LARC
Land & Accountability Research Centre

To: Ms Sibongile Malie
Minister of Mineral Resources

From: Land and Accountability Research Centre

By Email: Sibongile.Malie@dmr.gov.za

Re: Written Representations on the draft Mine Community Resettlement Guidelines, 2019

LARC Contact: Ramabina Mahapa – email: ramabina.mahapa@uct.ac.za

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Introduction

1 The Land and Accountability Research Centre ("LARC") is based in the University of Cape Town's Faculty of Law. LARC forms part of a collaborative network, constituted as the Alliance for Rural Democracy, which provides strategic support to struggles for the recognition and protection of rights in the former homeland areas of South Africa. An explicit concern of LARC is power relations, security of tenure for customary land right holders and the impact of national laws and policy in empowering rural citizens to advance their interests in engagements with mining companies and the State.

2 In this context, LARC submits these written representations regarding the draft Mine Community Resettlement Guidelines, 2019 ("Draft Guidelines").

3 These representations centre around the impact of mining on the land rights of people living in former homeland areas. The Constitution recognises that where tenure is legally insecure as a result of past discriminatory laws and practices, those affected are entitled to legally secure tenure or to comparable redress (Section

25(6)). The laws that governed the former homelands were designed to deny black land rights and to make black people's occupation and use of land subordinate to state control. The Interim Protection of Informal Land Rights Act of 1996 ("IPILRA") which was enacted to secure vulnerable land rights, explicitly included all the land in the former homelands and de facto land rights derived from custom, usage and customary law in recognition of this history of the denial and undermining of black land rights.

4 The Constitutional Court judgment of 2018 in *Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited and Another* ("Maledu Judgment") and the Baloyi Commission report in 2019 stress the centrality of IPILRA as a law that gives effect to section 25(6) of the Constitution in respect of tenure security for people living in the former homelands.

5 The Maledu Judgment of October 2018 was a unanimous judgment of the Constitutional Court stopping the eviction of the Lesethleng villagers for mining purposes within the Bakgatla ba Kgafela area near Rustenburg. The judgment said that the people affected did not consent to the termination of their land rights as required by IPILRA, and did not allow the eviction.

6 In November 2018 in the matter between *Duduzile Baleni and Others v Minister of Mineral Resources and Others* ("Baleni Judgment") the North Gauteng High Court, Pretoria passed a judgment in respect of the Xolobeni villagers on the Wild Coast. The court said that the Minister of the Department of Mineral Resources ("DMR") could not issue a mining right to an Australian company without consent having first been obtained from directly affected land right holders in terms of IPILRA and customary law.

7 The Baloyi report of August 2019 made findings on a long running inquiry into massive corruption within the Bakgatla ba Kgafela

community. The report found that the kgosi, the traditional council and government (particularly the Department of Traditional Affairs in the North West) were complicit in depriving the community of substantial assets and leaving them in poverty, while a small 'traditional' elite enriched itself. In particular the report found that the kgosi and traditional council failed to comply with the accountability requirements of both customary and company law. It found widespread failure by government and the kgosi and traditional council to comply with IPILRA. It recommended that procedures and regulations must be put in place to ensure IPILRA is enforced and complied with. Without such procedures and regulations to guide the actions of government officials and mining companies the report said it was inevitable that IPILRA would continue to be ignored.

8 The current Draft Guidelines provided an opportunity to comply with the Maledu Judgment of the Constitutional Court and with the recommendations of the Baloyi Report. In LARC's assessment the Guidelines not only fail to give effect to the Maledu judgment, but appear to be an explicit attempt to subvert IPILRA, section 25(6) of the Constitution and the Maledu judgment. The guidelines fail to uphold the tenure security of black people living in former homeland areas as required by section 25(6) of the Constitution. They fail to uphold IPILRA, as interpreted in the Maledu and Baleni judgments, and similarly expressed in the Baloyi report.

9 In these submissions, we first discuss the context in which the Guidelines were generated

10 We then consider the draft Resettlement Guidelines. In summary, LARC welcomes clause 9(2) of the Draft Guidelines which states that no "mining activity shall commence until a resettlement agreement is reached on the appropriate amount of compensation as a result of resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities".

