

2018 0518 SC LAND



## NEGOTIATING MANDATE

To : Chairperson of the Select Committee on Land  
and Minerals Resources

Name of Bill : Minerals and Petroleum Resources  
Amendment Bill

Number of Bill : B 15D-2013

Date of Deliberation : 5 MAY 2017

Vote of Legislature : Portfolio Committee on Tourism, Agriculture,  
Rural Development & Environment confers on  
the North West's Permanent delegate in the  
NCOP with the authority and mandate to  
negotiate in favour of the Bill, taking into  
account the proposed amendments attached  
herewith.

Hon G V Tlhapi

Chairperson:

Portfolio Committee on Tourism,

04 May 2018

Date

## ANNEXURE

## PROPOSED AMENDMENT

### Definitions

1. To insert a new definition of "customary law" with the following definition:

"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 the communities today shall prevail over any written account of a community's customary law, particularly any account written by colonial administrators or their functionaries.

2. To insert the definition "directly affected community" with the following definition:

"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.

3. To insert the definition of communal land with the following definition:

"communal land" means land in respect of which a community hold rights including informal rights as defined in interim Protection of informal Land Rights Act of 1998

4. section 2 paragraph (d) page 7

Retain "women and communities"

(d) Substantially and meaningfully expand opportunities for historically disadvantaged **[persons, including women and communities]** South Africans, to enter into and actively participate in the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources.

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

5. section 2 page 7

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

(l) Communities and members of communities owing 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.

6. section 5A: page 7 ***prohibited activities***

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 of 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"



7. section 10: page 8 **consultation**

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

“Provided that if the application relates to communal land,

(i) 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 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 assessments;

(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 steps:

(a) A widely publicised public meeting where the independent investigators summarises the likely effects 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.

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

(c) At or after such meeting, the community, the community may appoint community representative to represent the community in engagements with the independent investigator and the application 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 community members in an accessible form.

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

8. ~~9.~~ Section 10 C: ***page 9 Composition of Regional Mining Development and Environmental Committee***

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

"the development needs of communities"

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

"the regional land claims commissioner"

