (Sec 9)

- The Bill introduces a dual application system.
- The Minister is empowered to invite applications for a defined period through a Gazette on unknown terrains (where the State has generated the knowledge).
- Provision is also made for the first come first serve process on known terrains (where knowledge is independently generated).
- This process will ensure orderly and optimal development of the Country's mineral and petroleum resources.
- It will further optimise the transformation and developmental impact.

4.3 PROPOSED AMENDMENTS: STAKEHOLDER CONSULTATION (Sec 10,16)

- The Bill proposes provisions aimed at strengthening consultation with affected communities, including traditional leaders.
- The Bill provides for separation of consultation for directly affected stakeholders and interested stakeholders.
- Further provides for DMR to facilitate the consultation process.

- The purpose of the consultation is to ensure that the applicant engages meaningfully with directly affected stakeholders.
- It further provides affected parties with an opportunity to submit their comments and objections.
- Further gives the RM powers to forward the comments and objection to the applicant for further consultation with affected stakeholders.

4.4 PROPOSED AMENDMENTS: PARTITIONING OF RIGHTS (Sec 11)

- Section 11 is amended to provide for partitioning of rights by enabling holders thereof to dispose of part of their rights subject to the requirements of the Act.
- Ministerial prior consent is a requirement for the transfer of rights for both listed and unlisted companies as prescribed in the regulations.
- Mining companies are required to request the Minister's consent prior to the transfer of any interests in unlisted companies and change in controlling interests in listed companies.

4.5 PROPOSED AMENDMENTS: CHANGE OF OWNERSHIP (Sec 11)

- The purpose of these provisions is to discourage the dilution of BEE ownership in mining companies.
- In granting a section 11 consent the Minister must reaffirm the rights and interests of affected groups including workers and communities.
- The Bill further provides for national development finance institutions like IDC to finance exploration, prospecting and mining projects through mortgage bonds without Minister's consent.

4.6 PROPOSED AMENDMENTS: SLP's (Sec 23)

- The Bill provides for SLP's as follows:
  - ✓ Submission and approval within the prescribed timeframe.
  - ✓ Review of the approved SLP within a five year period for the duration of a mining right.
  - ✓ A percentage of the holders' contribution towards mine community development is accordingly prescribed in the reviewed mining charter 2016.

- The objects of the Act are amended to include labour sending areas.
- The concept of "labour sending areas" is defined.

4.7 PROPOSED AMENDMENTS: BENEFICIATION (Sec 26)

- Minister is empowered to designate certain minerals in consultation with a relevant Minister for national developmental purposes in order to:
- support national development imperatives such as industrialisation, energy security, food security, infrastructure development and fiscal stability and bring optimal benefit for the Country;
- ensure transformation of the mining industry and related sectors; and
- ensure cost competitive security of supply.
- In so doing the Bill requires mining operations to set aside a certain percentage of their production for local beneficiation.
- These resources are to be acquired by beneficiators at mine gate price or agreed price.
- Restrictions (Ministerial consent) on exports of designated minerals are introduced for non-producers.

4.8 PROPOSED AMENDMENTS: BEE (Sec's 1, 17, 28)

- The Bill requires not merely the extent of the holder's compliance with the Amended Charter but actual compliance from right holders.
- Emphasis is on "effective Black ownership", which marks a shift from the vaguely defined definition of BEE.
- Definition of this Act has been revised to expressly incorporate the Amended Charter into the ambit of the Act.
- BEE requirements have been extended to prospecting right applications.

4.9 PROPOSED AMENDMENTS: STATE PARTICIPATION (Clause 86A)

- The Bill provides for the State's active participation in the petroleum industry;
- The State has a right to a 20 % free carried interest in all new exploration and production rights.
- The State is entitled to a further participation interest in the form of acquisitions at either agreed price or through production sharing agreements.
- The State has a right to board representation.

4.10 PROPOSED AMENDMENTS: SANCTIONS (Sec 99)

- The Bill provides for enhanced sanctions.
- The sanctions are linked to a percentage of the annual turn over of the right holder consistent with the Competition Act.
- Provision is also made for administrative fines which will be payable to a designated fund and used to promote exploration activities and matters incidental thereto.
- These sanctions are intended to serve as sufficient deterrent to right holders and encourage compliance with the Act.

4.11 GUIDED MINISTERIAL DISCRETIONARY POWERS (Sec 107 & 56)

In terms of the proposed Section 107, the Minister's discretionary powers are guided in the following manner:

- Minister must develop regulations relating to procedures applicable to invitation of rights in terms of section 9.
- Minister must consult with relevant stakeholders when developing terms and conditions applicable to both State participation and beneficiation.
- Minister must take into consideration the Council's advice when developing such terms and conditions.

4.12 STREAMLINING OF INTER-DEPARTMENTAL PROCESSES

- In 2010, Minister of Mineral Resources adopted the "Strategy for Sustainable Growth and Meaningful Transformation of South Africa's Mining Industry"
- The Strategy identified amongst others a fragmented licensing mechanisms as one of the key binding constraints to the global competitiveness of the industry;

- Consequently, the Ministers of DMR, DEA and DWA agreed on modalities to streamline licensing requirements for mining (in line with the 2008 amendment of the MPRDA).
- Joint PPC on Mineral Resources and Environmental Affairs was briefed prior to the commencement of the public hearings on the alignment of the MPRD Bill and the NEMLA Bill in 2013.
- After the conclusion of the public hearings a Joint PPC meeting was held to ensure that the necessary amendments have been effected to the various pieces of legislation.

4.13 ENVIRONMENTAL MANAGEMENT Sec's 39, 40, 41 & 42

- Prior to 2008, mine environmental management was provided for under the MPRDA.
- Section 39 provided for the process for approval of mine environmental management plans and programmes (EMP's).
- Section 40 provided for consultation process with State departments on approval of EMP's.
- Section 41 provided for financial provision for EMP's.
- Section 42 provided for management of residue deposits and stock piles.
- Section 43 provided for mine closure.
- Applicants had to comply with these provisions in order to be granted rights and permits and in addition comply with the requirements of NEMA .
- The requirement to comply with various pieces of legislation proved cumbersome and further contributed towards non-compliance with NEMA.
- Macsand Judgment reinforced the view that holders of mining rights must comply with all other relevant prescripts.