This requirement for an agreement to be reached on resettlement before mining operations commence is consistent with the Constitutional Court's finding in the Maledu Judgment, specifically the court's finding that compensation for damages suffered or to be suffered by land right holders due to mining must be determined in terms of section 54 of the Mineral and Petroleum Resources Development Act, 2002 ("MPRDA") before mining can commence. These submissions argue, however, that this provision on its own is insufficient to secure meaningful benefit or tenure security to mining affected communities because of a series of problems in the rest of the guidelines. These problems will be elaborated in the next section and alternatives proposed in some instances. They are listed here :

- The guidelines exclude and override IPILRA just when various judgments and reports have found that IPILRA must be properly enforced and complied with.

- The guidelines are about consultation as opposed to consent. Consultation is weaker than consent.

- The Draft Guidelines treat all stakeholders as equal thereby disguising the fact that IPILRA's 'consent or expropriation' requirements apply to those whose property rights are directly affected.

- Few binding and enforceable requirements are imposed on mining companies by the Draft Guidelines which are themselves not legally binding. The opportunity to make legally binding regulations in terms of the MPRDA is overlooked.

- There are serious shortcomings with the clauses about compensation.
- The long drawn out internal dispute and grievance procedures are likely to hinder informal land rights holders initiating section 54

disputes about compensation.

Context

11 Historically, mining in South Africa has meant poverty and land dispossession for black South Africans. Although mining operations resulted in the development of cities in places such as Kimberley and Johannesburg, this infrastructure development has not taken place in the former homeland areas where mining is currently concentrated - for example in the platinum belt.

12 Mining has long been the backbone of South Africa's economy. Given the racially discriminatory policies of the colonial and apartheid regimes, black people have hardly benefitted, and have usually suffered disruption or dislocation, when mining operations occur on their land. They are far more vulnerable than white landowners who have title deeds to prove their rights and lawyers to negotiate surface leases.

13 Parliament sought to address this legacy by passing the Mineral and Petroleum Resources Development Act 28 of 2002 ("the MPRDA"), which provides for, among other things:

13.1 Local and rural development and the social upliftment of communities affected by mining;

13.2 Equitable access to the nation's mineral and petroleum resources for all the people of South Africa;

13.3 Substantial and meaningful expansion of opportunities in mining for black South Africans, "including women and communities"; and

13.4 The transformation of the mining industry through ownership, participation and benefit for communities that host or supply labour to mining.

13.5 Compensation for damages suffered by land right holders (which include informal land right holders as defined in IPILRA) because of mining operations.

14 In the experience of the rural communities that LARC and its partners engage with, members of mining affected communities rarely experience any of the positive impacts of mining and certainly nothing equivalent to the negative impacts of mining on these communities.

15 An immediate challenge is the current practice of mining companies concluding surface right agreement with traditional councils, represented and controlled by traditional leaders, rather than the households and groups who are directly impacted by mining.

16 This has led to the widespread reality that benefits do not reach the people who are deprived of their surface rights to land, or those directly affected by mining pollution.

17 Issues of scale are crucial here. The Mapela traditional council in Limpopo has jurisdiction over 42 far-flung villages. The Bakgatla ba Kgafela traditional council has jurisdiction over 32 villages. Mining shafts typically impact directly on the land of one or two villages, as opposed to that of the entire 'tribe'. Traditional council members may come from villages that are over 50km from where the mining takes place. When the traditional council authorises mining deals that generate revenue for the council, there is no direct equivalence between the council that reaps the benefits and the people whose rural livelihoods are destroyed by mining (Mnwana & Capps, 2015).

18 According to the then Chamber of Mines (now the Minerals Council South Africa), the DMR routinely advises potential investors to deal directly with traditional leaders (Chamber of Mines, 2017) even though traditional leaders do not have the legal authority to sign

deals binding communal land. Only the Minister of Agriculture, Land Reform and Rural Development has that authority as the nominal owner of most communal land. And he or she is bound by IPILRA to obtain the consent of those whose informal land rights (as defined in the IPILRA) to occupy, use or access land would be affected. If they do not consent, their rights must be expropriated, and duly compensated.

19 The Minister's failure to enforce IPILRA combined with the fact that some traditional leaders have stepped up to sign surface leases and mining deals while having no explicit legal authority to do so has resulted in many deals being legally precarious.

20 To address the fact that traditional leaders do not currently have the legal authority to sign deals binding communal land the Traditional and Khoi-San Leadership Act (TKLA) was recently signed into law by the President, although it has not yet been brought into operation. The TKLA attempts to provide traditional leaders with that authority in section 24.2. However the Act is unlikely to survive constitutional scrutiny as it does not require the consent of those whose land rights would be affected by such third party deals.

