Centre *for* Environmental Rights
Advancing Environmental Rights in South Africa

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Cc: The Chairperson, Portfolio Committee on Mineral Resources
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6 April 2011

Dear Minister Shabangu

PROPOSED AMENDMENT TO THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002: SUBMISSIONS BY 13 NON-GOVERNMENT ORGANISATIONS REGARDING ENVIRONMENTAL REGULATION OF PROSPECTING, RECONNAISSANCE, EXPLORATION AND MINING

We write to you on behalf of the thirteen non-government organisations listed at the end of this letter to address two issues: firstly, the lack of consultation with environmental and environmental justice NGOs and civil society organisations in relation to the current review of the Minerals and Petroleum Resources Development Act, 2002 (Act 28 of 2002) (MPRDA), and secondly, our expectation that any new amendment to the MPRDA will bring an end to the separate and inferior system of environmental regulation applicable to prospecting, reconnaissance, exploration and mining.

Lack of consultation with civil society

As you will be aware, subsequent to your decision not to bring into effect the Mineral and Petroleum Resources Development Amendment Act, 2008 (Act 49 of 2008), the Outcome 10 Delivery Agreement signed

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by government in September 2010 sets target dates for a new "joint proposal" between yourself and the Minister of Water and Environmental Affairs, a new law reform process, and finally a new "integrated and coordinated regulatory system for environmental management of mines" to be in place by June 2012. At the time of writing, we are unaware of any cooperation between the Department of Mineral Resources (DMR) and the Department of Environmental Affairs (DEA) to give effect to this commitment.

Towards the end of 2010, civil society organisations learned from the media of a review of the MPRDA being undertaken by the DMR and a new amendment to the MPRDA to be brought to Parliament.

Since any amendment to the MPRDA will almost certainly address and have far-reaching consequences for the environmental regulation of mines,[1] on 14 February 2011, the Centre for Environmental Rights wrote to the DMR on behalf of a number of NGOs requesting an opportunity to make inputs into draft legislation being developed, followed by further correspondence on 14 March 2011. A copy of that correspondence is attached to this document. On 18 March 2011, we finally received the following reply from a Chief Director at the DMR, Mosa Mabuza:

> *"Our policy and legal team enjoined with the responsibility of drafting the amendment is at the advanced stage of concluding this internal process, upon which we will be calling upon individual and group stakeholders to make their meaningful contributions to this process. We have included you in the database of stakeholders to be engaged in the process of consultations and eagerly await your much valued engagement and contribution towards finalization of the amendments."*

Even before receipt of this response, during March 2011, we learned from the media that the Minister intends bringing draft legislation to Cabinet for approval by the end of March 2011. We understand that it is a real possibility that the new legislation will set even shorter timefames for the processing of prospecting and mining rights, allowing even less time for EIAs than is currently the case.

We notice from a media statement issued by the DMR as recently as 9 March 2011 that the Minister has accepted contributions from MIGDETT (the Mining Growth, Development and Employment task team, consisting of government, business and labour) on amendments to the MPRDA.[2] Yet not only has no attempt been made to consult with civil society on amendments to the MPRDA, but even our express requests for opportunities to consult have at best been postponed to a later stage in legislative development.

Obviously the organisations we represent in this correspondence will have an opportunity to comment when the draft legislation is published for comment. What we were hoping for, instead, was an opportunity to provide input on and identify current problems in the MPRDA before a draft Bill was introduced to Parliament. However, this now seems unlikely. In response to Mr Mabuza's email quoted above, we asked whether the DMR intended making provision for consultation opportunities before introducing the amendment bill to Parliament. To date, we have received neither reply nor confirmation of such consultation opportunities. We reiterate our request for a meeting with the officials responsible for the MPRDA review.

In the absence of such consultation, we hereby set out our key expectations in relation to any amendment to the MPRDA to the extent that it affects the environmental regulation of prospecting, reconnaissance, exploration and mining.

Note that this submission should not be construed as a full list of all required amendments of the MPRDA, and that we have excluded submissions in support of the retention of any specific current provisions in the MPRDA. We reserve all our rights to make such submissions once the draft amendment bill is finally made available to us. The provision of this submission should also not be construed as an acceptable substitute for due and proper consultation with civil society.

