

Submission

to the

Department of Justice and Constitutional Development

on the

Draft General Laws (Mining) Amendment Bill [B – 2026]

by

Centre for Applied Legal Studies (CALS),

University of the Witwatersrand

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Table of Contents

1. INTRODUCTION	2
1.1. About the Centre for Applied Legal Studies	2
1.2. Background and focus of CALS' comments	3
2. COMMENTS ON PROCESS	1
2.1 Questions regarding inclusivity of public participation process preceding draft Bill.....	5
2.2. Questions around Socio-economic Impact Assessment (SEAIS).....	10
3. PREAMBLE, DEFINITIONS AND OBJECTS	11
.....	1
4.ABSENCE OF SAFEGUARDS TO ENSURE SEVERE CRIMINAL SANCTIONS NOT MISUSED AGAINST ARTISANAL MINERS	13
4. CONCERNS AROUND INDISCRIMINATE AND DISPROPORTIONATE PENALTIES AND ADHERENCE TO SECTION 10 AND 12 (1) (e) OF THE CONSTITUTION	14
5.CONCERNS AROUND EFFECTIVENESS OF INDISCRIMINATE APPROACH .	19
6.CONCLUDING REMARKS	21

1. INTRODUCTION

1.1. About the Centre for Applied Legal Studies

1. The Centre for Applied Legal Studies (“CALS”) welcomes the opportunity provided by the Department of Justice and Constitutional Development (“DOJ”) to comment on the Draft General (Mining) Laws Amendment Bill, 2025 (“the Draft Amendment Bill”).
2. CALS is a human rights organisation and registered law clinic with the Legal Practice Council, based at the School of Law at the University of the Witwatersrand. CALS’ vision is a society in which historical and social justice are achieved, state institutions are strengthened, and powerful entities are held to account by marginalised actors. For over 45 years CALS has been committed to the protection of human rights and the promotion of social justice through partnering with individuals and communities in the pursuit of systemic change.
3. CALS works towards our vision by undertaking research, advocacy, teaching, and strategic litigation under five intersecting programmes, namely: Business & Human Rights; Civil & Political Justice; Environmental Justice; Gender Justice and Home, Land & Rural Democracy.
4. The long-term strategic vision of the Environmental Justice Programme is a country where development occurs only if the environment can accommodate it; communities consent to how it occurs, management of natural resources is just, and communities and workers are the principal beneficiaries.

1.2. Background and focus of CALS’ comments

5. CALS has over a long period conducted research, advocacy (including written comments in law and policy review processes), and litigation around environmental, socio-economic and other human rights of communities in the extractives sector and has also co-convened the MPRDA Coalition, which comprises communities, civil society organisations, and labour. We are therefore

knowledgeable regarding the systemic environmental, socio-economic challenges in the extractives sector and the manner in which communities remain excluded from both a real say in decision-making around mining and the economic benefits while shouldering the bulk of the environmental and societal costs of mining.

6. We are cognisant of the scale and dangers posed by criminal syndicates in the mining sector to the safety of workers, communities and the economy and the need to consider all possible interventions, which include criminal law responses.
7. However, criminal justice responses can only address the symptoms of the crises and have limited efficacy without addressing the societal causes. As is widely documented, as soon as a mining operation enters the less profitable phase, the present mining regime allows the same mining companies who extract the wealth to divest themselves of their environmental and socio-economic liabilities with communities and mine workers being left to live with unemployment and hunger, environmental hazards and disasters, and collapse in services. There is no pathway to addressing illegal mining without addressing both the hunger and desperation and the lack of proper environmental rehabilitation and doing so requires law, policy and governance reforms as SAHRC, communities, civil society and academia have long been calling for.
8. Second, Criminal justice responses remain subject to the South African Constitution which requires proportionality of sanctions and due process.
9. Third these responses are more likely to be effective and avoid unintended consequences if preceded by meaningful consultation with the full range of stakeholders including communities, labour, artisanal miners, those with specialist knowledge, police, mining industry and others; and informed by a socio-economic impact assessment (SEIAS) as per cabinet requirements that is comprehensive and rigorous.¹