21 The practice of mining houses dealing directly with traditional leaders, rather than the individuals and the sub groups directly affected has resulted in insecure land tenure for informal land right holders, whose land rights are already precarious as a result of the legacy of apartheid's past racially discriminatory laws.

22 The dual application of the MPRDA and the Traditional Leadership and Goverance Framework Act of 2003 (TLGFA) has in practice, stripped rural people of the capacity to hold their leaders to account, and to ensure that compensation and mining royalties are properly reported and fairly distributed. Recent investigations (Human Rights Commission 2018; Bloom & Wales-Smith, 2018) have laid bare the

scale at which poor rural people are losing out through mining deals.

23 This is generating opposition at a scale that cannot be ignored. Mining companies indicated in October 2017 that protests involving road blocks, vehicle stoning and assaults on people going to work had caused a significant reduction in platinum production at Mogalakwena, the world's largest open-pit platinum mine, and Impala Platinum's Marula mine (Stoddard, 2017). Impala has said that it may soon have to close Marula, which would be the first such shutdown in South Africa linked purely to social upheaval. Chris Griffiths of Anglo Platinum told Reuters that 'what we are trying to do is get away from some of the previous structures where we felt obliged to pay the money over to the Kgoshi (chief)' (Stoddard, 2017).

24 More recently the situation has gone from bad to worse. In April 2018 Reuters reported that over the course of 2016, 2017 and the first three months of 2018, the platinum belt had been hit by more than 400 incidents of social unrest that had an impact on mining operations. These included 225 roadblocks, 107 illegal marches, and 40 wildcat strikes. According to Minerals Council data there were around 260 such incidents in 2018, but this increased massively to 330 incidents in the first six months of 2019.

25 Community protests and violence generated by a succession dispute between traditional leaders led to the closure of Richard's Bay Minerals towards the end of 2019. Rio Tinto also stopped construction of the $463-million (R6.8-billion) Zulti South project because of uncontrollable violence and loss of life.

26 In a written submission to Kgalema Motlanthe's 2017 High-Level Panel about problems confronting mining-affected communities the Minerals Council South Africa wrote (Chamber of Mines, 28 July 2017):

> *The legitimacy of traditional leaders is disputed by some community members in some jurisdictions, and that this can be the source of negative relationships between mines and adjacent communities… There have also been cases where the proceeds of these transactions have been mismanaged. None of this is satisfactory for the mines and the companies that own them… However, the industry's interest is in greater stability and a reduction of social conflict both within those communities and between disaffected members of those communities and the mines. That would need to include acceptance of greater accountability by traditional leaders.*

27 Given that the definition of 'traditional community' in the TLGFA and the TKLA defaults to the tribal boundaries put in place by the controversial Bantu Authorities Act of 1951, revenue from mining will continue to be deposited into tribal accounts, rather than compensation being paid to those directly affected.

28 It is against this backdrop that the Pretoria High Court held in the Baleni judgment that "where the land is held on a communal basis…the community must be placed in a position to consider the proposed deprivation and be allowed to take a communal decision in terms of their custom and community on whether they consent or not to a proposal to dispose of their rights to their land".

Draft Resettlement Guidelines Submissions

29 In the introduction section, the Draft Guidelines highlight that despite the mining and mineral industry's positive contribution to the South African economy, mining "has direct or indirect negative socio-economic and environmental impact on land owners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities".

30 The Draft Guidelines note further that mining "also has an effect of displacement of communities where mining activities take place in the form of physical resettlement, exhumation of graves, loss and damage to property…". In response to mining related displacements, the Draft Guidelines "are intended to outline the process and requirements to be complied with by an applicant or a holder of a prospecting right, mining right or mining permit when such application or right will result in physical resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities, from their land". Accordingly, the Draft Guidelines seek to safeguard the land rights of persons and/or communities displaced or likely to be displaced by mining.

31 As already noted above, clause 9(2) of the Draft Guidelines provides that no mining activity shall commence until a resettlement agreement is reached on the appropriate amount of compensation as a result of resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities.

32 We know from experience that the value of surface rights is destroyed when mining commences and that mining can make life unbearable for people living nearby. As a result, LARC welcomes clause 9(2) which would help ensure that agreements on compensation are resolved before mining is allowed to commence. Clause 9(2) is consistent with the constitutional court's interpretation of the compensation provision of the MPRDA as expressed in the Maledu judgment.

