15 February 2013

The Honourable Minister
Ms S Shabangu MP
Minister of Department of Mineral Resources
Trevenna Campus, Building 2 C
c/o Meintjes and Francis Baard Street
SUNNYSIDE

E-mail: andre.andreas@dmr.gov.za

Dear Madam Minister

DRAFT MINERALS AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL 2012

We, Tshintsha Amakhaya, an alliance of civil society organizations in land and agrarian reform and client rural communities, write this submission to express our concern about the draft Minerals and Petroleum Resources Development Amendment Bill published on 27 December 2012 for comment before 8 February 2013.

Our research¹ among over 1700 rural households in the Eastern Cape, KwaZulu-Natal, Limpopo, and Western Cape showed that after 19 years into democracy, land and agrarian transformation remains an illusion for the majority of rural South Africans. Less than 6% of the land has been redistributed, land reform projects have failed to result in equitable access to resources or benefit from agriculture, skewed land ownership patterns remain entrenched, many rural people live with insecure tenure, and levels of poverty and unemployment remain high.

¹ Visit our site and download The Agrarian Household Economy Status report https://sites.google.com/site/tshintshaintranet/research
The patience of landless people and the rural poor is running out and protest actions make headlines daily. Mineworkers, farm workers, urban dwellers are starting to exercise their rights to live and work in humane conditions, and demand to be consulted on issues that affect them and their environment such as extraction of minerals and fracking.

At the recently held Mining Indaba you made a statement that you are dealing with transformation and the 1913 Land Act legacy, and that the draft bill is part of your programme to do so. However, the draft Bill does nothing to address the 1913 legacy or 150 years of exploitation by mining interests. We also object to the fact that rural communities were not consulted to comment on content, merit, and adequacy of the draft Bill.

We echo the concerns raised by the Legal Resources Centre that the draft amendment bill does not address a number of important concerns and violates the rights of citizens as outlined in the Constitution, namely:

1. The failure of the legal framework to incorporate sufficient development principles relevant to the principle of sustainability;
2. The failure to ensure that the Constitutional principle of administrative justice is respected and adhered to throughout the mining and land development process;
3. The failure to recognize the historical impact mining has had on rural communities in South Africa, which creates a need to make special consideration when applications for land use change and land development are made in the context of mining;
4. The failure to address the status of customary tenure and the rights of customary communities to consent as provided for in the Interim Protection of Informal Land Rights Act. The mining laws purports to override the limited protection afforded by land tenure law;
5. The failure of the Bill to recognise the tension of opposing development paradigms and community participation in this regard as provided for in regional and international law.

Therefore, we demand that the draft Minerals and Petroleum Resources Development Amendment Bill be withdrawn and redrafted to address the plight of mining affected communities, and that you prioritize:

a) A programme of urgent consultation with affected rural communities on communal land to have them heard and address their concerns about the impact on mining on their livelihoods and landscapes also in relation to the imbalances caused by the 1913 Native Land Act;

b) Law reform to recognise, protect and promote the consent standard for any taking of communal land under customary law and the prior and continuous participation of affected communities in mining development projects affecting them;
c) Law reform including mining and spatial and land use planning law, to promote integrated rural development planning and implementation and address the dislocation of rural economies and communities as a result of discriminatory land and mining law over a period of a century and longer.

We appeal to you to bring leadership and vision to genuinely address the 1913 legacy and halt the exploitation of this nation’s marginalized people.

Yours sincerely,

Monique Salomon

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“Working together for rural change”

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Alliance partners

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