[1] In particular, we see references to "Putting a one-stop-shop in place for all mining-related licences" in statements by the Minister in recent months.

[2] http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=16862&tid=29706

Reasons for our submission

Since the MPRDA was first promulgated, there has been a serious decline in ecosystem heath and biodiversity in South Africa. In response, amongst many other commitments under international environmental law, the South African government has made commitments to the United Nations Framework Convention on Climate Change and towards emission reduction and climate change mitigation which must be upheld. Our government has committed extensively to the development of a green economy. Our government has also made commitments regarding government action to address the impacts of acid mine drainage. These commitments, particularly as read with the Constitutional rights to an environment that is not harmful to health or wellbeing, to water, to administrative justice, require fundamental changes in the way we manage our environment, and particularly how we regulate the prevention and mitigation of the detrimental environmental impacts of mining. Such impacts also threaten people's socio-economic and cultural rights, and threaten more sustainable livelihoods.

Separate and unequal environmental rules for mines no longer defensible

Under the MPRDA and its predecessors, the mining industry has benefited for decades from an environmental regulatory regime that is significantly weaker than that with which all other industrial sectors have to comply, namely the environmental impact management regime imposed by the National Environmental Management Act, 1998 (Act 107 of 1998) (NEMA) and the 2010 Environmental Impact Assessment Regulations promulgated under NEMA. By way of a few key examples:

- The time periods stipulated in the MPRDA for compiling an environmental impact assessment (EIA) are limited and constrained, virtually forcing applicants for mining rights to do inadequate public consultation and to compile less comprehensive specialist and environmental impact reports on the impacts of their proposed prospecting or mining, and less comprehensive environmental management programmes than is responsible.[3]

  In the case of a prospecting rights application, an applicant is given only 30 days to find and consult with all landowners and interested and affected parties, which usually ends in notice of a week, perhaps two, to affected parties.[4] This is in direct conflict with the requirements for consultation set out in the Constitutional Court judgement of *Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others*.[5]

  This problem is well-illustrated by the current application for exploration rights in the Karoo Basin brought by Shell, which attempts to consult all interested and affected parties in most of the Karoo within a six-week period.

  In contrast, the NEMA EIA regime, applicable to all other industries, provides for two tiers of EIA, recognising that not all proposed projects require the same level of assessment: a basic assessment for projects with limited impacts, and a full scoping and EIA for projects with larger impacts[6] (under the amended MPRDA and NEMA, applications for prospecting rights would require only a basic assessment,[7] while mining rights applications would require a full EIA[8]). It also provides for flexible

[3] Section 39(1) of the MPRDA states that "every person who has applied for a mining right in terms of section 22 must conduct an environmental impact assessment and submit an environmental management programme within 180 days of the date on which he or she is notified by the Regional Manager to do so."
[4] Section 16(4)(b) of the MPRDA.
[5] CCT 39/10) [2010] ZACC 26
[6] Regulations 21-25 of the 2010 EIA Regulations provide for applications that are subject to basic assessment; regulations 26-35 of the 2010 EIA Regulations deal with applications subject to scoping and environmental impact reporting. Different activities are listed in one of three listing notices. Listing notice 1 and 3 require assessment as provided by regulations 21-25 (a basic assessment), whereas listing notice 2 requires assessment as provided by regulations 26-35 (a full scoping and EIA).
[7] An activity requiring a prospecting right is listed as Activity 19 in Listing Notice 1 and therefore requires basic assessment only.
[8] An activity requiring a mining right is listed as Activity 20 in Listing Notice 2 and therefore requires a full EIA.

timeframes determined by the competent authority in view of the requirements of a particular project.[9] They also require limited, but structured and comprehensive public participation for all interested and affected parties within reasonable timeframes.[10]

- The methods of notification of new applications stipulated in regulation 74 of the 2004 MPRDA Regulations are not only inadequate, but in conflict with the requirements of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) (PAJA), as well as the Constitutional Court judgement in *Bengwenyama*. In contrast, the NEMA EIA regulations, applicable to all other industries, contain sensible requirements for notification of new applications that ensure compliance with PAJA.[11]