33 However there are major flaws that remain in the Draft Guidelines. The submissions below deal with these flaws in turn.

The guidelines exclude and override IPILRA just when various judgments and reports have found that IPILRA must be properly

enforced and complied with:

34 As already noted, court judgments in 2018 (particularly the Baleni and Maledu judgments) and the Baloyi Commission report in 2019 stress the centrality of IPILRA as a law that gives effect to section 25(6) of the Constitution in respect of tenure security for people living in the former homelands.

35 The Resettlement Guidelines do not mention IPILRA or customary law once, and instead set out a process that pre-empts and undermines compliance with IPILRA. Section 4 of the guidelines deals with the "Policy and legal framework" that regulates land and resettlement. A summary of applicable laws is provided in this section. Notably, IPILRA is not included in this list. This omission will have the effect of subverting the requirements of IPILRA and judgments from the North Gauteng High Court, Pretoria and the Constitutional Court.

36 By excluding IPILRA, the Draft Guidelines set in place weaker procedures that obscure the property rights and entitlements of the people directly affected by mining and resettlement. The most glaring problem is that the Draft Guidelines do not require the consent of affected rights holders before any deprivation of informal or customary land rights can take place as required by IPILRA.

The guidelines are about consultation as opposed to consent. Consultation is weaker than consent:

37 The Draft Guidelines replace consent with consultation, which is a far weaker right in comparison.

38 The guidelines are about consultation with wide groupings of stakeholders, not about obtaining the consent of the people directly affected as required by IPILRA. Section 25 of the Constitution provides that people may not be deprived of their property rights

except by agreement (meaning with their consent) or by expropriation by a court. IPILRA confirms that the holders of informal rights cannot be deprived of their property rights without their consent, except by expropriation.

39 The Guidelines talk about compensation in clause 9.4 but they do not link the compensation payable by the mining companies with the Constitutional requirement that a court must determine the amount of compensation payable when the holders of land rights refuse to agree to the deprivation of their rights. In fact the Draft Guidelines do not envisage or provide for a point at which those with property rights can say NO during the consultation process.

40 Clause 15 of the Draft Guidelines states that the resettlement and compensation should not be confused with Social and Labour Plans and Mining Charter Commitments. But it does not explain that this is because the Draft Guidelines deal with the Constitutionally protected property rights of the people directly affected by mining, as opposed to development targets or services for 'the wider community'.

The Draft Guidelines treat all stakeholders equally and thereby disguise the fact that IPILRA's 'consent or expropriation' requirements apply to those whose property rights are directly affected. The Constitution and IPILRA require that those whose property rights are directly affected be treated differently from other stakeholders:

41 The Draft Guidelines list various stakeholders who must be consulted before resettlement takes place. At times it includes the holders of informal and communal rights in this list of stakeholders. But the guidelines never say that the people directly affected, who stand to be deprived of their property rights to land as a result of mining operations, must be treated differently from other 'stakeholders' who are not to be deprived of their property rights.

42 The Draft Guidelines require stakeholder mapping (clause 7.2), but do not include criteria to differentiate between the interests of stakeholders whose property rights will be affected, and other secondary stakeholders who will be much less affected and are likely to outnumber the directly affected land rights holders.

43 In some clauses of the document the holders of informal and communal land rights are not explicitly included in the list of stakeholders, such omissions have the effect of having these rights holders overlooked at critical points. For example informal and communal land right holders are not explicitly included in the introduction section when the obligation of an applicant to notify and consult stakeholders as part of consultation requirements is dealt with, and in relation to the Resettlement Agreement in section 12.

44 While one could argue that the rest of the Draft Guidelines refer to informal right holders, the failure to name them and require their inclusion in this legally binding resettlement agreement will enable current practices of exclusion to continue. Similarly the holders of informal land rights are not listed in section 13.3 which deals with section 54 (of the MPRDA) dispute resolution processes.

45 To secure the property rights of informal land right holders as required by section 25(6) of the Constitution and IPILRA, we propose that the mapping process required in clause 7.2 of the Draft Guidelines should be expanded in nature by not just identifying (who) the large pool of 'stakeholders' described in the guidelines are, but must be aimed at identifying who is a stakeholder and the nature of the land rights they hold. The nature of these rights should then determine the treatment of the right holders in accordance with the laws that regulate those rights, for example, customary law, IPILRA, ESTA and the Prevention of Illegal Evictions from and Unlawful Occupation of Land Act, 19 of 1998 and other relevant laws.

