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The Reeds

Centurion

0158

3 March 2017

Attention: Mr Asgar A Bawa

Select Committee on Land and Mineral Resources

Plein Street

Cape Town

By email abawa@parliament.gov.za

Dear Sir,

PUBLIC SUBMISSIONS ON THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT

AMENDMENT BILL

We thank for the invitation to make submission.

It is our opinion that the proposed amendments are progressive towards transformation which is salutary. However, it becomes futile to have such progressive legislation if there is no sound implementation, enforcement and monitoring. Further, much focus is placed on changing the legislation which in some instances has unintended consequences such as unconstitutionality, while appropriate legislation is already in place but with no effective execution.

If one considers the current provisions of regulation 46 of the MPRDA which provides for all the elements of a Social and Labour Plan (SLP), section 28(2)(c) which provides the submission of annual compliance reports to the Mining Charter and SLP commitments and further the directive of having a SLP reviewed every 5 years (which is now a proposed amendment in terms of the Bill), these provisions if strictly enforced, monitored and vigorously audited annually, there will be far greater progress in terms of economically transforming the industry.

The proposed amendments are more semantics to tighten up and clear inconsistencies in legislation while SLP regulation is where actual action is required by the holder of a mining right to give effect to

transformation in the elements of Human Resources Development; Local Economic Development; Management of Downscaling, while the Mining Charter adds to these elements Procurement,

Ownership and Beneficiation. Consistent implementation and monitoring of these targeted elements will advance BEE further than effecting said amendments in my opinion.

Let us consider for instance the element of Employment Equity as per regulation 46(c) of the MPRDA, in terms of which mines must have a plan to achieve 10% of women participation in mining and 40% HDSA participation in management within 5 years from the granting of the right or the conversion of an old order mining right. These target should have been achieved by 2011 or there should at least be reasonable progress thereto. However the disparities and racial discriminatory practices of white males and whites generally being preferred for management and leadership positions over qualified HDSA's still exists in the mining industry. This was alluded to by President Zuma in his state of the nation address with his reference to the Employment Equity report of 2015/16. Mining companies undermine compliance as they are aware that there are minor if any, consequences for non-compliance. If SLP commitments in this regard were effectively monitored and those companies which do not comply face penalties as per the Act, there would be substantial progress towards addressing the historical imbalances of the past in the mining industry from an employment equity and labour perspective, and also through empowerment of black businesses.

In closing, our submission is that the desired objectives of government for industry cannot be achieved in the absence of effective implementation, monitoring and consequences for those companies which are non-compliant. We can change and enact sound progressive legislation, but little will be achieved without effective implementation, enforcement and monitoring. It is my opinion that a greater obligation therefore lies with the Department of Mineral Resources to ensure enforcement and compliance through stringent auditing processes and imposition of sanctions and penalties in instances of non-compliance.

Peta Attorneys Inc.

Mining Law ▪ Energy Law ▪ Environmental Law

We trust that our submission will find your favorable consideration.

Yours sincerely

A handwritten signature in green ink, appearing to be 'Dineo Peta', written over a light blue horizontal line.

Dineo Peta

Director