

Submission

to the

Department of Minerals and Petroleum Resources (DMPR)

on the

Draft Mineral Resources Amendment Bill, 2025

by

Centre for Applied Legal Studies (CALS),

University of the Witwatersrand

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Table of Contents

1. INTRODUCTION	4
1.1. About the Centre for Applied Legal Studies	4
1.2. Background and focus of CALS' comments.....	4
2. GENERAL COMMENTS.....	8
2.1.	8
Ensuring meaningful community consultation required in the lawmaking process	8
2.2. Resisting industry pressure to dilute transformation, localisation and other developmental measures	10
3. PREAMBLE, DEFINITIONS AND OBJECTS.....	12
4.	20
FREE PRIOR INFORMED CONSENT AND PUBLIC PARTICIPATION.....	20
4. RELOCATION AND RESETTLEMENT	26
5.	33
ACCESS TO INFORMATION, COMPLIANCE MONITORING AND ENFORCEMENT	33
6.	37
ARTISANAL AND SMALL-SCALE MINING	37
7.	49
GENDER EQUALITY	49
8. SOCIAL AND LABOUR PLANS	53
9.	68
TRANSFORMATION & THE MINING CHARTER.....	68

10.....	71
CONCLUDING REMARKS	82

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 Mineral and Petroleum Resources (“DMPR”) to comment on the Draft Mineral Resources Development 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. As the primary framework governing the mining sector in South Africa, it is vital that the MPRDA promotes development and reindustrialisation for the majority, meaningful participation by workers and communities, and the protection of environmental, land and other human rights of communities (including the right to free prior and informed consent). The MPRDA should be framed within the context of the transition from colonialism and apartheid to democracy, and the constitutionally enshrined project of political, societal, and economic transformation from white supremacy to a society based upon democracy, respect for human rights and social justice. The stated objectives of the MPRDA in Section 2 (as well as the white paper preceding the Act¹) clearly bear this out:

¹ Department of Minerals and Energy *White paper: a minerals and mining policy for South Africa* (October 1998).

...

b) give effect to the principle of the State's custodianship of the nation's mineral and petroleum resources;

(c) promote equitable access to the nation's mineral and petroleum resources to all the people of South Africa;

(d) 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;

...

6. While the inclusion of organised labour in the formulation of the MPRDA represented a major advance, mining-affected communities as a sector remained excluded, resulting in legislation that does not adequately centre the rights and interests of affected communities. Issues such as protection of rights of communities subject to resettlement/displacement; tenure security and free prior and informed consent; transparency and meaningful consultation in decision-making processes; local economic development; and holistic participatory mine closure are either not addressed or couched in terms that offer little in the way of enforceable rights and recourse for communities.
7. The Marikana Massacre, in particular, exposed the continued extractive nature of mining to the detriment of Black workers and communities, and women in particular, in an ostensibly *post-apartheid* South Africa.² The self-organisation of the Rustenburg mine workers and the movements around them also contributed to the emergence of national and local movements of mining-affected communities, for example Mining Affected Communities United in Action ("MACUA") and Mining and Environmental Justice Community Network of South Africa ("MEJCON-SA"). Communities³, civil society organisations⁴, high level panels⁵ and Chapter 9

² Marikana Commission of Inquiry: Report on Matters of National and International Concern Arising out of the Incidents at the Lonmin Mine in Marikana, in the North West Province (2015).

<https://www.sahrc.org.za/home/21/files/marikana-report-1.pdf>

³ MACUA & WAMUA *Looted promises: the crumbs economy of mining and the myth of the just transition* (2025) at 38. https://macua.org.za/wp-content/uploads/2025/05/Looted_Promises-4.pdf; MACUA, SOMO and ActionAid *Manganese Matters A metal of consequence for women and communities in South Africa affected by mining and the global energy transition* (2021); Submission by the Bafokeng Land Buyers' Association on the Mineral and Petroleum Resources Development Amendment Bill [B15 D – 2013].