4.14 Additional proposals cont... (Outcomes of Oceans Phakisa)

- Based on the outcomes of the Oceans Operation Phakisa, the Department has engaged the upstream petroleum industry to relook at clause 86A and find a win-win solution for the sector taking into account its frontier nature.
- In this regard clause 86A of the Bill has been reworked to propose the following:
  - ✓ 20% State carried interest;
  - ✓ A cost recovery mechanism of the carried interest during the production stage;
  - ✓ Downward adjustment at production stage in consultation with the Minister of Finance;

- Certainty of project terms by providing for the determination of terms for both exploration and production rights for the duration of the right;
- Renegotiation of terms when renewing a production right;
- Relinquishment of contiguous portions of exploration rights at the renewal stage;
- Minister to be given powers to develop a Petroleum Charter to make provision for transformation issues for the oil and gas sector.
- The proposal is to provide for a 10% BEE shareholding.
- It is proposed that these additional amendments to the Bill and related proposals be included in

- DMR has identified loopholes relating to the application of small scale mining and thus proposes that the applicability of small scale mining be limited to 50+1% South African owned company's.
- It is proposed that the definition of historically disadvantaged South Africans be replaced with the definition of black persons as per the alignment of the transformation policies in line with the BBBEEA and the generic codes.
- It is further proposed that non compliance with sec 100 be included in sec 47, so as to empower the Minister to suspend and/or cancel rights should the applicant fail to comply with the requirements of the mining charter and the housing and living conditions standards.
- An amendment of the definition of "effective date" is proposed so as to give effect to the Mawetse judgment.

4.15 Additional proposals (technical errors)

- DMR has, post adoption of the Bill by Parliament, identified grammatical errors in the Bill.
- These errors are found in the definition of prospecting right and clarity is also provided in the proposed section 9 to clarify the dual application system.
- Clause 22, section 27 grammatical errors are also corrected to provide clarity that the section refers to mining permits.
- An amendment is further proposed to section 100, clause 74 to empower Minister with powers to develop a petroleum charter.
- An amendment is proposed to section 9 to provide for the dual application system.
- A further amendment is proposed to the mining right granting section (s23) and rights and obligations of the mining right holder (s25) to include compliance with the housing and living conditions standards in order to ensure that the standards are a condition of the mining right.
- It is proposed that Section 27 (small scale mining) be amended to limit its application to qualifying 51% Black South African persons owned.

- It is also proposed that the proposed amendments in the Bill relating to the replacement of the designated agency (PASA) with Regional Manager be omitted.
- An amendment is proposed to section 96 to provide for the appointment of an appeals panel relating to the processing of an appeal involving the State owned mining company.

4.16 CONCLUDING REMARKS

- The proposed amendments and the additional proposals to the MPRDA will:
  - ✓ Strengthen the architecture of the mining and minerals regulatory framework and direct a shift towards local mineral value addition.
  - ✓ Contribute towards national developmental imperatives.
  - ✓ Streamline licensing processes.
- Provide for State participation in the petroleum sector.
- Significantly boost the energy security programme through extractive industries that span mining, minerals and upstream petroleum industry

5. ORAL SUBMISSIONS

5.1 BOJANALA PUBLIC HEARING

- A clear distinction must be drawn between affected communities and interested communities. Consultation should be approved based on the inputs of the affected communities more than interested communities
- Section 10 (a) make publicly known that an application for prospecting right, mining right or mining permit has been accepted in respect of the land question
- Section 10(b) call upon affected persons and communities to submit their comments and objections regarding the application (within 30 days from the date of the notice) to the Regional Manager within 90 days
- The composition of the Regional Mining Development and Environment Committee should include representation from affected communities from across the province

- Section 26) A comprehensive national development on developing skills to ensure that the is optimal beneficiation of the products. This should be coupled with a beneficiation development fund which will establish industries for processing and finalisation of products
- Section (d) 4 No persons or producer may export unrefined minerals from South Africa
- A concern was raised that rehabilitated mining dump in Tlhabane created by Glencore. No environmental impact assessments done on the dust that comes from this un-rehabilated dump. No are there any plans to rehabilitate it
- BEE ownership should be enforced at 26%
- Section 43 (g) The holder of right or permit should publish mine closure plans make known to the affected community
- An oversight committee should be established by the department to ensure compliance and enforcement of the Social Labour plans
- A study and impact assessment should be done on mining on Restitution of Land Act of 1994 by MRPDA , currently the Chief Land Commissioner making decisions on behalf of communities
- Concluding remarks on strengthening community consultation including land owners and lawful occupiers. A definition needs to be made for the following with clear conscience definitions of :
    - ✓ land owners
    - ✓ land occupiers
    - ✓ affected communities
    - ✓ interested communities
- Consideration of land claims and dispute of land claims and how it adds on the pressures to land dispossessions
- The findings on the Bengwenyama Case on public participation was not fully adhered to in the current pubic participation
- The objects of the AU Mining Law:

  "Transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development" This shared vision will comprise: • A knowledge-driven African mining sector that catalyses & contributes to the broad-based growth & development of, and is fully integrated into, a single African market through: o Down-stream linkages into mineral beneficiation and manufacturing; o Up-stream linkages into mining capital goods, consumables & services industries; o Side-stream linkages into infrastructure (power, logistics; communications, water) and skills & technology development (HRD and R&D); o Mutually beneficial partnerships between the state, the private sector, civil society, local communities and other stakeholders; and a comprehensive knowledge of its mineral endowment. • A sustainable and well-

governed mining sector that effectively garners and deploys resource rents and that is safe, healthy, gender & ethnically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities; • A mining sector that has become a key component of a diversified, vibrant and globally competitive industrialising African economy; • A mining sector that has helped establish a competitive African infrastructure platform, through the maximisation of its propulsive local & regional economic linkages; • A mining sector that optimises and husbands Africa's finite mineral resource endowments and that is diversified, incorporating both high value metals and lower value industrial minerals at both commercial and small-scale levels; • A mining sector that harness the potential of artisanal and small-scale mining to stimulate local/national entrepreneurship, improve livelihoods and advance integrated rural social and economic development; and • A mining sector that is a major player in vibrant and competitive national, continental and international capital and commodity markets.