¹ Since 1 October 2015 all

10. The overarching concern of these comments is to draw attention to the risks that the Bill may infringe Constitutional requirements around proportionality and could further stigmatise and contribute to violation of the rights of artisanal miners following Stilfontein when the rhetoric of government officials drew upon dehumanizing xenophobic and afrophobic tropes.
11. CALS submissions begin with General Comments on the draft General (Mining Laws) Laws, which focus on questions around the quality of the process leading to the publication of the draft Bill namely with regards to meaningful consultation of stakeholders including communities and with regards to the Socio-economic Impact Assessment (SEAIS).
12. This is followed by an analysis of the General (Mining) Laws Amendment Bill which begins with comments on some of the definition before focusing on the following themes:
 - 12.1. Impact of Bill on artisanal miners given lack of guardrails to prevent extreme sanctions against artisanal miners
 - 12.2. Concerns around indiscriminate and disproportionate penalties and Bill's adherence to Sections 10 (human dignity) and Section 12 (1) (e) of the Constitution
 - 12.3. Concerns around efficacy of Bill's draconian, indiscriminate approach, and wide discretion in determining penalties

2. COMMENTS AROUND PARTICIPATION AND LEGISLATIVE PROCESS

2.1. Questions around public consultation process leading to draft Bill

13. Public participation on this Bill has been confined to a written comment period following publication of a settled text. We submit that this falls short of the meaningful participation required for legislation of this nature, and the Bill's own history illustrates why. According to a report of the Portfolio Committee on Mineral

Resources and Energy tabled in Parliament in February 2024² the DMRE (now DMPR) and law enforcement agencies within the Justice, Crime Prevention and Security (JCPS) Cluster, including SAPS, had, by August 2023, already drafted a General Laws Amendment Bill containing substantially the same amendments now before the public: strengthened criminalisation of illegal mining under the MPRDA, a broadened definition of "authorised person" to bring in SAPS, and increased penalties under the MPRDA, Precious Metals Act and Diamonds Act. The then Acting Director-General told the Committee these amendments would be tabled before Cabinet in September 2023, with "consultation and parliamentary processes" to follow before the end of that year. The Committee itself recommended that the process be expedited.

14. The current public comment window, opened in August 2026, is accordingly the first formal opportunity affected communities and civil society have had to engage with legislation whose substance was settled internally roughly three years earlier. This is not a case of a Bill drafted, consulted on, and refined in response to public input - it is a case of a finished policy position being opened for comment only once government's own view had long since hardened.
15. The nature of the "engagement" that has occurred in the interim reinforces this concern. The same 2024 report records a community meeting held with Riverlea residents affected by illegal mining, in which residents raised concerns about rehabilitation funding, policing conduct, and infrastructure damage.³ That is the kind of operational, complaint-driven engagement mining-affected communities have had not consultation on the legislative text that will determine the criminal-law and policing framework now proposed to govern their lives. Communities most exposed to the Bill's consequences as both potential targets of enforcement and as residents of areas where illegal mining and policing responses to it occur have had no comparable opportunity to shape the Bill's substance.

² Portfolio Committee on Mineral Resources and Energy, *Report on the Oversight Visit to North West and Gauteng Provinces*, ATC240209 (09 February 2024), <https://pmg.org.za/taled-committee-report/5648/>.

³ Ibid.