⁴ Amnesty International, CALS & SCMAC *Unearthing the Truth: How mines failed communities in the Sekhukhune region of South Africa* (2022) <https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/environment/resources/Unearthing%20the%20truth%20final%20report.pdf>; Bench Marks Foundation *Policy Gap Series* (Reports 1 – 13). <https://www.bench-marks.org.za/policy-gap-series/>; CALS Comments regarding the Mineral and Petroleum Resources Development Amendment Bill (B15 – D) (17 March 2017) Centre for Environmental Rights Comments on the Mineral and Petroleum Resources Development Amendment Bill, 2012

⁵ High Level Panel *Report of the High-Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change* ("High Level Panel Report") (2017).

institutions, such as the Human Rights Commission (“SAHRC”),⁶ have identified an array of fundamental flaws with the MPRDA and/or the systemic nature of human rights violations in communities and have persistently brought these to the attention of the department and parliament.

8. However, the last time the MPRDA was substantively reviewed (over the 2013-2018 period), the consultation of communities and civil society was hasty and insufficient, and as a result too few of the inputs from these sectors shaped the content. When this process was abandoned by the Government in 2018, the reports and submissions from communities and civil society were left to gather dust (with the limited exception of the 2020 amendments to the Mineral and Petroleum Resources Development regulations which went some way, although not far enough, to addressing gaps around Social and Labour Plans (SLPs)).
9. The re-opening of the legislative review of the MPRDA presents South Africa with a historic opportunity to make the reforms needed to protect the human rights of communities and better advance development that benefits the majority of rather than a narrow elite.
10. The main aims of these comments are, first, to assess whether the amendments proposed by the DMPR have adequately addressed issues repeatedly raised by communities and civil society and, second, to the extent that these amendments fall short of what is required, to propose changes and/or additional provisions. In making this assessment, these submissions will draw upon the wide array of analysis and commentary on the MPRDA but with a particular emphasis on the recommendations made to the Department by the MPRDA Coalition (the summary document submitted to the DMPR is attached as Annexure I)⁷ and by SAHRC.
11. The MPRDA Coalition is a collective of community networks and organisations, including MACUA and MECJON-SA, the National Association of Artisanal Miners, public interest law organisations and other civil society partners organised around advancing the reforming of mining law and policy and decision-making to overcome the systemic exclusion of mining-affected communities.⁸ CALS serves as a co-convenor of the MPRDA Coalition. The position of the Coalition has consistently

parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf, p. 504).

⁶ See South African Human Rights Commission *Hearing Report on the Underlying Socio-Economic Challenges of Mining-Affected Communities* (2018).

⁷ Submission to the Department of Mineral & Petroleum Resources by the MPRDA Coalition, on the Proposed Amendments to the MPRDA (14 November 2024).

⁸ Members of this collective include MACUA (and its women’ and youth organisations WAMUA and YAMUA), MEJCON-SA, Bench Marks Foundation, ActionAid, CALS, Lawyers for Human Rights, Legal Resources Centre, Centre for Environmental Rights, All Rise Attorneys, National Association of Artisanal Miners, and Corruption Watch.

been that the current barriers are faced by affected communities are not solely the result of challenges in implementing MPRDA.