- Clarity needs to be given on when will this be ratified in South Africa
- Clarity needs to be given on when how the objects are fully incorporated into the MPRDA
- Section 11, clarity is needed on the prescribed manner , no clarity gives an impression that transfers can be done without consultation
- Section 23 The Minister must notify the affected community of approval or rejection of the application of rights
- Communities should be given time to consult legal experts and other resources after public hearings
- The Minister powers seems take more weight than those of the affected communities
- The definition of HDI versus black persons should be clarified
- Consultation should be meaningful , it should be fostered in communities and
- No protection of land invasion created by mining. Labourers occupying land unlawfully then later claiming land tenure
- A proposal was made that before the minister accepts the application, zoning and expansion feasibility studies must be carried out to ensure communities will be able to expand and carter for population growth to avoid the current situation in Luka where the community cannot expand the village
- TVET syllabus focused on mining should be introduced to further ensure that full beneficiation is experienced in the North West and affected communities and rural industrialisation
- Social investment on education and labour upskilling on affected communities to ensure direct local economic development of local communities before labour attraction of labour sending areas

- *The select committee itself will not consider the department's [57 new] amendments, which will be addressed via the provincial mandates. The select committee believes this process will circumvent the restrictions placed by the joint rules of Parliament on what can be considered in cases of presidential referrals. [our insertion]*
- A concern was raised that Bill 15D and the 57 further amendments proposed by the Department of Mineral Resources must be rejected because:

1. The joint rules of Parliament provide that no amendments can be made when a Bill is returned to Parliament by the President on the procedural ground of lack of participation. Parliament has failed to facilitate proper and meaningful public participation
2. The NCOP and the Provincial Legislatures therefore cannot cure the flawed NCOP and PL process of March 2014 by now holding fresh hearings because these belated hearings cannot make amendments, which shortcoming would render the hearings meaningless.
3. In any event the NCOP and the Provincial Legislatures cannot consider amendments which fall outside the referral mandate of the President.
4. Bill 15D[1] and the 57 further proposed amendments[2] do not address the concerns of communities. They actually dilute the little community participation currently provided for in the MPRDA. For example, Bill 15D and the 57 further amendments delete the MPRDA's current requirement that when a prospecting or mining right is granted and the application relates to the land occupied by a community, the Minister may impose "conditions requiring the participation of the community." [3]
5. The 57 further amendments cannot be entertained by either the Select Committee or the Provincial Legislatures.
6. The legal and factual reasoning for these assertions, and the adequacy of the hearings are more fully set out in our earlier correspondence. We stand by each allegation made therein.
7. . The 57 backdoor amendments of the DMR dated 24 November 2016 be rejected;
8. The NCOP be requested that a new draft bill be prepared that provides that community consent be required and the IPILRA [the Interim Protection of Informal Land Rights Act of 1996] be inserted as a pre condition for the consideration of any prospecting and mining right on communal land.
9. The principal demand is that IPILRA be explicitly incorporated into the MPRDA and that no mining on communal land be allowed without community consent. Our further proposed amendments are attached hereto.

10. LAMOSA record that when the President referred[4] the Bill back to Parliament two years ago on 16 January 2016, he recorded one of the referral grounds as related to "the consent principle in customary law." He asserted that the bill "ignored" the consent principle. The National Assembly and the NCOP ignored the exhortation of the President. The eight editorial amendments of the NA and the 57 amendments proposed by the DMR fail to address customary law and other property rights of communities on customary land. Instead Bill 15D and the proposed further amendments of the DMR further undermine community property rights and the participatory rights of communities

- DMR failed to consult with affected communities prior to tabling the proposed amendments
- Job reservation for unskilled labour for affected communities should be done and labour sending areas should provide technical skills that take more than a year to acquire skill
- Prioritisation of bulk infrastructure in mining squatter camp next to Segwelane above the community that has been settled
- Causalisation of labour and labour broking deterioration of health of workers and their contracts being terminated after six months without compensation and upskilling
- North West Province needs to enact the North West Mining Development Centre
- Mines should make known and publish achievements of the Social Labour Plans in the Annual Report. It must e monitored that there was actual achievement in accordance to the approved Social Labour Plan.
- Mining is disrupting farming activities and there is no compensation for the disruption in farming and other economic activities.
- The amendments vary significantly from the proposed Bill that the President resent to the National Assembly
- Feedback public hearing should be held after the debates in the NCOP (recommendation)
- Objects of the Amendment : Provide for enforcement of Housing and Living Conditions standards for mineworkers.
- This does not address lack of housing post working especially those not coming from local communities. At retirement most workers go back from labour sending areas of origin and usually without decent housing and depend on the state to provide housing
- Cost of consultation, clarity needs to be given on who carries the cost of consultation and the support from DMR
- Section 11: The Bill further provides for national development finance institutions like IDS to finance exploration, prospecting and mining projects through mortgage bonds without Minister's consent –

ability to finance and ability to carry licence (this discriminates upcoming entrepreneurs who do not necessarily have the financial and technical support to carry and finance the licence)

- Clarity was requested on the level or percentile of employment qualifies an area as a labour sending area.
- Small scale mining (Tlhatlhaganyane) needs financial support and no access to market.
- The Bill proposes amendments to consultation, recourse for current mining that was approved without prior consultation.
- Its recommended that open cast should be stopped due to damage to housing
- The proposal is to provide for a 10% BEE shareholding in the Petroleum Industry is not adequate to redress previous economic exclusion a 30% BEE shareholding is proposed for the net.
- 10 % of total turnover should be legislated should be use.
- The Bill should accommodate to redress past transgressions by mining houses:
- Make provision in the Bill to establish mining forums (DMR, mining houses, affected communities) that will assist in coordinating community development.
- Notice of change of ownership, this must be known to the affected community.