- There is no express requirement for public notification or participation in amendments to environmental management plans or environmental management progammes (even when those amendments are significant). [12] In contrast, the NEMA EIA regulations, applicable to all other industries, confer a discretion on the part of the competent authority to require appropriate public participation in amendments to authorisations (including environmental management plans) where the interests of the environment or the rights or interests of other parties are likely to be adversely affected.[13]

- Unlike the EIA process stipulated by NEMA and the 2010 EIA regulations, , applicable to all other industries, the MPRDA does not expressly require the appointment of an impartial and independent environmental assessment practitioner (EAP) with specified obligations to administer the environmental impact assessment process required by the MPRDA and its regulations. The lack of a requirement for such an independent EAP registered with the Environmental Assessment Practitioners' Association of South Africa fundamentally undermines the rights application process and the integrity of all reports filed in such a process.

Limited time periods and insufficient public participation undermine efforts to adequately assess detrimental impacts of propsecting, exploration and mining. An inadequate EIA is directly linked to:

- inadequate measures to mitigate detrimental environmental impacts;

- inadequate social and labour plans, since these are invariably based on the economic and socio-economic assessments conducted as part of the EIA; and

- inadequate financial provision put up by mines, since rehabilitation costs on closure would invariably be underestimated.

This stark inferiority and inadequacy of the MPRDA environmental management regime has long been of great concern to many stakeholders,[14] including the DEA, provincial environmental departments and conservation authorities who have invested decades of work and resources into the EIA regulations, of which the latest is the 2010 EIA regulations under NEMA.

As the Minister will be aware, the amendments to NEMA and MPRDA passed by Parliament in 2008 were intended to address this concern comprehensively. However, the only justification we have received for the Minister's decision not to bring into effect the 2008 MPRDA Amendment Act is her comment in the National Assembly that "several concerns" had been raised by mining sector stakeholders and government departments

[9] In the 2010 EIA Regulations, Chapter 6, no specific time periods for public participation are given. It is stated rather, in Regulation 54(7)(b), that the process must be facilitated in such a way so as to ensure that interested and affected parties are given a **reasonable opportunity** to comment.
[10] Chapter 6 of 2010 EIA Regulations.
[11] Regulation 54 of the 2010 EIA Regulations
[12] S.102 of the MPRDA
[13] Regulation 41(3) in the 2010 EIA Regulations.
[14] The need for ancillary activities to mining operations to be authorised separately through an environmental authorisation under NEMA (e.g. construction of roads) creates confusion in the industry with many mining companies not being aware of the need to obtain NEMA authorisations for these activities.

related to the implementation of the Amendment Act. The DMR, she said, "deemed it prudent to first consult and further endeavor to address the concerns raised by stakeholders before the Amendment Act take *[sic]* effect." The concerns of mining sector stakeholders have not been made public, and despite the DMR's view that it should consult stakeholders, it has failed to consult some of the people most affected by the failure to bring the MPRDA Amendment Act into effect, namely communities, civil society organisations and the non-government organisations that support them.

The ongoing discrepancies between the environmental management regime for mines and other industries have become both untenable and indefensible. In the medium to long-term, shortcutting a proper EIA and consultation with affected communities benefits neither the mining company, nor the national economy.

It is time for the mining industry to comply with the same rules as all other industries in South Africa.

Bringing mining under NEMA regime facilitates implementation of an integrated licensing system

Bringing prospecting, reconaissance, exploration and mining under the NEMA regulatory regime also finally makes it possible to integrate the various licensing processes currently applicable to mining activities in accordance with s.24L of NEMA. This would mean that a mining company could do a single comprehensive EIA with adequate notice, proper public consultation and comprehensive scoping, specialist reports and environmental impact report, which would constitute the basis for either an integrated authorisation or the joint authorisations the Departments of Mineral Resources, Water Affairs and Environmental Affairs.

It is difficult to imagine any of the authorities involved or the mining industry opposing such a step towards more streamlined regulation.