12. The SAHRC is a Chapter 9 institution tasked by Section 184 of the constitution to promote a culture of human rights; the protection, development, and attainment of rights; and the monitoring and assessment of the observance of rights. The SAHRC has previously conducted investigations pertaining either directly to the rights of mining-affected communities or on matters with a significant bearing on communities (such as its hearing on artisanal mining).⁹ Most notably, the SAHRC held hearings on the socio-economic challenges of mining affected communities that gave rise to a report in 2018 which finds links between systemic rights violations and gaps in the legal framework.¹⁰ The report contains recommendations and directives to the DMPR and parliament regarding necessary law and policy reforms.
13. CALS submissions begin with General Comments on the Draft Amendment Bill, namely around the consultation process and whether community and civil society inputs are meaningfully engaged and a note on the importance of transformation and measures to promote local industrialisation such as beneficiation. This is followed by the more in-depth analysis of the Draft Amendment Bill. Rather than a complete clause by clause analysis, CALS submissions (with the exception of a section discussing the preamble, definitions, and objects) are categorised into issues/themes under which a comparison is set out between the status quo and what the MPRDA Coalition and SAHRC have proposed. These issues/themes are:
 - 13.1. Free Prior and informed consent and participation
 - 13.2. Access to information, compliance monitoring and enforcement
 - 13.3. Relocation and resettlement
 - 13.4. Artisanal and small-scale mining ("ASM")
 - 13.5. Women and gender equity
 - 13.6. Social and labour plans
 - 13.7. Transformation and the Mining Charter

⁹ South African Human Rights Commission Report of the Investigative Hearing – Issues and Challenges of Unregulated Artisanal Underground and Surface Mining Activities in South Africa (2015).
<https://www.sahrc.org.za/home/21/files/Unregulated%20Artisanal%20Underground%20and%20Surface%20Mining%20Activities%20electronic%20version.pdf>

¹⁰ South African Human Rights Commission *Hearing Report on the Underlying Socio-Economic Challenges of Mining-Affected Communities* (2018).
<https://www.sahrc.org.za/home/21/files/SAHRC%20Mining%20communities%20report%20FINAL.pdf>

2. GENERAL COMMENTS

2.1. Ensuring meaningful community consultation required in the lawmaking process

14. Despite the transition from apartheid to democracy, relations between mining companies and Black communities continue to take place primarily on a colonial basis. Despite the transformative objectives of the MPRDA, mining-affected communities have been excluded from participating as a core stakeholder in decision-making and lawmaking around mining.
15. An important advance since the emergence of movements such as MACUA is that mining-affected communities tend to be included as interested and affected persons in processes of law and policy review. However, despite withstanding the worst of environmental degradation from mining and the lack of broad-based local economic development (“LED”), communities are still not treated as core stakeholders on a par with the mining industry and organised labour and excluded from multistakeholder fora such as the Mining Industry Growth Development and Employment Task Team (“MIGDETT”). Furthermore, the limited engagement that has taken place has often been characterised by poor notice (e.g. public meetings advertised the day before and without prior dissemination of information to prepare inputs), with public hearings being run more like information sessions with brief questions and answers than opportunities for meaningful community input. A paternalistic attitude towards community representative by officials has been observed (e.g. challenging their representative credentials and chastising them for their criticism of consultation processes rather than engaging with the substance of their criticism). With rare exceptions, community and civil society proposals have not been reflected in the final versions of the laws and policies.
16. Is it enough for the DMPR to produce attendance registers and say communities were consulted? The answer under our constitutional democracy is a ‘no’. In numerous landmark cases – *Doctors for Life International v Speaker of the National Assembly and Others*¹¹ (“*Doctors for Life*”); *Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others*¹² (“*LAMOSA*”) and *Mogale and Others v Speaker of the National Assembly and Others*¹³ (“*Mogale*”) – the Constitutional Court has held that such engagement must be *meaningful*. The *Mogale* case encapsulated the standard as follows:

¹¹ (2006 (6) SA 416 (CC).

¹² 2016 (5) SA 635 (CC).

¹³ 2023 (6) SA 58 (CC).

‘Public involvement must enable people to know about the issues, have an adequate say, and be capable of influencing the decision to be taken.’

