



The Honourable Minister Susan Shabangu MP
Minister of Mineral Resources
Per fax: 012 444 3145

Cc: The Honourable Minister Edna Molewa MP
Minister of Water and Environmental Affairs
Per fax: 012 336 7817

Our ref: MF/DT/CH/MT

18 June 2013

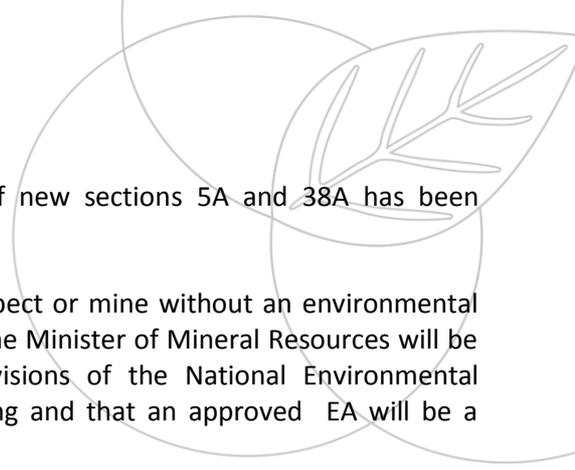
URGENT

Dear Minister Shabangu

REQUEST TO TAKE URGENT STEPS TO REMEDY CONSEQUENCES OF COMMENCEMENT OF MPRDA AMENDMENT ACT AS READ WITH THE 31 MAY AND 6 JUNE 2013 PROCLAMATIONS

1. With the coming into force of the Mineral and Petroleum Resources Development Amendment Act, 2008 (MPRDAA) on Friday, 7 June 2013, several critical provisions were deleted from the Mineral and Petroleum Resources Development Act, 2002 ("the principal Act") while the commencement of other critical provisions has been suspended. In this letter, we focus exclusively on the deletion of sections 5(4) and 39 from the principal Act and the related amendment of sections 17(5) and 23(5) because of the calamitous consequence these deletions and amendments have in circumstances where the commencement of new sections 5A and 38A has been suspended for 18 months.
2. Section 5(4) of the principal Act provided that no person may prospect or mine without an approved Environmental Management Plan (EMP) or Environmental Management Programme (EMPR) respectively. Section 39 of the principal Act required applicants for rights to submit, and empowered the Minister of Mineral Resources to approve such EMPRs or EMPs. Sections 17(5) and 23(5) of the principal Act respectively provided that no prospecting right or mining right could come into effect until the date the EMP or EMPR was approved in terms of section 39.
3. The commencement of the MPRDAA deletes section 5(4) and section 39 *in toto* (and the commencement of these provisions was not suspended by the proclamation issued on 6 June 2013). Ostensibly therefore, a person may now prospect or mine without an approved EMP or EMPR. Although sections 16(4)(a) and 22(4)(a) - the amendment of which has been suspended for 18 months - require the Regional Manager to call on applicants for rights to submit EMPs and EMPRs respectively, the Minister for Mineral Resources (or any official with delegated powers) no longer has the power to approve EMPs or EMPRs. Moreover, whereas sections 17(5) and 23(5) previously provided that the respective rights came into effect on the date that the EMP or EMPR was approved, these rights now come into effect on the date that the rights are executed (MPRDAA clause 1(f) read with clauses 13(g) and 19(e)).

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4. The situation described above arises because the commencement of new sections 5A and 38A has been suspended.
 5. When it commences, section 5A will provide that no person may prospect or mine without an environmental authorisation (EA). When it commences, section 38A will provide that the Minister of Mineral Resources will be the responsible authority for implementing the environmental provisions of the National Environmental Management Act, 1998 (NEMA) as it relates to prospecting and mining and that an approved EA will be a condition prior to the granting of a prospecting right or mining right.
 6. However, as matters stand, following the commencement of the MPRDAA, with the respective deletion, amendment and suspension of the provisions described above, an approved EMP or EMPR is now no longer a condition precedent to commencing prospecting or mining operations.
 7. Section 98(a)(i) makes contravention of section 5(4) a criminal offence. Section 98(a)(i) has not been amended by the MPRDAA. However, since section 5(4) has been deleted from the MPRDA it is no longer a criminal offence to prospect or to mine without an approved EMP or EMPR.
 8. We assume that the situation described above is an unintended consequence of the statutory events of the past two weeks. However, a legislative regime that allows prospecting and mining to take commence and continue without an approved EMP or EMPR is a clear violation of section 24 of the Constitution, and poses serious and imminent risks to the environment. It also undermines the regulatory regime imposed by the MPRDA, and will cause severe challenges for enforcement of the MPRDA for as long as this situation is allowed to continue.
 9. We therefore call on the Minister as a matter of extreme urgency to take steps to remedy the situation. The Minister will no doubt take advice on this issue, but it appears to us that the Presidential Proclamation of 31 May 2013 must be further amended to ensure that the deletion of sections 5(4) and 39 and the amendment of sections 17(5) and 23(5) are excluded from the commencement of the MPRDAA.
 10. Kindly confirm urgently, and in any event no later than 25 June 2013, that the Minister will take the necessary steps to address this unfortunate situation.

Yours sincerely

CENTRE FOR ENVIRONMENTAL RIGHTS

per: 

Melissa Fourie
Executive Director

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