Additional changes required to the MPRDA's public participation requirements

Even if prospecting, reconaissance, prospecting and mining are brought under the NEMA EIA regime, whether through commencement of the 2008 MPRDA Amendment Act or not, certain additional amendments to the MPRDA would still be required. In particular:

- The MPRDA contains no express requirement for public notification or participation in the transfer of rights in the MPRDA (which must be approved by the Minister). Consider the dramatic impacts such a transfer can potentially have on the environment and other affected parties, it is likely that such a transfer without notification to interested and affected parties and without an opportunity for those parties to make representations violates PAJA.

- The MPRDA does not require the consent of the Department of Water Affairs (DWA) for the approval of mine plans at the mining right and EMP/EMPR approval stage. This leads to inadequate mining plans which make rehabilitation measures and financial provision for mines inadequate and even impossible from the outset. Such consent by the DWA should be incorporated as a legal requirement for a valid mining right and approved EMP/EMPR.

Amendments required to penalty provisions applicable to environmental impacts of mines

The penalties provided for in the MPRDA for offences that relate to environmental impacts require urgent amendment to be in line with international standards and similar provisions applicable to other industries under NEMA. Even taking into account the virtual absence of compliance monitoring and enforcement of the MPRDA, current penalties provide no disincentive whatsoever for mining companies who make half-year profits in the billions of rands. Note that bringing the environmental regulation of mines under NEMA will immediately and drastically increase a number of these penalties without further amendments to the MPRDA.

We provide a few examples below.

1. For the offence of mining or prospecting without an approved right and/or an approved EMP or EMPR and/or without consulting a landowner,[15] the maximum penalty under the MPRDA is R100,000 or two years' imprisonment or both.[16] In contrast, commencing a listed activity under NEMA without authorisation can attract a maximum penalty of R5 million or 10 years' imprisonment.[17]

2. For the criminal offence of not complying with a directive from the DMR,[18] the maximum penalty under the MPRDA is R100,000 (no risk of imprisonment at all).[19] In contrast, non-compliance with a NEMA compliance notice can attract a maximum penalty of R5 million or 10 years' imprisonment.[20]

3. For the criminal offence of non-compliance with an EMP or EMPR,[21] the maximum penalty under the MPRDA is R500,000 or 10 years' imprisonment.[22] In contrast, non-compliance with an environmental authorisation under NEMA can attract a maximum penalty of R5 milion or 10 years' imprisonment.[23]

4. For the criminal offence of "submit[ting] inaccurate, incorrect or misleading information in connection with any matter required to be submitted under this Act", the MPRDA s.99(g) provides a penalty of "a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment". The application of the Adjustment of Fines Act, 1991 to such a provision means that that penalty for the potentially grave offence of submitting incorrect information in, for example, a mining right application, is limited to R10,000.

Access to information

It is hard to describe in this letter the scope of the obstacles facing communities, community-based organisations and non-government organisations in obtaining access to the documents they require to realise their environmental and other Constitutional rights. Such obstacles are the direct result of mining companies' refusal to make available key documents to interested and affected parties (occasionally apparently supported by DMR officials), and the failure of DMR Information Officers to comply with the Promotion of Access to Information Act, 2000 (Act 2 of 2000). We will in due course address this issue with the Minister and the DMR in more detail.

For now, we request that provision be made in any amendment to the MPRDA to place an obligation:

- on all applicants for new rights to make available the full rights application to the public, automatically (i.e. without a specific request through PAIA or otherwise).[24] Without key documents such as the works programmes and statements of financial and technical ability, it is not possible for interested and affected parties to assess whether the application complies with the MPRDA; and

- an obligation on the DMR and rights holders to make available all authorisations granted by the DMR, including rights, environmental management plans (EMPs) and environmental management programmes (EMPRs), to the public automatically (i.e. without a specific request through PAIA or otherwise); and

- on the DMR to make all delegations of power by the Minister of Mineral Resources to the public automatically (i.e. without a specific request through PAIA or otherwise).