17. What is more, Parliament has developed a Framework and Practical Guide to give content to the principle of meaningful participation, which the Courts have applied in cases like *Mogale*. While this framework applies to the parliamentary stage of the lawmaking process, given the introduction of the Draft Amendment Bill for comment is an early stage of the larger lawmaking process, the same principles should apply to this stage with appropriate modifications to the circumstances.
18. The second reason why we reference these principles and standards is to alert the DMPR and Parliament of the need for the upcoming legislative process to follow these principles which, in our experience, were in many instances not observed in the previous MPRDA review. Pre-hearing workshops are required to develop relationships with stakeholders, to ensure awareness campaigns are effective and to mobilise communities for the consultations to come.¹⁴ Summaries of Bills must be translated into a minimum of three widely-spoken languages in each Province.¹⁵ Adequate notice of at least 7 days for provincial hearings are required (for example in *Mogale* and other judgments notification of public meetings a day or two before was held to be inadequate).¹⁶ Transport must be provided to the hearings to reduce barriers to participation.¹⁷ Consultation is a *two-way exchange*, it requires decision-makers to engage with inputs and include detailed public comments in negotiating mandates.¹⁸
19. While meaningful consultation does not involve a formal veto by any role player, decision-makers should have due regard to the interests of the most vulnerable and directly impacted in particular. If submissions from a variety of communities and civil society organisations are insufficiently reflected in the Bill when compared to those of mining corporations, it is a sign that consultation has not been meaningful. Unfortunately, as these comments illustrate, almost none of the inputs in the November 2024 submission by the MPRDA Coalition were addressed in the Draft Amendment Bill. This is especially concerning since, as will be shown in a dedicated section of our comments, some of these proposals echo what the SAHRC had requested the DMPR and Parliament to consider.¹⁹

¹⁴ *Practical Guide for Members of Parliament and Provincial Legislatures* as referenced in *Mogale* at para 39.

¹⁵ *Ibid.*

¹⁶ *Mogale* at para 61-63.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ While these SAHRC recommendations are discussed extensively in the dedicated section of these comments a few examples include addressing issues around consent under African Customary Law; the DMPR publishing all Social and Labour Plans; and the DMPR specifying a ringfenced minimum Social and Labour Plan expenditure for mining companies.

2.2. Resisting industry pressure to dilute transformation, localisation and other developmental measures

20. The Constitution recognises the need for historical redress and enshrines substantive, not merely formal, equality. Section 9 (2) provides:

‘To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken’

21. This is also bolstered by the African human rights framework. Article 21 of The African Charter on Human and Peoples’ Rights to which South Africa is a state party not only authorises measures towards economic self-determination, the eradication of colonial economic domination and fair distribution of benefits of natural resource extraction but, in fact, requires state action in this regard. The following subsections are of particular significance:

‘1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.

....

5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.’

22. The mining industry and their representatives (such as the Minerals Council) have, however, engaged in a campaign to water down any obligations to transform the sector and promote localisations of the value chain (beneficiation). This has coincided with broader efforts to roll back even the mildest racial justice measures (e.g. employment equity, land reform etc), which have an unfortunate echo in the United States’ recent roll-back of all ‘Diversity, Equity and Inclusion’ (DEI) measures and endorsement of misinformation of a ‘white genocide’ in South Africa.²⁰ These efforts included a string of cases challenging the binding nature of the Mining Charter under Section 100 (2) of the MPRDA and the legality of

²⁰Rebuked by Trump but praised at home: How Ramaphosa might gain from US showdown *BBC World Service* (24 May 2025). <https://www.bbc.com/news/articles/c2e3z8v1rvlo>

provisions in the Mining Charter, which culminated in the courts declaring the Charter non-binding and a mere policy instrument in 2021.²¹

23. Unfortunately, as we will discuss under the heading 'The Mining Charter and Transformation' the Bill instead makes concessions to the position of the Minerals Council. This has not, however, satisfied the industry. The Minerals Council and business aligned commentators have instead gone on the offensive, publicly lambasting the Draft Amendment Bill as executive overreach that will deter foreign investment. In these theatrics and not-so-subtle threats, the industry and aligned commentator have resorted back to a time-honoured playbook of relying on doomsday claims to resist any regulation in the public interest, which was notably deployed during the negotiated transition to deter the African National Congress (ANC) from adopting redistributive policies.²²

