



16 January 2015

Dear Madam Speaker,

REFERRAL OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL TO THE NATIONAL ASSEMBLY

The above Bill was passed by Parliament and referred to me for assent and signing into law.

I have given consideration to the Bill in its entirety and the various opinions and commentaries regarding *inter alia* the constitutionality and tagging of the Bill.

After consideration of the Bill and having applied my mind thereto I am of the view that the Bill as it stands does not pass constitutional muster.

The Constitution requires that the President must assent to and sign the Bill referred to him by the National Assembly. However, in terms of section 79(1) of the Constitution, 1996, if the President has reservations about the constitutionality of the Bill, he may refer it back to the National Assembly for reconsideration.

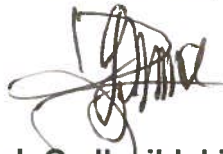
In terms of section 79(1) of the Constitution, I hereby refer the attached Bill to the National Assembly for reconsideration on the following basis:

- a. The definition of "This Act" is likely unconstitutional in that the amended definition elevates the Codes of Good Practice for the South African Minerals Industry, the Housing and Living Condition Standards for the Minerals Industry and the Amended Broad-Based Socio-Economic Empowerment Charter for South African Mining and Minerals Industry to the status of national legislation. In addition, in terms of Section 74 of the Amended Act, the Minister is given the power to amend or repeal these instruments as and when the need arises effectively by-

passing the constitutionally mandated procedures for the amendment of legislation;

- b. As amended, Sections 26(2B) and 26(3) appear to be inconsistent with South Africa's obligations under the General Agreement on Trade and Tariffs (GATT) and the Trade, Development and Cooperation Agreement (TDCA) insofar as they appear to impose quantitative restrictions on exports in contravention of GATT and TDCA and in so doing render the state vulnerable to challenges in international fora;
- c. I am of the view that NCOP and the Provincial Legislature did not sufficiently facilitate public participation when passing the Amendment Act as required by Section 72 and 118 of the Constitution in that the consultation period was highly compressed and there appears to have been insufficient notice of the public hearings held by the provincial legislatures;
- d. I am further of the view that the Bill should have been referred to the National House of Traditional Leaders for its comments in terms of Section 18 of the Traditional Leadership and Governance Framework Act in that the Bill impacts upon customary law or the customs of traditional communities by:
 - i. allowing persons to enter upon land to conduct an investigation after notifying and consulting with the owner, occupier or person in control in terms of Section 50 and in so doing ignores the consent principle in customary law;
 - ii. amending the definition of "community" in Section 1 of the Amendment Act.

Yours sincerely,



Mr Jacob Gedleyihlekisa Zuma
President of the Republic Of South Africa

Ms B Mbete
Speaker of the National Assembly
Parliament of the Republic of South Africa
P.O. Box 15
CAPE TOWN
8000