5.2 DR RUTH SEGOMOTSI MOMPATI PUBLIC HEARING

- The community insists that the law should include the previous mines companies to comply with the act in order to compensate the beneficiaries.
- Who should we consult or which local offices will assist us if we want to start mining business.
- The bill does not empower Women and Youth who are interest on mining.
- Consultative Meeting must include all relevant stakeholders and information must be available for everyone (Transparency).
- Establish a local monitoring and evaluation committee to ensure that law enforcement is adhered to.
- There was a concern that mining companies does not give local communities (who have mining skills) opportunity to be employed/ partnering with them.
- The communities recommend that mining companies should review their business plan every year to check compliance.
- Member of the Legislature should be part of the consultative meeting
- The system should be strengthening to ensure that the areas around the mines are proper rehabilitated.
- They proposed that Government must take ownership of mines.

5.3 DR KENNETH KAUNDA PUBLIC HEARING

- Issues were raised regarding illegal mining from stock piles that have not rehabilitated.
- The new Bill seeks to correct injustices of the past but there are lots of miners that did not get their pension funds as mines claimed to have closed only to have them open by another name thereafter.
- There are cracked houses due to the blasts at the mines but the mines do not assist.
- Some companies steal their business plans when they apply for prospecting rights.
- In Matlosana there are lots of old mines that have closed and the community will not benefit from this bill. Some people have suffered from silicosis, lithiasis and injuries at the mines, some have injuries and not yet compensated.
- The Social Labour Plans must be implemented and monitored to ensure that the needs of communities near mines benefit from production at the mine.
- The Bill is silent on how the SLP will be implemented and what criteria must be followed. Most communities have never been consulted on them, have never seen a copy of the SLP.
- There must be transparent process in the community.
- Mines continue to exploit the community by getting minerals from them without benefitting.
- The partitioning of rights needs to be better managed under this bill as this is how some mines are able to get away from implementing the SLPs for communities.
- The land for closed mines can be used for agriculture if only the mines are held to account and penalized for not rehabilitating the land.
- There is fronting in mines during the inspection of DMR. There are certain sections of the mine that do not comply with legislation or safety regulations that are closed when inspections are conducted.
- Some people cannot apply online as they don't have access to internet so it already excludes them from applying for mining or prospecting rights.
- The J Shaft in Khuma has gold but had to be stopped because there is a lot of water in the mine and it rendered the mine unsafe.
- If the SLP is implemented the license of the mine should be reviewed, as communities around mines do not seem to benefit from the mine.
- Penalties for mines not complying to rehabilitate mines puts communities in danger and must be more stringent.
- Mining Charter must include burial rites for employees at mines.
- The closed mines in Matlosana can be used as a tourist attraction and create jobs for the youth in the area.
- Mines must be nationalised.

5.4 NGAKA MODIRI MOLEMA PUBLIC HEARING

- Lack of consultation with the community in terms of mining industries that are been constructed in rural areas.
- No proper developments in terms of roads, bridges and schools at Kripan, as compared to places with no mining industries. There are no meaningful opportunities expanded to members of the community.
- The mining company in Kraipan does not add any value in terms of employment to the community, only foreigners are getting employed.
- There is no proper channel in terms of reporting deaths of mine workers, and these mining companies do not provide any financial assistance to the bereaved families.
- Regular oversight visits should be conducted especially on rural mining areas.
- SLP's and IDP's should work hand in hand to have an increased level of developments in rural mining areas.
- Rural mining companies employ more trained foreigners with relevant mining skills, there is no skills transferred to the community.
- The community of Ditsobotla was never consulted about the mining company that was constructed on their graveyard.
- The Kalgold mining in Kraaipan once promised the community to build a training centre, until today. A trust fund for education was also requested.
- There is a need for community representation in terms of decisions taken between municipalities and mining companies.
- Mining licence should not be granted for a longer period, if there are no developments.
- Most houses have cracks due to the mining blasts.
- A library was long built by the mining company, but has not yet been handed over to the community.
- Members also raised concerns about wholes that were dug previously by one mining company, and they were left opened for years. Those holes were reported to have caused many lives in terms of children and domestic animals.
- Thorough consultations should be done in terms of mines which are constructed on farms belonging to communities.
- Community members should always form part with regard to elections of mining directors.
- Mining communities also required to be updated on their trust accounts

6. RECOMMENDATIONS BY COMMUNITIES/STAKEHOLDERS

Communities and Stakeholders recommended as follows:

6.1 Establish a local monitoring and evaluation committee to ensure that law enforcement is adhered to.

6.2 Mines must be nationalised.

6.3 The Bill must ensure that the areas and communities around mines arerehabilitated.

6.4 If the SLP is implemented the license of the mine must be reviewed, as communities around mines do not seem to benefit from mining activities.

6.5 Penalties for mines not complying with rehabilitation must be more stringent.

6.6 The Mining Charter must include burial rites for employees at mines.

6.7 The closed mines in Matlosana can be used as a tourist attraction and create jobs for the youth in the area.

6.8 Communities recommend that mining companies should review their business plan every year to check compliance.

6.9 A Member of the Legislature should be part of the consultative meetings that are held with communities.

6.10 Regular oversight visits should be conducted especially on rural mining areas.

6.11 Mining communities be updated on their trust accounts quarterly.

7. RECOMMENDATIONS OF THE COMMITTEE

The Committee recommends that the House resolve as follows;

7.1 The Bill be rejected as Bojanala district was not in agreement with the amendments. The amendments do not benefit communities in mining areas, they benefit the state and mining houses.