24. The Department should not be distracted from pursuing the Constitutional imperative of transforming the mining sector in order to address the ongoing injustices arising from the colonial and apartheid past. Section 100 (2) should be amended to incorporate charter targets into regulations under the Act while community and worker ownership requirements should be retained and strengthened. Likewise, measures such as beneficiation (as proposed in amendments to Section 26) that are designed to break the neo-colonial economic order of Africa as a supplier of raw materials are a non-negotiable if we are to use our resources to reindustrialise (while decarbonizing) and create decent work.

25. [NOTE: I HAVE AN PARAGRAPH I WOULD LIKE TO ADD HERE ON THE BROADER INTERNATIONAL LEGAL OBJECTIVES. I WILL SEND SEPERATELY FOR YOUR CONSIDERATION]

²¹ *Minerals Council of South Africa v Minister of Mineral Resources and Energy and Others* 2022 (1) SA 535 (GP); *Chamber of Mines of South Africa v Minister of Mineral Resources and Others* 2018 (4) SA 581 (GP); <https://www.miningmx.com/news/markets/32592-hulme-scholes-gets-back-dmrs-mining-charter-case/>

²² One example is the reaction was the white-owned media reaction in 1991 to the idea of wealth-taxes to address apartheid disparities. H Klug *Constituting Democracy – Law, Globalism and South Africa's Political Reconstruction* (2000) at 128

3. PREAMBLE, DEFINITIONS AND OBJECTS

Preamble			
Section and current wording	MPRDA Coalition proposal	Draft amendment Bill wording	Discussion
The Preamble fails to recognise State's obligation to provide tenure security and redress to people subject to insecure tenure under apartheid and colonialism	<p>Insert the following sentence:</p> <p><i>Recognising the State's obligation in terms of the Constitution to provide tenure security or comparable redress to people whose tenure is insecure due to past racial discrimination</i></p>	Not addressed in Draft Amendment Bill [Bill does not amend Preamble]	The continued lack of recognition of security of tenure, in context where mining often occurs on communal land occupied by people with historically insecure tenure, is consistent with the DMPR's approach by which mining overrides land rights of the vulnerable in violation of the Constitution
Section 1: Definitions			
Section and current wording of MPRDA	MPRDA Coalition proposal	Draft amendment Bill wording	Discussion
None- MPRDA does not define artisanal miner	Insert definition of artisanal miner	<p>Addressed in Draft Amendment Bill which inserts the following definition:</p> <p><i>"Artisanal mining' means traditional and customary mining operations using traditional or customary ways and means, which includes</i></p>	The inclusion of a definition represents a step forward with the Draft Amendment Bill, being the first time legislative recognition is given to the sector. Some refinement would, however, increase its inclusiveness and relevance to the realities of the ASM sector.

		<i>the activities of individuals mostly using rudimentary mining methods, manual and rudimentary tools to access mineral ore, usually available on surface, or at shallow depths.”</i>	<ul style="list-style-type: none"> - Not limiting ASM to traditional and customary methods as some ASM uses machinery. - Not limiting it to surface and shallow given reality of artisanal mining underground that requires support and regulation. - Amend present reference to individuals excluding collective forms of ownership like co-operatives
<p>Present definition of ‘community’:</p> <p><i>‘community’ means a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law: Provided that, where as a consequence of the provisions of this act, negotiations or consultations with the community is required, the community shall include the members or part of the community directly</i></p>	<p>No proposed definition in November 2024 Coalition submissions but member organisations of the Coalition have emphasised.</p> <ul style="list-style-type: none"> - Danger of defining community as everyone in municipality diluting host/impacted community. - Danger of tying community exclusively to communal land ownership - Need to embrace all vulnerable and historically 	<p>Changes definition of ‘community’ to:</p> <p><i>‘a coherent, social group of persons within a metropolitan municipality or district municipality as defined in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), with interest or rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom or law’</i></p>	<p>Definition should include host communities who are defined by the direct impact of mining as these impacts are directly felt not only by communities who own the land on which mining occurs. We have encountered mining companies have excluded local community civic organisations and activists within sight of the mine on the basis that they are not the recognised landowner/s.</p> <p>The DMPR and Parliament should also restore the element of historically disadvantaged persons which the Bill removes. Without that element there is a vagueness</p>