[15] S.5(4) of the MPRDA
[16] S.99(1)(a) of the MPRDA
[17] S.24F(2) of NEMA
[18] S.98(a)(vi) of the MPRDA
[19] S.98(1)(e) of the MPRDA
[20] S.31N(3) of NEMA
[21] S.98(a)(iii) of the MPRDA
[22] S.99(1)(c) of the MPRDA
[23] S.24F(2) of NEMA
[24] Currently, the general practice amongst most applicants for prospecting and mining rights is only to provide copies of the documents that form part of the environmental impact assessment, and then only in draft form: draft scoping reports, draft EIA reports and draft EMPs. Occasionally, not even these documents are made available.

Additional safeguards for environmentally sensitive areas

The Minister will be aware of our formal request of 1 February 2011, in terms of s.49 of the MPRDA, to declare (a) a prohibition on commercial prospecting and mining in certain areas of critical biodiversity and hydrological sensitivity and value as prohibited from commercial prospecting and mining; and (b) procedural restrictions on applications for rights in certain areas of environmental sensitivity and value that do not qualify for a prohibition. This request of 1 February 2011 is unaffected by the submissions made in this document.

Even if prospecting, reconaissance, prospecting and mining are brought under the NEMA EIA regime, whether through commencement of the 2008 MPRDA Amendment Act or not, we request that additional safeguards be put in place in the form of the restrictions proposed in our s.49 application of 1 February 2011. These safeguards are aimed at improving the quality of decision-making on applications for prospecting and mining rights in these areas, and include the following:

- Notice of the application, the publication of key documents in the environmental impact assessment and notice of public meetings must be published in two national newspapers and a local newspaper.[25]
- At least 30 days' notice, excluding public holidays, must be given of all public meetings in the environmental impact assessment process.[26]
- Public meetings must be held in at least:
    - the town closest to the proposed mining site; and
    - the closest of the following capital cities: Johannesburg, Cape Town, Port Elizabeth and Durban.[27]
- Interested and affected parties notified must include at least the non-government organisations on whose behalf this document has been prepared.[28]
- All Scoping Reports, Environmental Impact Reports, EMPs and EMPRs must explicitly consider cumulative impacts of the proposed prospecting or mining (current threats to biodiversity and water resources, as well as negative trends influencing the proposed area) and induced/secondary negative implications for hydrological, land use, heritage and tourism resources.[29]
- All Scoping Reports, Environmental Impact Reports, EMPs and EMPRs must be submitted for independent peer review by a nationally respected professional in the field of environmental assessment to ensure quality of work.[30]

[25] This proposed restriction attempts to address the omissions in the current requirements for notification in the MPRDA Regulations, which we regard as flawed and non-compliant with the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).

[26] There are currently no timeframes for notice of public meetings in the MPRDA or MPRDA Regulations. This proposed restriction recognises the fact that there are interested and affected parties in the geographical areas listed in this section who are employed full-time, or may not reside in close proximity to the proposed sites, and who may require time to make arrangements to attend public meetings.

[27] There are currently no requirements regarding the venues for public meetings in the MPRDA or MPRDA Regulations. This proposed restriction recognises the fact that there are interested and affected parties in the geographical areas listed in this section who may not reside in close proximity to the proposed sites.

[28] The work of the organisations submitting this proposal covers significant areas of the country. These organisations are also well-networked with many smaller community and civil society organisations across the country. Having said that, including these organisations as interested and affected parties does not eliminate an applicant's duty to notify all interested and affected parties.

[29] Considering cumulative impacts is a fundamental requirement for sustainable development. The impact of the lack of consideration of cumulative impacts is clearly visible in Mpumalanga, where prospecting and mining rights applications have been accepted for approximately 53% of the province.

[30] There is currently no requirement for peer review of these reports in the MPRDA or MPRDA Regulations. This is an important mechanism to ensure accuracy and quality of expert reports on which the DMR will rely when it makes a decision on a prospecting or mining right application, which is essential when it comes to making decisions on whether or not to allow prospecting or mining in sensitive areas.