8. ACKNOWLEDGEMENTS

The Chairperson of the Committee thanked all Members for their commitment to the oversight process of the Mineral & Petroleum Resources Development Amendment Bill [B15D – 2013]

The cooperation of the MEC for READ, the Head of the department , senior officials from the department and The Department of Mineral Resources is highly appreciated.

The Chairperson of the Committee would also like to thank the support staff for contributing in compiling this report.

9. ADOPTION OF THE REPORT

The Portfolio Committee recommends that the House approve the passing of the Mineral & Petroleum Resources Development Amendment Bill [B15D – 2013]

I present to this House, the report of the Portfolio Committee on Tourism, Agriculture, Rural Development & Environment, for consideration and adoption

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HON. J M MALULEKE
CHAIRPERSON: TOURISM, AGRICULTURE, RURAL DEVELOPMENT & ENVIRONMENT

_____

DATE

9.

COMMITTEE REPORT

(Negotiating mandate stage) Report of the Standing Committee on Economic Opportunities, Tourism and Agriculture on the *Mineral and Petroleum Resources Development Amendment Bill* [B 15D - 2013] (NCOP), dated 3 May 2017, as follows:
The Standing Committee on Economic Opportunities, Tourism and Agriculture, having considered the subject of the *Mineral and Petroleum Resources Development Amendment Bill* [B 15D - 2013] (NCOP) referred to it in terms of Standing Rule 220, confers on the Western Cape's delegation in the NCOP the authority to not support the Bill for the following reasons:

1. Definitions, clarifications and corrections

1.1 **Clause 1(h) – Definition of "designated minerals":** There are insufficient criteria for the minister to apply in declaring a mineral or petroleum resource a 'designated mineral'. This lack of clarity will have a negative impact on investor certainty and could result in lower investment in the industry, having a negative impact on tax revenues for the fiscus and job creation. There must be clear objective criteria that the minister must follow to declare a mineral or petroleum resource a 'designated mineral'.

1.2 **Clause 1(k) – definition of "historically disadvantaged South Africans":** The Committee supports the omission of the phrase "should be representative of the demographics of the country" in the new definition of "black persons".

1.3 **Clause 1(q) – definition of "mining area":** The proposed definition of "mining area" is too broad. The definition must be limited to include the area physically to be mined as well as infrastructure on or in that area, which are exclusively used for the purpose of mining on the land in question. This will be consistent with the interpretation of "development" in terms of other activities listed in the NEMA Environmental Impact Assessment ("EIA") Regulations, 2014.

1.4 **Clause 1(zD) – definition of "this Act":** The Committee agrees that the proposed definition of "this Act" remains unconstitutional for the reasons expressed in the President's referral of the Bill [B – 15B] back to the National Assembly. It elevates policy to the status of legislation. Refer to point 7 below.

1.5 **Clause 31(d) Section 43(5) – "Issuing of a closure certificate" in the Principal Act:** The reference to "the Department of Water and Environmental Affairs" must be changed to "the Department of Water and Sanitation and the Department of Environmental Affairs". The Department of Agriculture and relevant municipalities (the responsible authority for air pollution and municipal planning) must also be included.

1.6 **Clause 32 Section 44 – "Removal of buildings, structures and other objects" in the Principal Act:** It is unclear what is included under "building structure or object". It is open to interpretation and could apply to all structures on the site. It would be excessively burdensome on the holders of the rights if they are not allowed to remove objects and/or movable building structures or materials that are rightfully theirs. This would increase the cost of investment, and therefore deter investment. What is included and excluded in the phrase "building structure and object" must be clarified.

1.7 **Clause 37 Section 49(1) – "Minister's power to prohibit or restrict prospecting or mining" in the Principal Act:** The proposed amendment to section 49(1) is not supported. Furthermore, objective criteria must provide for the determination of "national interest" by the minister. Alternatively, a definition should be provided.

1.8 **Clause 44 Section 56A – "Establishment of Ministerial Advisory Council" in the Amendment Bill:** It is unclear who will be regarded as the "three persons representing relevant state departments" contemplated in paragraph (c). Paragraph (c) of section 56A(2) must be revised to provide for adequate representation of relevant state departments. Furthermore, provision should be made for local government and the NGO sector to be represented.

1.9 **Clause 73 Section 99 – "Penalties" in the Principal Act:** There should be a monetary value attributed to the fine in order that those who do not reflect profits in their annual financial statements still incur a penalty. Sections 99(1)(a), (c) and (e) must therefore be amended to include an appropriate amount as an alternative, if no profits are reflected in a holder's annual financial statements, as follows: "... percent of the persons or right holder's annual turnover in the Republic and its exports from the Republic during the persons or right holder's preceding financial year as reflected in the last available annual financial statements or one million rand, whichever is the greater, or imprisonment..."

2. Conflict with Environmental Law

General comment: The Committee proposes that where there is conflict between the Mineral and Petroleum Resources Development Amendment Bill (hereafter referred to as the MPRDA Bill) and the National Environmental Management Act, 1998 (hereafter referred to as the NEMA), that the MPRDA Bill should be fully aligned with the NEMA.

2.1 The Amendment Bill, in many instances, proposes to replace the specific time periods stated in the Mineral and Petroleum Resources Development Act with the "prescribed period". Alignment must be achieved between the MPRDA Bill and the NEMA. The "prescribed period" should be replaced with "the period as provided for in terms of the National Environmental Management Act, 1998".

2.2 **Clause 11, section 16(4)(a) and (b) – "Application for prospecting right" in the Principal Act:** The proposed deletion of "... any interested and ..." is inconsistent with the principles of NEMA and limits the scope of public participation. The environmental authorisation process in terms of NEMA allows for *all interested and affected parties* to be consulted during an environmental authorisation process, and the omission of such persons from this amendment is not supported. The deletion of the phrase "and any interested and" is, therefore, not supported. The MPRDA Bill should be aligned with the NEMA.