<i>affect by mining on land occupied by such members or part of the community;</i>	disadvantaged groupings directly impacted by operation (doorstep/host communities as well as labour sending communities)		regarding who in society provisions around communities are designed to protect – the purpose of protecting the vulnerable is lost.
<p>Definition of historically disadvantaged persons in present iteration of MPRDA:</p> <p>'Historically disadvantaged person' means-</p> <p>(a) any person, category of persons or community, disadvantaged by unfair discrimination before the Constitution took effect;</p> <p>(b) any association, a majority of whose members are persons contemplated in paragraph (a);</p> <p>(c) a juristic person, other than an association, which-</p> <p>(i) is managed and controlled by a person contemplated in paragraph (a) and that the persons collectively or as a group own and control a majority of the issued share capital or members' interest, and are</p>		Draft MPRD amendment Bill deletes the definition of 'historically disadvantaged person'	<p>Corrective measures to empower historically disadvantaged persons is central to the constitutional vision of equality and the objectives and mechanisms in the MPRDA including but not limited to Section 100(2) [Mining Charter]. An act needs to define the category of persons it is empowering even if by reference to definitions in other legislation. In this regard we presume that the insertion of 'Black Person' defined in terms of the Broad-Based Black Economic Empowerment Act, 2003 is intended to replace 'historically disadvantaged person.' While this goes some way, it also excludes other forms of discrimination, for example the forms of discrimination faced by Black women.</p>

able to control the majority of the members' vote; or (ii) is a subsidiary, as defined in section 1 (e) of the Companies Act, 1973, as a juristic person who is a historically disadvantaged person by virtue of the provisions of paragraph (c) (i);			More concerning is that this exclusion come in an overall context of pressure on the SA government (both from the US and domestic and international corporations) to backslide from transformation measures
None (no definition of informal rights in present MPRDA)	<p>Insert following definition:</p> <p><i>"Informal Rights" means informal rights as defined in IPILRA.</i></p> <p>[IPILRA defines informal land rights as follows:</p> <p><i>"informal right to land" means(</i> <i>a) the use of, occupation of, or access to land in terms of(</i> <i>i) any tribal, customary or indigenous law or practice of a tribe;</i> <i>(ii) the custom, usage or administrative practice in a particular area or community, where the land in question at any time vested in(</i> <i>aa) the South African Development Trust established by section 4 of the Development Trust</i></p>	Not addressed in Draft Amendment Bill (no definition of informal rights)	Again, conveys an overall lack of prioritisation of community's land rights