16. The importance of public participation in the legislative-making process has long been recognised in South Africa as a means to promote transparency, accountability, and inclusivity. The process of public participation is important because it gives individuals an opportunity to engage in the law-making process and to ensure that a diverse range of perspectives are taken into consideration, thereby ensuring that the legislation is representative and reflective of the views of those it may affect.
17. South Africa's jurisprudence on public participation and lawmaking has been solidified over the years, which is indicative of its importance in our Constitutional democracy. The Constitution of the Republic of South Africa, 1996 places a clear and binding obligation on Parliament to facilitate public involvement in their legislative and other processes. This obligation is expressly entrenched in sections 59(1)(a) and 72(1)(a) of the Constitution, which require the National Assembly and the National Council of Provinces, respectively, to facilitate public participation in their processes. Public participation is, therefore, not merely a matter of parliamentary courtesy or a procedural formality. It is a constitutional requirement that forms a vital component of South Africa's democratic order.
18. The constitutional commitment to public participation reflects the Constitution's conception of democracy as extending beyond periodic elections and the selection of political representatives. Although South Africa is principally a representative democracy, the Constitution deliberately incorporates elements of participatory democracy by recognising that citizens should have meaningful opportunities to influence decisions that affect their lives. The legislative process is consequently not intended to be an exclusively representative exercise in which elected officials deliberate among themselves. Rather, it is a process in which members of the public must be afforded a reasonable opportunity to make their views known and to contribute to the development of laws that will govern them.
19. The importance of this constitutional obligation was authoritatively confirmed by the Constitutional Court in *Doctors for Life International v Speaker of the National*

Assembly and Others.⁴ The Court held that Parliament's obligation to facilitate public involvement is legally enforceable and that a failure to comply with this obligation may result in the invalidity of legislation.⁵ The judgment makes clear that public participation is not an optional feature of the legislative process, nor can Parliament satisfy its constitutional obligation through a purely formal or token invitation to participate. Where those who are subject to legislation are denied a reasonable opportunity to participate in its formulation, the constitutional legitimacy of the legislative process is undermined.

20. The requirement of reasonable public participation is particularly important in a constitutional democracy characterised by significant social and economic inequality. Formal equality of political status does not necessarily translate into an equal ability to participate in legislative processes. Marginalised communities may face practical barriers to participation, including geographical distance, limited access to information, financial constraints, language barriers, digital exclusion, and a lack of institutional resources. A constitutional commitment to meaningful participation must therefore take account of the circumstances in which participation occurs. It is not sufficient to create a nominal opportunity to participate if that opportunity is inaccessible or incapable of enabling affected communities to engage meaningfully with the legislative process.

21. The importance of public participation is also recognised in international law. The obligation to facilitate public involvement gives effect to the right to political participation under international law and must therefore be construed with reference to art 25 of the International Covenant on Civil and Political Rights (ICCPR), which states that '[e]very citizen shall have the right and opportunity' to political participation'.

22. Public participation consequently performs several functions within South Africa's constitutional democracy. It enhances the legitimacy of legislation by ensuring that those affected by laws have an opportunity to influence their development; it improves the quality of legislative deliberation by exposing Parliament to

⁴*Doctors for Life International v Speaker of the National Assembly and Others* 2006 (6) SA 416 (CC).

⁵ *Ibid* at para 46.

information, experiences and perspectives that may otherwise be overlooked; and it promotes accountability by requiring public representatives to engage with the concerns of the people they represent. Most fundamentally, however, participation gives practical effect to the constitutional principle that public power must be exercised in a manner that respects the dignity, equality, and agency of all people.

23. The constitutional requirement of public involvement must therefore be understood as part of a broader democratic commitment to ensuring that law-making remains connected to the people who are governed by law. Parliament's role is not diminished by public participation; rather, representative institutions are strengthened when citizens are afforded meaningful opportunities to engage with and influence legislative processes. In this sense, participatory democracy and representative democracy should not be understood as competing models. Properly conceived, public participation complements representative government by ensuring that the exercise of legislative power remains responsive, accountable, and grounded in the lived realities of the communities it is intended to serve.

24. We request that the Department clarify the actual scope of consultation undertaken in developing this Bill, given the significant gap between the 2023 drafting process described above and the Bill's publication in 2026. Specifically, we ask the Department to disclose: which organisations, communities, and independent experts were consulted in the drafting of this Bill, and at what stage of the process; whether mining-affected and host communities as opposed to government departments, law enforcement structures, and industry bodies were consulted at all, and if so, through what mechanism and in which areas; and whether organisations working directly with artisanal and small-scale miners and mining-affected communities, and other civil society organisations with established expertise in this area, were approached for input, given that they would be best placed to represent the interests of those most exposed to the Bill's criminal and enforcement provisions.