2.3 **Clause 19(d) Section 24(3)(a) – "Application for renewal of mining right" in the Principal Act:** The implications of the proposed amendments to section 24(3)(a) are that the minister must grant the renewal of a mining right *even if the operation is unlawful in terms of other statutes*. The proposed deletion is fundamentally wrong and promotes unlawful activities. This is inconsistent with the principles of NEMA (Section 37 of the MPRDA specifically confirms the application of the principles of NEMA) and contrary to the rule of law, a value on which the Constitution is founded, as well as the need for cooperative governance. The phrases "any relevant provision of" and "or any other law" should not be deleted from section 24(3)(a).

2.4 **Clause 28 Section 37(1) – "Environmental management principles" in the Principal Act:** The rationale for the deletions in section 37(1) is not clear. The NEMA principles apply to all mining, prospecting and related activities. The deletion is especially disconcerting when seen in conjunction with the consistent deletion of *"any other law"* throughout the amendment Bill. The proposed substitution of section 37(1) is not supported.

2.5 **Clause 29 Section 38B – "Integrated environmental management and responsibility to remedy" in the Principal Act:** Clause 29 of the Amendment Bill proposes to amend section 38B(1) by providing that an environmental management plan or programme that had been approved at the time of the coming into effect of the National Environmental Management Amendment Act, 2014 shall be deemed to have been approved as an environmental authorisation in terms of NEMA.

Clause 29 proposes to amend section 38B(4) to the effect that all pending applications lodged in terms of the MPRDA prior to the coming into effect of the National Environmental Management Amendment Act, 2014 shall be processed in terms of the MPRDA as if the National Environmental Management Amendment Act, 2014 is not in operation.

The issue of the effect and validity of environmental management plans and programmes approved in terms of the MPRDA must be addressed in NEMA. To this effect the National Environmental Laws Amendment Bill, 2015 ("NEMLA4") seeks to regulate the situation of environmental management plans and programmes that had been approved on or before 8 December 2014. The MPRDA cannot dictate the application of the underlying fundamental environmental management principles in respect of NEMA.

The proposed amendments to the NEMA (through the National Environmental Laws Amendment Bill, 2015; "NEMLA4") seek to regulate the situation of environmental management plans and programmes that had been approved on or before 8 December 2014. In light of the imminent coming into effect of NEMLA4, the provisions of section 38B of the Amendment Bill are redundant and should be omitted.

Alternatively, an additional provision should (in conformance with the final version of NEMLA4) be included to the effect that section 38B does not apply in instances where an application for an environmental authorisation in relation to activities ancillary to exploration, prospecting, mining, or primary processing was not obtained, was refused or there was failure to obtain an environmental authorisation in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989) for activities that required such an environmental authorisation in terms of that Act, or for activities identified or specified under section 24(2) of NEMA, or a waste management licence has not been obtained, was refused or not obtained for any activity listed in terms of section 19 of the National Environmental Management: Waste Act, 2008.

2.6 **Clause 31(g) Section 43(14) – "Issuing of a closure certificate" in the Principal Act:** The insertion of this clause is not supported as some environmental consequences will only become apparent over the long term (significant time-lag effect of environmental consequences). Additionally, the term "invasive operations" is not defined. It is not clear who will determine whether a holder *"has not conducted any invasive operations"*.

2.7 **Clause 53 section 56 – "Lapsing of right, permit, permission and licence" in the Principal Act:** The final deregistration of rights must also be subject to the holder complying with any environmental responsibility related to the rehabilitation of the land.

2.8 **Clause 51(f) Section 74(4)(a) – "Application for reconnaissance permit" in the Principal Act:** The deletion of the phrase "and any interested and affected party" and the replacement with "an affected party" is not supported. It implies that it is only necessary to consult with one party. This could lead to insufficient consultation with all interested and affected parties.

2.9 **Clause 58 Section 81(3)(a) – "Application for renewal of exploration right" in the Principal Act:** The proposed deletion of "or any other law" in section 81(3)(a) is not supported. The Minister of Mineral Resources should consult with other government agencies when it knows that other laws have not been complied with, and the minister should not be compelled to issue a right in cases of non-compliance with other laws.

2.10 **Clause 58 Section 81(3)(c) – Application for renewal of exploration right" in the Principal Act:** The Committee proposes the insertion of "has complied with the terms and" before "conditions of the environmental authorisation" in section 81(3)(c).

2.11 **Clause 63 Section 85 – "Application for renewal of production right" in the Principal Act:** Compliance with environmental authorisation as well as with the environmental management programme must be assessed. The section must therefore be amended to specifically include the approved environmental authorisation as well as the environmental management programme.

The Committee proposes to amend section 85(2)(c) as follows: "(c) be accompanied by a detailed report reflecting the extent of compliance with the requirements of the approved environmental authorisation and environmental management programme, the rehabilitation to be completed and the estimated cost thereof; and".

3. Community rights and participation in decisions that affect communities

Submissions received from the Western Cape Government, Legal Resources Centre, Centre for Environmental Rights, the Mining and Environmental Justice Community Network, Action Aid and members of the public show that there is a substantive issue regarding community participation and consent in decisions that affect communities. It appears as though the rights and entitlements of communities to participate in decisions that affect them (mining and petroleum related decisions) have been diminished.

The *Interim Protection of Informal Land Rights Act, 1996* ("the IPILRA") provides for the protection of informal land rights held on a communal basis. Importantly, the IPILRA provides that a holder of an informal land right will be deemed an owner of land for the purposes of section 42 of the *Minerals Act, 1991*. The IPILRA secures the rights of communities by recognising the custom and usage of communities by providing for compensation in the case of deprivation of informal land rights, by requiring consent (of the majority) by communities for informal land rights to be disposed of, and other matters.