	<p><i>and Land Act, 1936 (Act No. 18 of 1936);</i></p> <p><i>(bb) the government of any area for which a legislative assembly was established in terms of the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971); or</i></p> <p><i>(cc) the governments of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei;</i></p> <p><i>(b) the right or interest in land of a beneficiary under a trust arrangement in terms of which the trustee is a body or functionary established or appointed by or under an Act of Parliament or the holder of a public office;</i></p> <p><i>(c) beneficial occupation of land for a continuous period of not less than five years prior to 31 December 1997; or</i></p> <p><i>(d) the use or occupation by any person of an erf as if he or she is, in respect of that erf, the holder of a right mentioned in Schedule 1 or 2 of the Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of</i></p>		
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	<p>1991), although he or she is not formally recorded in a register of land rights as the holder of the right in question, but does not include(</p> <p>e) any right or interest of a tenant, labour tenant, sharecropper or employee if such right or interest is purely of a contractual nature; and</p> <p>(f) any right or interest based purely on temporary permission granted by the owner or lawful occupier of the land in question, on the basis that such permission may at any time be withdrawn by such owner or lawful occupier']</p>		
None (no definition of Interested and affected person in present MPRDA)	No coalition proposal in November 2024 submission in this regard [confirm]	<p>Draft amendment Bill inserts the following definition:</p> <p><i>“interested and affected persons’ means a natural or juristic person or association of persons with a direct interest in the proposed or existing prospecting or mining operation or who may be affected by the proposed or existing prospecting or mining operation”</i></p>	<p>The danger of this definition is that it limits organisation and solidarity. National community networks appear to be excluded as are civil society organisations both of whom are key to support (resourcing/capacitation/advice) for local communities to help level the highly unequal playing field especially with large mining companies. Further the environmental and socio-</p>

			<p>economic rights impacts of mining are matters of public interest</p> <p>Community networks, civil society organisations should be explicitly included in the definition</p>
None (as no definition of SLPs in present MPRDA)	<p>Insert following definition of 'Social and Labour Plans':</p> <p><i>Social and Labour Plans'</i> <i>means a document comprising of legally binding commitments with respect to the development of the areas in which they operate with an emphasis on host communities, labour sending communities and employees. Social and labour plans are a mandatory part of the licensing process for mining and production rights under the Act and no mining activity may commence without a Social and Labour Plan.'</i></p>	Not addressed in Draft Amendment Bill which does not add definition of SLPs.	The lack of a definition of SLPs conveys a low prioritisation for community development by the DMPR
Section 2: Objects of Act			
Section and current wording	MPRDA Coalition proposal	Draft amendment Bill wording	Discussion
None (security of tenure of holders of land rights who	Insert the following object:	Not addressed in Draft Amendment Bill which does	Section 25 (6) of the Constitution provides that:

tenure is insecure due to historic discrimination is not currently an object of MPRDA only security of tenure of mines)	<i>“Ensure security of tenure or comparable redress for people whose tenure is insecure due to past racial discrimination”</i>	not make security of tenure in line with Section 25 of the Constitution and IPILRA an object)	<p><i>‘A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.’</i></p> <p>In contradiction to the Constitution and IPILRA, security of tenure not currently an object of MPRDA – only security of tenure of holders of mining and prospecting rights is as per Section 2 (g) of the Act.</p> <p>The <i>status quo</i> thus remains which shows prioritisation of mining industry over land rights of historically disadvantaged communities, households and individuals.</p>
No direct object of substantive equality though substantive equality indirectly present in objects such as meaningfully expanding opportunities for historically disadvantaged persons to	<p>Insert the following object:</p> <p><i>‘Give effect to s9(2) of the Constitution by promoting the State’s duty to realise</i></p>	Not addressed in Draft Amendment Bill which does not add a standalone object of substantive equality)	The Constitutional Court has in the case of <i>Minister of Finance and Other v Van Heerden</i> ²³ affirmed that measures to advance historically disadvantage persons are not presumptively unfair and are instead required to

²³ 2004 (6) SA 121 (CC).

participate in industry (Section 2 (d)); ensure that holders of mining rights contribute towards the development of the areas in which they operate (Section 2 (i))	<i>substantive equality for all in South Africa'</i>		<p>fulfil the Constitutional right to substantive equality. To quote the majority judgment:</p> <p><i>'However, what is clear is that our Constitution and in particular section 9 thereof, read as a whole, embraces for good reason a substantive conception of equality inclusive of measures to redress existing inequality. Absent a positive commitment progressively to eradicate socially constructed barriers to equality and to root out systematic or institutionalised under-privilege, the constitutional promise of equality before the law and its equal protection and benefit must, in the context of our country, ring hollow.'</i>²⁴</p>
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4. FREE PRIOR INFORMED CONSENT AND PUBLIC PARTICIPATION