25. Where consultation did occur, we further request disclosure of what concerns and proposals were raised by those consulted, and how, if at all, those inputs were addressed in the version of the Bill now published. This is not a formal request in

the abstract: it goes to whether the Bill's current form (in particular, the scope of SAPS's compliance powers under proposed section 91A, and the absence of clear safeguards distinguishing permitted artisanal miners from illegal operators in practice) reflects any engagement with those likely to be affected by enforcement, or whether it reflects only the perspective of the law enforcement and regulatory agencies that drafted it. Without this information, it is not possible for us, or for the Portfolio Committee, to assess whether the Bill's current provisions represent a considered response to community concerns or an unmodified continuation of the 2023 draft.

26. We submit that meaningful public participation, consistent with the Constitutional Court's guidance in *Doctors for Life* and related jurisprudence, requires more than an opportunity to comment on a finalised text. It requires that affected communities have a genuine opportunity to shape the substance of legislation that will materially affect their lives and livelihoods, at a stage before the state's position has hardened. On the facts set out above, that opportunity was not given.

2.2. Questions around the Socio-economic Impact Assessment (SEIAS) leading to the draft Bill

27. A Socio-Economic Impact Assessment System (SEIAS) is a South African government tool used to assess the socio-economic effects of proposed legislation, regulations, policies, and other subordinate legislation before they are finalised. It is administered by the Department of Planning, Monitoring and Evaluation (DPME), and was introduced around 2015 to replace an earlier, weaker impact assessment process (the Regulatory Impact Assessment (RIA)). Any government department proposing a new law, regulation, or policy is supposed to complete a SEIAS assessment, both an initial one (early in the drafting process) and a final one (before the proposal goes to Cabinet or Parliament). The assessment is meant to weigh costs and benefits across diverse groups, for example, impacts on the poor, on business (especially small business), on employment, and on the environment, and to consider feasible alternatives.

28. In practice, it is often used (or should be used) as a hook for public participation and scrutiny. Civil society and affected communities can ask whether an SEIAS was conducted and, if so, request to see it, as it should reflect who was consulted and what impacts were identified.
29. The Bill has been published for comment without an accompanying SEIAS report, whether at the initial or final stage, being made available to the public. This is a material omission given the scale and nature of the changes proposed in the Bill. For instance, the Bill increases maximum penalties for offences under the MPRDA, Precious Metals Act and Diamonds Act from the current thresholds to as much as R100 million and/or 30 years' imprisonment, among the most severe penalty escalations in recent South African legislative history. It expands the category of "authorised persons" under section 91 of the MPRDA to include SAPS members, extending policing powers into a regulatory compliance space. These changes carry an evident and foreseeable differential impact in that they fall most directly on persons physically engaged in artisanal and small-scale mining, including permit holders who risk being caught up in enforcement action rather than on the organised syndicates or corporate beneficiaries the Bill is ostensibly aimed at.
30. The SEIAS Guidelines exist precisely to require government to evaluate this kind of differential impact on the poor, on informal-sector livelihoods, and on affected communities, before, not after, a Bill of this severity is finalised. We request that the Department confirm whether an initial and/or final SEIAS was conducted for this Bill, if so, release it to the public as part of this comment process, given its direct bearing on the substance of comments that can be made. If not, explain the basis on which a Bill of this magnitude proceeded without one, and commit to conducting one before the Bill is finalised.

3. PREAMBLE, DEFINITIONS AND OBJECTS

3.1. Definition of Artisanal Mining

31. Section 4 of the draft GLAB repeats verbatim amendments to the prohibitions in Section 5A of the MPRDA that are contained in Section 5 of the MPRD. These

changes include adding 'small-scale mining permit' and 'artisanal mining permit' to the list of licenses without which the mining-related activities listed in the Act are prohibited.

