

RICHARD SPOOR
ATTORNEY



Your reference:
Our reference: Mr R Spoor

MPRDAB 16

Friday 25 May 2007

The Committee Secretary
Minerals & Energy Portfolio Committee
Parliament
Cape Town

Dear Madam

Re: Mineral and Petroleum Resources Development Bill

I act for several rural communities in the Limpopo province who are affected by mining activities upon their land. In every instance my clients reside on communal land and although they do not hold title to the land they are deemed to be owners and are lawful occupiers for the purposes of the MPRDA.

I wish to express, on their behalf, their disquiet at the proposed amendment to section 5(4)(c). As it stands it is an offence to carry out mining and prospecting without notifying and consulting with people and communities in the position of my client. This requirement is placed on a par with the requirement that there is an approved environmental management programme or plan and that there is a valid new order right.

The effect of removing the requirement that there must be notification and consultation with the lawful occupier is to debase that requirement and to remove the criminal sanction.

The difficulties experienced by my clients in their dealings with mining companies relate to a very large extent to the failure of the mining companies to consult properly and in some places to consult at all.

Rural communities are in a very unequal relationship with mining companies, who have a monopoly of knowledge, skills and resources. This inequality is prejudicial to the community's interests.

It is significant that the MPRDA places no obligation on the Minister to consult with the lawful occupiers before she awards a new order right to the mining company. A new order mining right is defined in Section 5 by the inroads it makes on the lawful occupier or the owner's property rights.

This subordination of property rights to mining interests is justified in the 'public interest'. However, it frequently takes place to the great and enduring prejudice of the communities concerned.

The principal protection afforded the community is the duty of the mining company to consult and the obligation on the mining company to prepare a social and labour plan. The social and labour plan is ostensibly the guarantor that local communities and those directly affected by mining derive some benefit and are not prejudiced by mining activities. This is in fact a very weak protection because the social and labour plan is drawn up unilaterally by the mining company and is approved or rejected by

the Department, without reference to the community.

The Act gives absolutely no content to the term 'consultation' and in practice, the DME is awarding New Order Rights when there has been only the very barest nod to consultation, much less to meaningful consultation.

It is respectfully submitted that what is required to avoid grave injustice and the further impoverishment of tens of thousands of vulnerable rural people is that the consultation requirement be firmed up and be given content.

I would be very grateful to have the opportunity to make a presentation to the Parliamentary Portfolio Committee in relation to these matters where I might have the opportunity to elaborate on these submissions.

I understand that provisional arrangements have been made for back to back presentations from the Legal Resources Centre, the Nkuzi Land Rights Group and myself and a representative of one of my clients, Mr Emmanuel Makgoge from the Maandagshoek community near Burgersfort in the Limpopo Province.

We thank you for your kind assistance herein.

Yours faithfully

RICHARD SPOOR