

Mining and land law

- A shift in the legal regime and recognition of ownership and customary rights would invoke a) the consent principle under customary law, which requires community permission for any mining on communal land, and b) high standards of redress and reparation for unlawful taking of customary land and mineral rights

Mining indaba cape town jan 2013

minister mineral resources

- This year also marks a hundred years since the enactment of the Native Land Act, which created a system of land tenure that deprived the majority of South Africans of the right to own land, and eventually compelled Africans who had lost their land to join the mining industry as migrant labourers... It is the remnants of this historical legacy of the migrant labour system, poor housing and living conditions, high levels of illiteracy, and low skills level that inevitably contributed to Marikana.

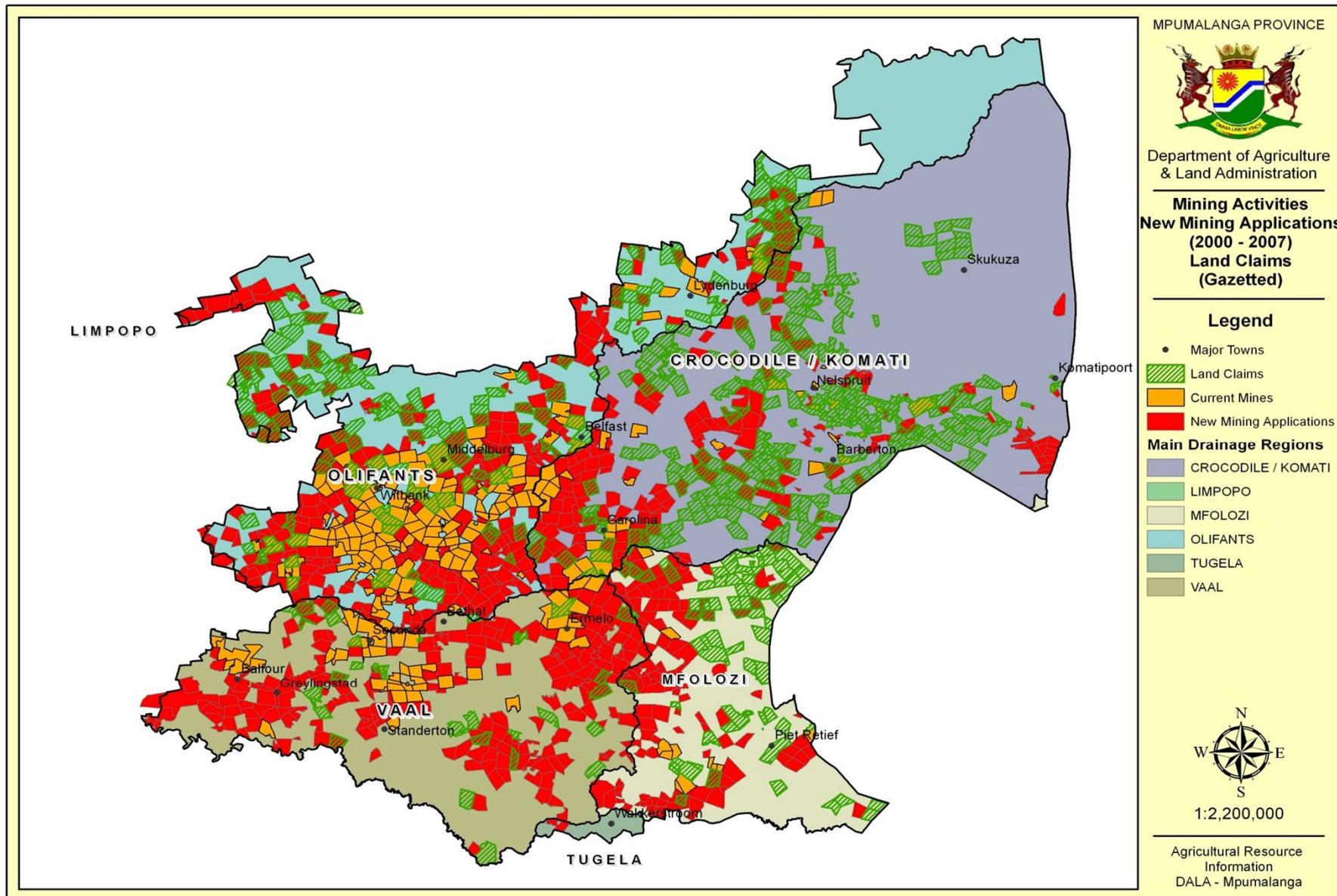
ANC statement: the 1913 land act served mine bosses