32. This means that the only protection enjoyed by artisanal miners from the penalties under the GLAB is the granting of the artisanal mining permit. This gives rise to questions around whether it is, at present, possible for all or the bulk of artisanal miners to obtain this permit – or in other words is the permit easy enough to qualify to remove the choice of either starvation or punishment. This gives rise to a number of questions but for the purposes of the definitions section the question is whether the definition of artisanal mining permit and artisanal mining include all common forms of artisanal mining.
33. In this regard CALS along with representatives of artisanal miners (e.g. NAAM) and mining-affected communities (e.g. MACUA) had noted that the definition of artisanal mining in the draft MRDB was too narrow in particular for limiting artisanal miners to traditional methods of mining (which is not applicable to all artisanal miners) as well as limiting the activity to the surface or shallow depths whereas some artisanal miners mine underground, especially given the many ownerless and abandoned underground mines.
34. This has been partly remedied by the GLAB which removes the elements of 'traditional and customary mining operations' and 'using traditional and customary means.' However, the definition still retains many of the flaws of the MRDB definition. First, the reference to rudimentary methods, while less limited than traditional methods, still is not applicable to all artisanal mining, especially in the context of ownerless or abandoned large e.g. gold mining operations. Likewise, the exclusion of underground mining remains. The definition should include the contexts in which artisanal mining occurs, the situation of the artisanal miners and needs to be produced through engagement with artisanal miners across the diverse settings/regions where artisanal mining occurs, organisations for example National Association of Artisanal Miners (NAAM) and individuals and institutions who have conducted empirical research on the sector.

3.2. Definition of Artisanal Mining Permit

33. The definition of “artisanal mining permit” is unchanged from the definition contained in the draft MRDB. The criticisms by CALS (in our comments on the MRDB), NAAM and MACUA of the proposed permitting system still remain.

4. ABSENCE OF SAFEGUARDS TO ENSURE SEVERE CRIMINAL SANCTIONS NOT MISUSED AGAINST ARTISANAL MINERS

35. The question of regulating artisanal mining cannot be viewed outside of the context of the history of mining in South Africa in which mining houses (and the forebears of many of the current dominant companies) generated massive profits on the back of the colonial and apartheid state’s dispossession of African communities’ land and the exploitation of Black workers. While Black workers and communities built the sector and experienced the environmental and social harms, a white minority reaped the profits. Artisanal mining is one pathway towards communities reclaiming the minerals on their land.

36. While the resistance of workers and communities has brought some improvements in labour practices in the new democratic dispensation and modest deracialisation of ownership, mining-affected communities remain excluded from the sector with regards to broad-based development, ownership, and decision-making 32 years into democracy. It is these very same communities and erstwhile mine workers who, once mining companies have made their profits and exited (often through transfers of ownership prior to the planned end of life of mine but in many cases through *de facto* abandonment), are abandoned to face unemployment and poverty. Often the choice for breadwinners and their dependents is either to starve or mine abandoned sites, whether surface areas or shafts.

37. The draconian nature of the penalties makes it especially vital to ensure that for those dependent on artisanal mining, there is a viable and accessible alternative to the choice of starvation or criminalisation. This requires a system for designation of suitable land, permitting and capacitation and support for artisanal mining that is already fully functioning and able to absorb the artisanal mining sector as a

whole. This is neither the case in practice or in legislation, given the artisanal mining permit only presently exists in a bill that has not even been tabled in parliament and which definitionally, through the absence of mechanisms of support and through shouldering artisanal miners with little means with the responsibility for environmental impact assessments and environmental management.

38. It is therefore vital for the GLAB to protect artisanal miners through provisions such as distinguishing severity of sanctions for artisanal miners without permits from syndicate bosses and other key criminal, to suspend the applicability of sanctions on artisanal miners until the permitting system is fully operational, and to further exempt artisanal miners who have applied for a permit but are still awaiting a permit longer than a specified period.