The IPILRA and the Minerals Act, 1991 gave significant recognition and protection to informal land rights held by communities. This meant that traditional authorities or land owners (holding title deeds) could not dispose of land or rights in land without the participation and consent of certain communities. *The Mineral and Petroleum Resources Development Act, 2002*, changed this position, and the amendment Bill leaves the principal Act largely unchanged in this regard. The principal Act, as it stands at present (and will continue to stand if the amendment Bill is passed as is), makes community participation a matter that *may in the relevant minister's discretion* be provided for.

This is a far cry from the extensive protections provided for in the IPILRA concerning community participation, community consent and compensation. The protections provided for in the IPILRA is not a matter for ministerial discretions, but must be abided by.

Hence, since the IPILRA remains on our statute book, there is a conflict of laws between the provisions of the IPILRA and the principal Act, which can be remedies by the amendment Bill. However, the current amendment Bill does not remedy the conflict.

The Committee agrees that community participation should be aligned with the IPILRA in the MPRDA Bill. Furthermore, the Committee agrees that the definition of "community" in the amendment Bill must be further clarified and aligned with the IPILRA definition of "community".

4. Conflict with international trade agreements and obligations

The President expressed the reservation that sections 26(2B) and 26(3) of the Bill are inconsistent with South Africa's international obligations because it imposes export restrictions on "designated" minerals. In short, Parliament is passing a law that will result in South Africa being in breach of international treaties it is a signatory to.

Submissions received from the Chamber of Mines, the Centre for Environmental Rights, Anglo American, and the South African Institute for Race Relations, state that the Bill's export restrictions are in breach of South Africa's obligations under the 1994 General Agreement on Tariffs (GATT) of the World Trade Agreement (WTO), and the Trade, Development and Co-operation Agreement (TDCA) concluded between South Africa and the European Union. They argue that this will expose the country to international sanctions.

International treaty-making in South Africa falls exclusively within the competence of the national executive, and is not shared with Parliament. It is the national executive (and not Parliament's approval of the international treaty) that binds South Africa internationally. Parliamentary approval of an international treaty has domestic effect only. It follows that GATT has domestic *and* international effect.

It is inferred from this that there is a duty (domestically) on the government and Parliament to act in good faith and to act in a manner that would not defeat the objects and purpose of an approved international treaty. Government and Parliament have a legal obligation to act in a collaborative manner when exercising their authority.

Therefore, should the Bill be passed in its current form, it would compel (in terms of domestic law) the national executive to act in a manner that violates international treaties that South Africa is a signatory to. Furthermore, it appears as though Parliament would violate its obligation to act in good faith and to not defeat the objects and purpose of an approved international treaty.

Failure by the national executive and Parliament to act collaboratively in exercising their powers is irrational and unlawful.

The Committee expresses the view that international treaties must advance the interests of the South African people.

5. Mining and production rights

5.1 **Clause 5 Section 9 – "Order of processing of applications" in the Principal Act:** The Committee supports the proposed amendment; however, a change of wording is needed for "first come first served".

5.2 **Clause 8(a) Section 11 – "transferability and encumbrance of prospecting rights and mining rights" in the Principal Act:** The proposed amendment goes further than the stated intention in the Memorandum on the Objects of the Bill, and introduces the requirement of ministerial consent for the transfer of a prospecting right or part thereof in a unlisted company, or of a controlling interest in an unlisted company that *"hold a prospecting right or mining right or an interest in any such right"*. The ambit of what is intended by an *"interest in any such right"* held by a listed or unlisted company is ambiguous. Also, it appears that where unlisted companies hold only a minority shareholding in a right, ministerial consent will be required for a change in shareholding in such a company. The requirement of ministerial consent in respect of listed companies is unworkable in light of the manner in which shares in listed companies are traded. Furthermore, the proposed amendments are vague, and unduly and arbitrarily restrict the transfer of prospecting rights or parts thereof held by both listed and unlisted companies.

The amendments to section 11(1) are not supposed insofar as they are vague and potentially contravene the principle of legality and section 25 (the right to property) of the Constitution.

The Committee agrees that the state must have a mechanism for ensuring that mining rights and interests benefit intended persons, and are not transferred without oversight. The mechanism proposed in the Bill is, however, practically unworkable. Retrospective oversight by the Department of how companies trade their shares is proposed. This ensures that the Department can achieve legitimate objectives whilst, at the same time, does not interfere with or impede trade in shares in a dynamic manner and on a day-by-day basis in the markets. The Committee proposes the following:

- Creation of a different and workable mechanism to implement the policy;
- Determination of the transfer of prospecting rights or part thereof by an independent expert body; and
- Listed companies should report on shareholding annually so that the Department of Mineral Resources can (retrospectively) track how companies are trading their shares.

5.3 **Clause 12(g), section 17(5) – "Granting and duration of prospecting right" in the Principal Act:** The Committee proposes that a time limit be set for lodging appeals against the granting of mining rights or the approval of environmental authorisations.

5.4 **Clause 31(b) Section 43(2) – "Issuing of closure certificate" in the Principal Act:** The clause will deter the holder of a mining permit from purposefully hiding certain facts in order to gain a closure certificate. However, the criteria in respect of the limits of the liability imposed by this clause should be specified in terms of how far into the future it applies and determination of the degree of culpability. Without such criteria this clause is too vague and it may not be possible to enforce it.

5.5 **Clause 34(b) Section 46(2) – "Minister's power to remedy environmental damage in certain instances" in the Principal Act:** The proposed amendment of section 26(2) to delete the phrase *"or if there is no such provision or if it is inadequate, from money appropriated by Parliament for the purpose"* is not supported.

5.6 **Clause 35 Section 47(2)(c) – "Minister's power to suspend or cancel rights, permits or permissions" in the Principal Act:** Affording the Minister a discretion to give a holder "a reasonable opportunity" to show why the right, permit or permission should not be suspended, is the preferred option rather than stipulating that the holder must be given "30 days notice", as stated in the proposed clause 47(2)(c). There may be instances where it is not appropriate or adequate or reasonable to provide the holder with only "30 days notice".