***Few binding and enforceable requirements are imposed on mining companies by the Draft Guidelines*:**

46 The resettlement consultation and planning process is the sole responsibility of the mining rights holder or applicant, in other words it is driven by the mining company and not by government. There is very little oversight by government until near the end of the process. The mines must identify and pay for evaluations by experts and the legal costs of complainants (but only 'if feasible' See clause 31.1).

47 In clause 9.4.1 a mining company must appoint an 'Independent Valuer' to determine compensation and compensation rates. This Valuer must be 'acceptable' to both the applicant communities. It is not clear how some vulnerable communities would be able to determine this Valuer as acceptable when the DMR or any independent party is not there to protect that community's interests. This ignores the power relations and potential conflicts of interests by lawyers and evaluators who are on the pay roll of the mining houses.

48 The IPILRA guidelines by contrast require officials of the Department of Agriculture, Land Reform and Rural Development to witness and sign off that the IPILRA requirments concerning consent and consultation have been adequately complied with where the deprivation of informal land rights is at issue.

49 Moreover the obligations on mining houses to consult properly are weak and unenforceable. Clause 7.3 about the Method of Consultation of Stakeholders lists methods that 'may' be used. Not a single method is prescribed that MUST be used.

50 Closely related to the weak obligations imposed on mining companies by the Draft Guidelines is the legal status of the guidelines themselves. The Draft Guidelines are not regulation or legislation, they constitute a formal policy. As a result the Draft

Guidelines do not constitute binding law. Any conduct therefore that is inconsistent with the Draft Guidelines would not be unlawful. This is concerning when considering the fact that the resettlement process is pretty much entirely driven by the mining companies with virtually no government oversight, and no procedures enabling rights holders to call for government intervention if they have grievances in the course of the process.

51 Further, the Draft Guidelines are not based on any specific provision of the MPRDA. In fact, the introduction section in the Draft Guidelines states that the MPRDA has no explicit provision for resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities. The DMR has nonetheless issued the guidelines to regulate the resettlement process.

52 The introduction to the Draft Guidelines concedes the need for and importance of clear and enforceable guidance on resettlement, but the non-binding nature of the Draft Guidelines does not carry through on this concession.

53 We propose instead, that the Minister should strongly consider issuing regulations in terms of section 107 (Regulations) of the MPRDA to regulate resettlement. The Minister has wide powers to issue regulation in terms of section 107 in respect of matters falling within the ambit of the MPRDA. In particular, the resettlement regulation can be issued in terms of sections 107(1)(a)(ii), 107(1)(a)(iii), 107(1)(a)(v), 107(1)(k) and/or 107(1)(l). Such regulations would create a legally enforceable obligation in regard to the resettlement process.

54 Further, section 54 of the MPRDA provides for compensation for damage suffered or likely to be suffered by land right holders as a result of mining operations. A purposive interpretation of section 54

would include the resettlement process. Accordingly, it is incorrect for the Draft Guidelines to suggest that the MPRDA does not deal with resettlement.

Problems with compensation provisions of the Draft Guidelines:

55 It is of great concern that the compensation provisions in clause 9 appear to prioritise houses and house plots over fields, grazing and access to other communal resources such as rivers and forests. Agricultural and grazing land is mentioned only once in clause 9.4.2 (a) but left out of the main list in clause 9.3. Also worrying is that 'full replacement cost' is defined as market value plus transaction costs in clause 9.4.2. The market value of rural areas depressed and denuded by mining activity is likely to be far less than the replacement value of fields, grazing and other resources as they were before mining commenced.

56 The focus on market value falls short of international best practice. Using a market value model in the rural context is misplaced. A few hectares of rural land has trivial market value. Rural land represents more than economics; it represents livelihood, dignity and status for the land holder which cannot be measured by the market.

57 The Draft Guidelines currently do not provide a list of compensable use rights. This places informal land right holders in an incredibly vulnerable position. Our experience has taught us that more often than not mining companies tend to attempt to exclude use and access rights from the compensation payable. IPILRA by contrast defines 'informal land rights' to include use, occupation and access. The loss of informal and customary rights to resources such as forests and rivers for example is usually not compensated. The Draft Guidelines miss the opportunity to create and crystalize some of these rights.