- A period of at least 60 days must be allowed for initial objections and comments on all key documents in the environmental impact assessment.[31]
- The Regional Mining Development and Environment Committee (RMDEC), if convened under s.10(2) of the MPRDA, must hold public hearings to allow all objectors to state their case in public before making a recommendation to the Minister.[32]
- Minutes of RMDEC meetings and RMDEC recommendations to the Minister must be made available to interested and affected parties.[33]
- The objections and comments of statutory authorities (specifically including the Department of Environmental Affairs, the Department of Water Affairs, provincial environment departments, the Department of Agriculture, provincial agriculture departments, the South African Heritage Resources Agency and provincial heritage agencies) must be attached to the RMDEC recommendation to the Minister, i.e. the decision-maker must have sight of these comments when making a decision.[34]
- Decisions to approve or not approve prospecting and mining rights in terms of s.17 and 23 of the MPRDA must be made at the head office of DMR, and not at regional level.[35]
- In those cases where prospecting or mining right is approved in a restricted area:
    - The financial provision for remediation of environmental damage provided by the right or permit holder in terms of s.41 of the MPRDA must be approved by the Department of Environmental Affairs or the provincial environment department, and the Department of Water Affairs where appropriate;
    - The Environmental Management Plan or Programme must be approved by the Department of Environmental Affairs or the provincial environment department, and the Department of Water Affairs where appropriate;
    - Any offset proposed by the right or permit holder must be approved by the Department of Environmental Affairs or the provincial environment department or agency responsible for biodiversity conservation, and the Department of Water Affairs where appropriate;
    - The right or permit must be identified and prioritised for compliance monitoring by authorities, and compliance monitoring reports made available to interested and affected parties on a monthly basis. In addition, independent audits of compliance must be done at the rights holder's expense on a quarterly basis, and audit reports made available to interested and affected parties. Where non-compliance is detected, operations must cease with immediate effect until non-compliance, and any damage caused by non-compliance, has been remedied.[36]
- Where prospecting or mining is proposed in a national freshwater ecosystem priority area[37] the specialist studies conducted in the environmental impact assessment must include a specialist study on hydrology and aquatic biodiversity.

[31] Sensitive areas require more investigation and more and more comprehensive specialist studies, which take time to procure, complete or review.

[32] Public hearings before RMDEC will ensure better recommendations by RMDEC and greater transparency by allowing a comprehensive airing of issues, and will also allow the veracity of representations made to RMDEC to be tested. Public hearings is a well-established mechanism in international jurisdictions to promote transparency and accountability.

[33] See note 32 above. Currently, the public has no access to the minutes of RMDEC meetings (assuming that such minutes are even kept) or recommendations made to the Minister by RMDEC, undermining the transparency of decision-making around mining and prospecting.

[34] Currently, it is sometimes difficult for the public to assess whether the decision-maker had sight of or had taken into account representations made by other authorities pursuant to s.40 consultation.

[35] This proposed restriction will ensure a consistent approach to sensitive areas across the country.

[36] Currently, we see very little (if any) evidence of monitoring of compliance with EMPs or EMPRs, and/or enforcement in cases of non-compliance in any prospecting or mining operations, not to mention where such activities are authorised in sensitive areas. Without comprehensive compliance monitoring and transparency of such compliance reports, there is little incentive for the rights holder to comply with the requirements of the EMP or EMPR.

[37] http://cogis.qsens.net/csir/national-freshwater-ecosystem-priority-areas-nfepa-project

We have proposed specific areas to which such restrictions should apply, namely:

- Protected environments declared under NEMPAA, such as the Magaliesberg Protected Environment;[38]
- Focus Areas for protected area expansion identified in the National Protected Areas Expansion Strategy,[39] such as parts of the Richtersveld and parts of the Pondoland coast;
- Priority areas for protected area expansion identified in Provincial Protected Areas Expansion Strategies;
- Focus Areas for Marine Protected Areas expansion identified in the Offshore Marine Protected Areas project, such as the Agulhas Bank;
- Critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans, such as the Kamiesberg Mountain, Northern Cape;
- Areas identified in an approved Biodiversity Management Plan for ecosystems or species under s.43 of the Biodiversity Act;
- National freshwater ecosystem priority areas,[40] such as the Groot Marico, the last remaining freeflowing river in the Northwest; and the headwaters of the Umngeni Vlei; and
- Estuarine functional zones.[41]

