



The Honourable Minister Susan Shabangu
Minister of Mineral Resources
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Our Ref: CER3.1/MF

21 September 2011

Dear Minister Shabangu

ENVIRONMENTAL REGULATION OF PROSPECTING, RECONNAISSANCE, EXPLORATION AND MINING: THE PROPOSED AMENDMENT TO THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 (MPRDA), DECLARATIONS UNDER S.49 OF THE MPRDA TO PROHIBIT AND RESTRICT PROSPECTING AND MINING IN AREAS OF CRITICAL BIODIVERSITY AND HYDROLOGICAL VALUE AND SENSITIVITY, AND SAMRAD

We write to you to follow up on two submissions made on behalf of a number of civil society organisations to the Minister earlier this year, both related to the environmental regulation of mineral resources:

1. On 6 April 2011, a submission requesting further consultation with civil society about proposed amendments to the MPRDA, and providing an overview of community and civil society concerns about the separate and inferior system of environmental regulation provided for in the MPRDA.
2. On 1 February 2011, a submission requesting the Minister to exercise her discretion under s.49 of the MPRDA to declare a short list of geographical areas of critical biodiversity and hydrological value and sensitivity as prohibited from prospecting and mining, and to declare certain restrictions in respect of other areas of biodiversity, conservation and hydrological importance.

Copies of both submissions are attached to this letter for your reference.

Proposed MPRDA Amendment

We acknowledge receipt and thank the Minister for her response to our submission of 6 April 2011 dated 15 April 2011, which essentially advised us that, as civil society organisations, our first opportunity for engagement with the Ministry and the Department on the proposed MPRDA Amendment would be during the

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Parliamentary process. We understand that the Minister and her counterpart in Water and Environmental Affairs have been provided with various options for resolving the outstanding matter of the legislation and authorities to regulate the environmental impacts of mining. If this is correct, permit us to make three brief remarks in support of the Department adopting the environmental impact assessment and compliance monitoring and enforcement mechanisms provided for in the National Environmental Management Act, 1998 (NEMA).

1. The **separate** environmental regulation system for mining provided for in the MPRDA, a system different to that applicable to all other industrial and development sectors, is not justifiable. For all the reasons listed in our submission of 6 April 2011, the separate environmental regulation system for mining is **inferior** to the system provided for in NEMA, contravenes the Promotion of Administrative Justice Act, 2000 and compromises government's Constitutional obligation to realise environmental rights guaranteed in section 24 of the Constitution. Perpetuating this separate and unequal system can only lead to more conflict and likely litigation against the Minister and Department, and does not contribute to realisation of the objectives of the MPRDA.
2. The current system **disincentivises cooperative governance** and causes inter-departmental conflict, which has knock-on effects for government's relationship with the mining industry. The Departments of Environmental Affairs and Water Affairs are frequently handed mining rights as a "done deal", which makes it near impossible for to fulfill their Constitutional and legislative mandates without creating further inter-governmental conflict and further uncertainty within the mining industry.
3. While not perfect, the 2008 amendments to NEMA and MPRDA¹, already promulgated, would constitute a significant improvement to the current system. Most importantly, it creates the framework for an **integrated permitting system** that will go a long way to addressing the mining industry's concerns about delays and red tape. It also creates the opportunity for the Department to transfer some responsibility for compliance monitoring and enforcement against environmental non-compliance to the DEA and provincial environment departments.

Should it in any way assist, the Centre for Environmental Rights is willing and able to provide the Minister with a more detailed submission or presentation in support of these brief remarks.

Section 49 declarations

Unfortunately we have not received any reply from the Minister or the Department regarding our comprehensive, well-consulted and well-supported civil society submission of 1 February 2011, which relied on extensive scientific research, mapping and other work undertaken by provincial conservation authorities, the Departments of Environmental Affairs and Water Affairs, the South African National Biodiversity Institute (SANBI) and the CSIR.

In the interim, we understand that other requests for s.49 declarations have been made to the Minister, or are under development. Our information is that the areas identified in these additional submissions fall within the list of geographical areas included in our submission of 1 February 2011, and we urge the Minister to consider adopting a holistic rather than a piecemeal approach in relation to such declarations. Either way, we would appreciate an indication from the Minister as to her approach to our submission of 1 February 2011.

We furthermore understand that there are discussions underway between the affected national departments regarding the implementation of sub-output 3.4 of the Outcome 10 Delivery Agreement, which inter alia provided for:

- "National areas negotiated and published by 2015 identified for restricted mineral development:*
- *Monitoring and enforcement of mining activities (ongoing)*

¹ Mineral and Petroleum Resources Development Amendment Act, 2008 (Act 49 of 2008) and the National Environmental Management Amendment Act, 2008 (Act 62 of 2008)

- *Comparison of 'environmentally sensitive areas' and 'mineral development priority areas' by December 2012*
- *Public and stakeholder consultation by June 2013*
- *Gazette restricted mineral development areas in terms of s.49 of the MPRDA by April 2014"*

We would be grateful if the Minister and/or the Department could advise us of progress made in relation to the identification and comparison of "environmentally sensitive areas" and "mineral development priority areas".

The inclusion of environmental data and maps in SAMRAD

Earlier this year, when the Minister launched the South African Mineral Resources Administration (SAMRAD) online application system, there were various references in the media to the inclusion of existing GIS data into the system so that "[o]fficials of the department processing the application will be able to, at the press of a button, establish the environment-sensitivity status of an area applied for before even beginning to process the application. This will obviate the possibility of mining rights being granted for ecologically sensitive areas."² This was also confirmed by DMR officials at the DMR's exhibition and demonstration of SAMRAD at the Mining Indaba in February 2011.

We would be grateful if the Minister could set our minds at ease and confirm by return correspondence that such features have now indeed been incorporated into SAMRAD, particularly through the incorporation of BGIS maps and data held by SANBI.

Yours sincerely



Melissa Fourie
Executive Director

² <http://www.miningweekly.com/article/dmr-launches-samrad-to-clean-up-the-mineral-application-process-2011-05-20>