5. CONCERNS AROUND INDISCRIMINATE AND DISPROPORTIONATE PENALTIES AND ADHERENCE TO SECTION 10 AND 12 (1) (e) OF THE CONSTITUTION

39. The proposed amendment of section 87 of Act 56 of 1986, as amended by section 13 of Act 10 of 1991, raises concerns around indiscriminate and disproportionate penalties that risk infringing on the constitutional and human rights of those convicted.
40. Section 12(1)(e) of the Constitution guarantees the right not to be treated or punished in a cruel, inhuman, or degrading way. This is reinforced by South Africa's international obligations. Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights, and Article 5 of the African Charter on Human and Peoples' Rights, all prohibit cruel, inhuman, or degrading punishment. As a ratifier of these instruments, South Africa has a duty to promote, respect and protect this right, and these standards inform the interpretation of the Constitution under section 39.

41. A core element of this protection is that punishment must be proportionate to the offence. The proposed amendment increases the maximum term of imprisonment from 10 years to 30 years, a threefold increase, and raises the maximum fine to R100 million across both categories of offence, collapsing the distinction the current Act draws between more and less serious contraventions.
42. In a media statement⁶ delivered on 11 August 2026 announcing Cabinet's approval of this amendment bill, the Minister of Justice and Constitutional Development, Ms Mmamoloko Kubayi, explained that the increased penalties respond to the severe harms associated with illicit mining, including its links to kidnapping, human trafficking, child labour, forced labour, and violent crimes such as the use of illegal firearms, rape, murder, intimidation and assault. We do not dispute the seriousness of these harms, nor the need for a firm legislative response to organised, violent illicit mining activity. However, the rationale given is specific to conduct of that violent and exploitative character.
43. The Bill does not confine the enhanced penalty to conduct meeting that threshold. Instead, it imposes an identical maximum penalty, a fine of R100 million and imprisonment of 30 years, uniformly across multiple, materially different offences. This uniform escalation does not distinguish between organised, violent criminal conduct of the kind described by the Minister and lower-level or regulatory contraventions that may not involve any of the aggravating factors cited as justification. As a result, the amendment risks producing sentences disproportionate to the actual harm caused in a given case, undermining the proportionality principle embedded in section 12(1)(e) of the Constitution.
44. This disproportionality is not merely a matter of policy concern; it raises a genuine risk of constitutional invalidity. South African courts have repeatedly grappled with whether harsh and inflexible sentencing regimes are compatible with the Constitution. The proposed amendment must, moreover, be assessed against both

⁶ <https://www.gov.za/news/media-statements/minister-mmamoloko-kubayi-provides-update-key-legislative-amendment-bills>

section 12(1)(e) and section 10 of the Constitution. Section 10 provides that “everyone has inherent dignity and the right to have their dignity respected and protected”. Human dignity is an independent constitutional right against which the exercise of the State's punitive power must be measured.

45. This is particularly important when the proposed amendment is considered against South Africa's history. The constitutional protection of dignity represents a deliberate departure from a legal order in which the State exercised extensive coercive power over individuals, including through criminalisation, detention, and severe punishment, within a system structured by racial discrimination and apartheid. The Constitution's commitment to human dignity was intended, in part, to ensure that the individual remains a bearer of inherent worth even when accused or convicted of a crime. The Constitutional Court's early jurisprudence confirms that the rights to dignity and protection against cruel, inhuman, or degrading punishment apply to convicted persons and are not forfeited merely because a person has committed an offence.

46. In *S v Dodo*,⁷ the Constitutional Court made this connection between dignity and proportionality explicit. The Court held that human dignity is independently protected by section 10 and that impairment of dignity is implicated in punishment that is cruel, inhuman, or degrading. It further held that proportionality lies at the heart of the enquiry into whether punishment is cruel, inhuman, or degrading, particularly where the severity of the punishment is principally attributable to the length of imprisonment.⁸

47. The significance of proportionality is therefore not limited to the question whether a particular sentence is harsh. It reflects the constitutional requirement that the State must treat an offender as a person whose punishment is connected to the offence and their culpability, rather than as a convenient vehicle for achieving broader penal objectives. The court in *Dodo* held that where punishment bears no adequate relationship to the gravity of the offence, the offender risks being reduced

⁷ 2001 (3) SA 382 (CC).