The Committee does not support the proposed amendment to section 47(2)(c). The discretion present in the principal Act should be retained.

5.7 **Clause 35 Section 47(4) – "Minister's power to suspend or cancel rights, permits or permissions" in the Principal Act:** It is not clear whether the 30 days referred to in section 47(4) is in addition to the "30 days notice" in section 47(2)(c). Consideration should be given to retaining the discretion with regards to the timeframe.

5.8 **Clause 63 Section 85 – "Application for renewal of production right" in the Principal Act:** The proposed insertion of a new paragraph (e) in section 85(3) is new and was not included in the amendment Bill. This proposal to introduce re-negotiation processes in respect of the renewal of a production right could have significant negative consequences on investment in the mining industry. Introducing additional long-term uncertainty into the mining sector has been shown to negatively affect investment and thus job sustainability. The need to re-negotiate technical, financial and commercial terms with the minister when a production right is renewed could also risk increased corruption in the mining sector. The Committee opposes this amendment.

5.9 **General comments:** The Amendment Bill does not require the mine owner or operator to make a full disclosure of the hazardous substances used during prospecting or mining. This should form part of the application for a mining license. This is especially problematic when water treatment or soil remediation is required. The amendment Bill should require the mine owner or operator to make a full disclosure of the hazardous substances used during prospecting or mining.

The MPRDA Bill should enable the Minister to consider an applicant's eligibility as a "fit and proper person", as contained in the National Environmental Management Air Quality Act and the National Environmental Management: Waste Act before issuing any rights.

6. Free-carried interest

Clause 65 ("State participation on exploration and production rights"), read with Clause 1(j) and 1(zA), Sections 1 and 86A: One of the most disconcerting clauses in the amendment Bill is partially addressed by the additional proposed amendments to clause 65 contained in the Table of Proposed Amendments to the MPRDA Bill. The state 'free carried interest' is proposed to change to 'carried interest' instead, whereby costs borne by the non-state holder shall be recoverable, thereby decreasing the investment disincentive. However, additional clarity is required in respect of the new proposed section 86A(4), *"The State is entitled to a corresponding percentage of voting rights to the interest held in such joint operating agreements"*. The proposed section 86A should be amended further to minimise the involvement of the state.

The new proposed section 86A must be scrutinised in respect of constitutionality in so far as it appears to be retrospective in application.

7. Inclusion of Mining Charter, Codes of Good Practice, and Housing and Living Condition Standards in "this Act"

Various submissions spoke to the proposed definition of **"this Act"** as being unconstitutional. The amendment Bill proposes the amendment of the definition of "this Act" to include the Draft Reviewed Mining Charter (the Charter), the Codes of Good Practice for the South African Minerals Industry (the Codes), and the Housing and Living Condition Standards (the Standards) for the Minerals Industry.

By incorporating certain codes, standards and guidelines under the definition of "this Act" in clause 1 of the Bill and, at the same time, empowering a minister to amend those codes, standards and guidelines, the Bill imparts to the national executive a power to amend a statute. This is indeed cause for concern. Should the Bill be passed in its current form, a minister may amend a statute or parts of a statute without involving Parliament at all. This is constitutionally impermissible and violates the separation of powers.

For this reason, the Committee asserts that the proposed definition of "this Act" in clause 1 of the amendment Bill is unconstitutional.

8. Application for, issuing and duration of mining permit

Clause 22(c) Section 27 – "Application for, issuing and duration of mining permit" in the Principal Act: The amendment proposed on page 9 of the Table of Proposed Amendments to the MPRDA Bill to section 27 is not contained in the amendment Bill [B 15D - 2013]. This proposed amendment, on the face of it, appears to have the effect of limiting the issue of mining permits to 50%+1 Black Owned South African Companies.

The Chamber of Mines' submission points to unintended consequences should the amendment proposed by the Department to the MRPDA Bill be accepted. It may be problematic where there is no black-owned or controlled company that is interested in applying for a permit, or that qualifies for the relevant mining permit. The mining opportunity may then go to waste, which would not accord with the object in section 2(e) of the MPRDA of promoting mineral resource development in South Africa.

This proposed amendment appears like an unduly blunt measure, which will have the effect of excluding foreign companies and reducing investment. This provision should be reconsidered after a full and careful impact assessment.

9. Issue of "Regional Manager"

9.1 **Clauses 39 and 40 Sections 51 ("Optimal mining of mineral resources" in the Principal Act) and 52 ("Notice of profitability and curtailment of mining operations affecting employment" in the Principal Act):** The reason for the removal and replacement of all references to "the Board" with "Regional Manager" is not clear. The Board's composition allowed for broader input from various relevant stakeholders. This will be lost. In addition, both options of the Board or Regional Manager are inferior to the option of an independent body being constituted to regulate matters independently and transparently in mining-related matters. This would decrease the potential for corruption.

The Committee does not support the replacement of "the Board" with the "Regional Manager". The reference to the "Board" should be replaced with a reference to the "Ministerial Advisory Council", or alternatively, to an independent body, and provision should be made for such a body to be properly constituted to ensure it has appropriate independence and expertise.

9.2 **Clause 51-53, 56 and following:** From clauses 51 onwards, the amendment Bill deletes references to the "designated agency" and replaces this with "Regional Manager," which refers to a Regional Manager of the Department of Mineral Resources. In the current Act this is the Department of Minerals and Energy, but this is revised to refer to the Department of Mineral Resources in the amendment Bill. This is where the conflation between mineral and petroleum resources becomes problematic – the management of petroleum resources requires specific techniques and approaches, which is not catered for in the amendment Bill.

Provision should be made in the amendment Bill for the role of the Petroleum Agency of South Africa, with responsibilities that are specific to petroleum resources.

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