- The ANC was formed at a time when South Africa was changing very fast. Diamonds had been discovered in 1867 and gold in 1886. Mine bosses wanted large numbers of people to work for them in the mines. Laws and taxes were designed to force people to leave their land. The most severe law was the 1913 land Act, which prevented Africans from buying, renting or using land, except in the reserves. Many communities or families immediately lost their land because of the Land Act. For millions of other black people it became very difficult to live off the land. The Land Act caused overcrowding, land hunger, poverty and starvation.

2012 amendment

substantially and meaningfully expand opportunities for historically disadvantaged persons, **[including women and communities,]** to enter into and actively participate in the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources

In 2007 in Mpumalanga there were more mining land than land claims and many overlapping



1813 Cradock proclamation

conversion of loan places to perpetual quitrent

4 Government reserves no other rights but those on mines of precious stones, gold, or silver; as also the right of making and repairing public roads, ... other mines of iron, lead, copper, tin, coals, slate, or limestone, are to belong to the proprietor.

	Living customary law	under the customary law of the community communal ownership of the land includes communal ownership of the minerals. The history and usages of the community establish that ownership of the minerals vests in the community under customary law
	Common law Free State title	The common law principle is that the rights of the owner of immovable property extend up to the heavens and down to the centre of the earth. This is expressed in the maxim cuius est solum
1813	Cradock proclamation	Government reserves no other rights but those on mines of precious stones, gold, or silver; as also the right of making and repairing public roads, ... other mines of iron, lead, copper, tin, coals, slate, or limestone, are to belong to the proprietor.
1860 1865	Mining Leases Act,	Mineral lands in Namaqualand; Leases of crown land limited to 40 morgen
1872/49	proclamation	Suspending native digging licenses
1872/59	proclamation	Tariff for Prospecting Licences on Private Property
1883/19	Precious Stones and Minerals Mining Act	Prospecting license by civil commissioner without the consent of the owner or proprietor of such lands... power revoked by act 1987/44 owner may grant licensed prospector leave for lawful consideration and lawful terms and conditions
1898 1907		Prospecting licences for both Crown and private land, with the consent of the owner, and on discovery provision was made for proclamation with some protection for owners. In 1907 similar regulation of prospecting for and mining of most base minerals was enacted
1875	Gold laws Transvaal	payments to be made to surface owners and for the owners to have some control over prospecting on their own land. Owners some preference by giving them a concession to dig for gold on approved terms
1885	Coal, Transvaal	Private owners permitted to prospect on their own land and to permit others to do so
1927	Precious Stones Act	proclamation did not in any way affect the rights of the surface owner in respect of the surface of the land, except insofar as the act specifically provided otherwise. entitled the owner of private land in the Cape Province on which precious stones had been discovered in the alluvial, to select 400 claims free of charge. entitled the surface owner of land on which an alluvial digging was proclaimed, to demand and receive half of the claim licence moneys collected in respect of it.

Way forward

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

New law

- The property rights of rural communities, land and resources rights should be protected by the consent standard or free prior informed consent as recognized under customary law and the African Charter. All new statute law should recognize community decision making processes.
- If community consent, subject to reasonableness, is recognised as the legal standard for use of community land, it will give communities the bargaining power to negotiate on an equal footing with mining companies.