⁸ *S v Dodo* para 37.

to a means to an end.⁹ This is inconsistent with the respect for inherent human dignity required by section 10.

48. The historical context reinforces the importance of this principle. South Africa's constitutional transformation was not simply a transition from one government to another; it involved a fundamental rejection of a system in which law was capable of being used as an instrument of coercion and domination. The constitutional commitment to dignity consequently requires particular vigilance where the State seeks to expand its power to deprive individuals of their liberty. Severe punishment cannot be justified solely because Parliament considers a particular social problem sufficiently serious. The punishment must remain constitutionally connected to the individual offence, its consequences, and the culpability of the offender.

49. This does not mean that the seriousness of illicit mining, or the violence and exploitation associated with certain forms of illicit mining, should be minimised. Parliament is entitled, and indeed obliged, to respond firmly to conduct involving murder, rape, human trafficking, forced labour, child labour, intimidation, and other serious forms of organised criminality. The constitutional difficulty arises where the legislative response to the most egregious manifestations of illicit mining is translated into a uniform maximum punishment applicable to materially different forms of conduct.

50. The proposed increase from a maximum of 10 years' imprisonment to 30 years is therefore constitutionally significant. Thirty years of imprisonment represents an exceptionally serious deprivation of liberty. Where such a penalty is made available across materially distinct categories of conduct, there is a risk that the punishment imposed in an individual case may become disproportionate to the actual harm caused and the culpability of the particular offender. Such a result implicates both section 12(1)(e) and section 10 of the Constitution.

⁹ S v Dodo para 38.

51. The same concern arises from the proposed uniform maximum fine of R100 million. Although a financial penalty does not deprive a person of physical liberty in the same manner as imprisonment, an exceptionally high fine can nevertheless have a profound impact on a person's dignity, livelihood, and ability to participate in society. Its constitutional validity must therefore be assessed not only by reference to the abstract seriousness of illicit mining, but also by considering whether the penalty bears a proportionate relationship to the nature of the contravention, the harm caused and the offender's culpability and circumstances.
52. The concern is accordingly not that Parliament may never impose severe penalties. Rather, the concern is that the constitutional protection of dignity prevents the State from treating severity of punishment as an end in itself. This principle is particularly important where deterrence is relied upon to justify severe punishment. Deterrence is a legitimate consideration in sentencing, but it cannot operate independently of constitutional limitations.
53. The proposed amendment should consequently be understood against the broader constitutional transformation of South African punishment. The Constitution permits the State to punish, but it does not permit the State to punish without constitutional restraint. The constitutional question is therefore whether the proposed penalties preserve a sufficient relationship between the seriousness of the particular offence and the punishment that may be imposed.
54. The proposed amendment should accordingly be reconsidered to ensure that its enhanced penalties are appropriately differentiated according to the seriousness of the conduct, the harm caused and the culpability of the offender. A constitutionally compliant legislative response to illicit mining can and should be robust. But robustness cannot be equated with indiscriminate severity. In a constitutional democracy founded upon human dignity, the State's response to serious criminality must itself remain consistent with the dignity of the persons whom it punishes.

6. CONCERNS AROUND EFFICACY OF DRAFT BILL'S INDISCRIMINATE APPROACH AMIDST DMPR'S PERSISTENT FAILURE TO ADDRESS ROOT CAUSES

6.1. The DMPR has persistently failed to address repeatedly highlighted law, policy and governance gaps contributing to an environment conducive to criminal syndicates

55. The socio-economic and environmental wasteland that is a pattern in communities with mines in closure, care and maintenance, bankruptcy, abandonment etc. is widely documented in the testimonies of communities, research reports, and news stories. Notable examples include ghost towns such as Blyvooruitzicht and Rietspruit, the Jagersfontein tailings disaster and many more. These are environments where the vacuum left in economic, societal, and environmental disintegration can easily be filled by criminal syndicates.