58 At various points in the Draft Guidelines, it is stated that they apply to applicants for mining and prospecting rights as well as current holders of these rights. It says the guidelines apply depending on when the demand for land emerges which can happen during planning and construction, or during active mining operations or the incremental project expansion (see clause 6). These uncriticized provisions are extremely dangerous for rights holders and in violation of the precedent set in the Maledu judgment that requires these questions to be completed before mining commences and for operations to halt where issues are outstanding. As already suggested, these clauses must be revised and be brought in line with clause 9(2) which requires resettlement agreements be concluded before mining commences.

59 In a context where mining operations are expanding it is worrying that in determining compensation (section 9.4.1) the current value is given paramountcy. Separate and clear provisions need to be made for this context. Current value and uses in such contexts are substantively and adversely affected by continuing mining operations. It is not made clear how these realities are to be taken into account and that mining needs to halt to ensure that there is no further degradation of land which can result in constructive eviction at far below the just and equitable compensation terms.

Long drawn out internal dispute and grievance procedures that are likely to hinder informal land rights holders initiating section 54 disputes about compensation:

60 The Draft Guidelines set up a complex internal dispute resolution procedure that will be dominated by those in the pay of the mining houses. The mining company is tasked with developing and populating an internal dispute resolution process, no obligation is created to ensure it is independent in its operation. People affected by the operations need only be informed of the process, they play no

role in shaping these processes and no endeavour is made to ensure the community trusts the processes. The Draft Guidelines also require the mining company to emphasise locally appropriate grievance resolution mechanisms and uncritically specifically refer to the use of traditional leaders and local authorities. This ignores the history of traditional leaders and local authorities being implicated in undermining the rights of vulnerable people in favour of mining companies.

61 In all these processes the issue of the property rights of those directly affected is fudged and their interests treated like those of any other stakeholder. At no point do the Draft Guidelines envisage a stage at which the rights holders can say NO in order to protect their property rights (see clause 8 as an example). Only if these internal dispute and grievance procedures fail should the mining house (not the affected rights holders) notify the Regional Manager of the need for a dispute resolution process in terms of section 54(3) of the MPRDA (clause 13.3). This is contrary to the spirit of the Maledu Judgment that emphasizes the importance of the section 54 dispute resolution process, and that such disputes must be resolved before mining commences.

62 This focus on the mining company being the body to trigger section 54 negotiations, and only after all its internal processes have failed, is underlined by the proposed regulations to the MPRDA. These provide that a non-refundable fee of R1 500 must be paid to the DMR when triggering a section 54 dispute resolution process. This amount is not much for mining companies and yet it is a significant amount for poor rural groupings who must rely on government because they cannot afford lawyers to represent them.

Conclusion

In conclusion LARC welcomes clause 9(2). But for the Guidelines to

comply with Section 25(6) of the Constitution and with IPILRA a distinction must be drawn between directly affected persons and other stakeholders for purposes of determining compensable loss and resettlement.

For the Guidelines to comply with International Best Practice and the 2018 United Nations Declaration on the rights of peasants and other people living in rural areas (UNDROP) host communities must be empowered to negotiate the terms of their resettlement under the principle of free, prior and informed consent.

Clause 6(2) of the Draft Guidelines directly contradicts clause 9(2) as it states that

"depending on when the demand for land emerges, displacement or resettlement of landowners, lawful occupiers, holders of informal and communal land rights mine communities and host communities can occur during project planning and construction or during active mining operations. It can also occur as a result of incremental project expansion."

While this is probably explaining the existing status quo, it needs to be amended so that it cannot be interpreted to condone resettlement on an incremental basis and before a Resettlement Agreement is in place.

IPILRA must be cited in the guidelines, and provisions to ensure compliance with IPILRA must be included. In particular the Minister of Agriculture, Land Reform and Rural Development must approve and sign any agreements (including surface leases) affecting informal land rights on nominally state owned 'communal land', after she has satisfied herself that IPILRA has been complied with.

Thank you for accepting our submission. LARC would appreciate the opportunity to make an oral presentation of our submission.

Nolundi Luwaya (Director) and Ramabina Mahapa (Researcher)

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Commission into Traditional Succession Dispute and Claims: Bakgatla Ba Kgafela Traditional Community, dated 20 August 2019 by MS Baloyi SC. Accessible on saflii: http://www.saflii.org/images/baloyi.pdf

Interim Protection of Informal Land Rights Act 31 of 1996.

Mineral and Petroleum Resources Development Act 28 of 2002.

Guidelines for Consultation with Communities and interested and Affected Parties in terms of section 10(1)(b), 16(4)(b), 22(4)(b), 27(5)(b) and 39 of the MPRDA.