Consequences of the ongoing separate and inferior rules for mining

An inadequate and inferior process by which a mining company assesses the way in which its proposed prospecting or mining will impact on the environment and the people living in that environment will not promote the interests of the national economy, the mining industry or labour, for reasons that include the following:

- Instead of creating new jobs, new mines will be hamstrung by enforcement action by environment authorities and ongoing challenges by communities, CBOs and CSOs, as has been the case at the Vele colliery in Limpopo;

- The failure to conduct full and informed public participation processes excludes workers and affected communities from having their say in regard to a range of important issues including the employment of local residents, the relocation of communities, housing of workers and the continued provision of services post-closure, to name but a few;

- The inappropriate environmental mitigation measures that result from an inadequate EIA – such as inadequate dust protection at tailing dams – will directly affect the health of workers and their families who often live in close proximity to the mine. The discharge of polluted water from mining will also directly impact on the environmental rights, socio-economic rights, cultural rights and health of mine workers' families;

- The inaccurate assessment of the economic and socio-economic impacts will result in inadequate social and labour plans, which will directly affect communities living around the proposed prospecting or mining area (which will often include the families of mine workers);

[38] In terms of s.48(b) of NEMPAA, no commercial prospecting or mining may be undertaken in a protected environment without the written permission of the Minister and the Cabinet member responsible for minerals and energy affairs.
[39] http://bgis.sanbi.org/protectedareas/NPAESinfo.asp. This Strategy is defined in the NEMA 2010 EIA Regulations Listing Notice 3 as "South Africa's national strategy for expansion of the protected area network, led by the Department of Environmental Affairs and developed in collaboration with national and provincial conservation authorities. The NPAES sets targets for protected area expansion, provides maps of the most important areas for protected area expansion, and makes recommendations on mechanisms for protected area expansion. Focus areas for protected area expansion are identified in the NPAES. They are large, intact, unfragmented areas of high importance for land-based protected area expansion, suitable for the creation or expansion of large protected areas."
[40] As listed and defined in the National Freshwater Ecosystem Priority Areas Project, available at http://cogis.qsens.net/csir/national-freshwater-ecosystem-priority-areas-nfepa-project.
[41] As defined in the National Estuaries Layer, available from the South African National Biodiversity Institute's BGIS website (http://bgis.sanbi.org).

- Inadequate financial provision leads to inadequate or no rehabilitation of prospecting and mining areas, causing long-term environmental degradation that impacts dramatically on all people living in or near the unrehabilitated area;

- Inadequate assessment of environmental impacts and inadequate financial provision have significant cost implications for the state in the form of requiring national revenue from taxpayers to pay for the costs of undertaking rehabilitation (as is now the case in acid mine drainage on the Witwatersrand), and the costs of public health systems for people whose lives and health are affected by the inadequately mitigated impacts of mining; and

- The violation of the environmental rights of all who live in South Africa poses serious risks to the health and wellbeing of current and future generations, as is so aptly illustrated by the challenges of acid mine drainage on the Witwatersrand.

As non-government organisations working in the environment and environmental justice sectors we understand that mining is a part of both our economy and way of life. The focus of our concern and endeavours is not to oppose mining, but to ensure that adequate assessment and mitigation of detrimental impacts take place within reasonable timeframes before prospecting and mining are commenced, followed by predictable compliance monitoring of requirements set, and strong enforcement action taken when non-compliance is found. This is the only way to ensure responsible environmental practices at mines, in the interest of workers, communities and the country.

Kindly acknowledge receipt of this submission.

Yours sincerely

CENTRE FOR ENVIRONMENTAL RIGHTS

per: 

On behalf of the following NGOs and CSOs, in alphabetical order:

BirdLife South Africa
Centre for Applied Legal Studies, University of the Witwatersrand
Centre for Environmental Rights
Earthlife Africa Cape Town, eThekwini and Johannesburg
Endangered Wildlife Trust
Environmental Monitoring Group
Federation for a Sustainable Environment
groundWork
Lawyers for Human Rights
South Durban Community Environmental Alliance
Wilderness Foundation
Wildlife and Environment Society of South Africa
World Wide Fund for Nature – South Africa