56. The legislative policy and governance gaps are equally widely documented in research by Chapter 9 institutions (most notably SAHRC)¹⁰, civil society, and academics. To cite a few of the issues environmental liabilities to easily change hands; problems with the mechanisms meant to ensure local economic alternatives such as social and labour plans (poor and top-down design; insufficient financial provisions for impactful projects; low levels of compliance and enforcement); lack of transparency and meaningful community participation; weak compliance and enforcement mechanisms under the MPRDA and lack of grievance mechanisms; the DMPR not being the appropriate body to regulate environmental management.

57. Furthermore, SAHRC made a number of directives and recommendations on law reforms to address many of these issues in its 2018 report on the conditions of mining communities as have a diversity of communities, civil society organisations in the form of law and policy comments, memoranda and petitions.¹¹ Proposals of

¹⁰ South African Human Rights Commission Hearing Report on the Underlying Socio-Economic Challenges of Mining-Affected Communities (2018).

¹¹ Just a few examples include: Memorandum to the Department of Mineral & Petroleum Resources by the MPRDA Coalition, on the Proposed Amendments to the MPRDA (14 November 2024). ; MACUA, Bench Marks Foundation and Alliance for Rural Democracy 'Open letter the Parliament of

this nature should be the starting point for reforms to the MPRDA to address the conditions giving rise to the growth in organised crime. However, up to this point, the DMPR has, for the most part, not addressed or meaningfully engaged these proposals in its law and policy making, including the version of the Mineral Resources Development Bill published for comment last year.

6.2. The draft Bill fails to specifically target leadership of organised crime

58. A legislative response to criminal mining syndicates that exposes ordinary people trying to survive in the wreckage created by a legal, policy and governance regime that creates accountability loopholes and a lack of comprehensive post-mining planning is not only unconstitutional – it is also likely to be ineffective by targeting actors who are not the primary drivers of the problem.

59. Instead, a response that effectively targets the primary actors based on how they are organised (including but not limited to syndicate bosses as well as bulk buyers of the minerals) is required. This necessitates meaningful consultation of impacted communities, artisanal miners, labour, and other stakeholders as well as SEIAS that draws upon the best available research, including regarding the structure of the illegal mining economy, and lessons learned from comparable efforts to weaken and eradicate organised crime sectors.

60. Addressing the drivers of the problem through legislative, policy and governance reforms, combined with a targeted and proportionate criminal justice response (framed by appropriate legislative provision) is what is required rather than a draconian and indiscriminate approach.

the Republic of South Africa (12 March 2026). <https://macua.org.za/2026/03/16/open-letter-to-parliament/>; Centre for Applied Legal Studies 'Submission Department of Minerals and Petroleum Resources (DMPR) on the Draft Mineral Resources Amendment Bill, 2025 (13 August 2025). <https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/environment/resources/CALS%20Comments%20on%20draft%20Mineral%20Resources%20Development%20Amendment%20Bill,%202025.pdf>; Centre for Environmental Rights Comments on the draft Mineral Resources Development Bill, 2025 (13 August 2025). <https://cer.org.za/wp-content/uploads/2025/08/13-August-2025-CER-comments-to-the-draft-Mineral-Resources-Bill-2025.pdf?x68187>

7. CONCLUDING REMARKS

61. Thank you for providing the opportunity to provide inputs on the draft General (Mining) Laws Amendment Bill.
62. The crux of our submissions is that while organised crime in the mining sector needs to be tackled, in its present form the Bill is likely unconstitutional due to an indiscriminate and draconian approach that risks providing the license for further gross human rights violations such as the deaths of the miners at Stilfontein. This response is even worse in light of the failure to take meaningful steps to address the flaws in the MPRDA and the governance of mining that creates the vacuum for organised crime to fill.
63. Priority should instead be afforded to using the opportunity of the MPRDA amendments to address these issues, while developing a thorough, targeted response to organised crime that confirms to the Bill of Rights.
64. Kindly inform us of any opportunities to provide oral input on the Draft Amendment Bill. For queries and further information, please contact Robert Krause at robert.krause@wits.ac.za or 068 162 2590.