Overall recognition and adherence to consent requirement under Constitution, IPILRA, case law				
Issue	Status quo	MPRDA Coalition Proposal	Draft amendment Bill	Discussion
The mining legal framework needs to be harmonised to communities' right to	The wording of the MPRDA under Section 10 provides only for consultation of	Recognise the right to FPIC through a range of amendments proposed by MPRDA coalition (specific	No amendments to recognise the right to FPIC and MPRDA with IPILRA	As the November 2020 submission of the MPRDA Coalition states ' <i>Twenty years into</i>

²⁴ Ibid.

free prior and informed consent as per the Constitution, statute and case law.	<p>landowners and lawful occupiers on land subject to a prospecting right, mining right or permit under the Act. This is in apparent conflict with the Constitutional guarantee of security of land tenure and IPILRA requirement of consent to deprivation of communal land. The state still has the option of expropriate land should it view mining development on the land to be in the public interest.</p> <p>The Constitutional Court in <i>Maledu and Others v Itereleng Bakgatla Mineral Resources and Another</i> (“Maledu”)²⁵ held that the two Acts should be read in harmony and that consent under</p>	provisions detailed below in this table)		<p><i>the operation of the MPRDA, there is a growing body of evidence that points to its failure to respect the right of land rights holders to Free Prior and Informed Consent. The ongoing deprivation of communal land rights has resulted in the continuation of the colonial and apartheid practises of dispossessing indigenous communities of their ancestral land. This translates, in practise, into racial discrimination, as the communal and informal land rights of communities are routinely denied by the lack of legal protections in the MPRDA.</i>²⁹</p> <p>The Departments continued failure in the Draft Amendment Bill to align the MPRDA with communities</p>
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²⁵ 2019 (2) SA 1 (CC)

²⁹ MPRDA Coalition (note above) at 8.

	<p>IPILRA must still be obtained regardless of Section 10.²⁶ In <i>Baleni and Others v Minister of Mineral Resources and Others</i> (“<i>Baleni</i>”)²⁷, the high court went further in holding that no mining right could be awarded absent consent being obtain by rights holders under IPILRA.²⁸</p> <p>The evidence for the severe impacts faced by mining affected communities, including loss of heritage and ways of life, livelihoods, homes and multiple impacts on environmental health, can be found in the testimonies of impacted communities, in the reports of the High Level Panel on the Assessment of Key</p>			<p>rights under the Constitution and IPILRA renders the department complicit in the violation of communities’ rights.</p>
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²⁶ At paras 103-106.

²⁷ 2019 (2) SA 453 (GP).

²⁸ At para 84.

	<p>Legislation and Acceleration of Fundamental Change, the report on the National Hearings on the Underlying Socio-economic Challenges of Mining-affected Communities, and in numerous other reports by civil society organisations.</p> <p>The department and the mining industry has never accepted the principle of Free Prior and Informed Consent however, nor provided legislative or regulatory guidance on aligning consultation processes under the MPRDA with consent</p>			
Need to align objects and definitions of Act with consent				
Issue	Status quo	MPRDA Coalition proposal	Draft amendment Bill	Discussion
Need for preamble (which frames the act) to duties of state to ensure security of	Present preamble does not recognise state's duty regarding security of tenure	Insert recognition of state's duties to ensure security of tenure in preamble of the MRPDA	Not addressed in draft Amendment Bill	See above.

tenure in line with Constitution				
Definition and objects of Act – need to align with rights of tenure security and substantive equality	Present definitions and objects recognise neither communities rights of security of tenure nor substantive equality.	Align definitions of Act and objects with rights to security of tenure and substantive equality	Not addressed	See above.
Need for Section 10 of Act (Consultation of landowners and lawful occupiers) process for seeking consent of holders of land rights protected by IPILRA	Present Section 10 only provides for consultation of landowners and lawful occupiers with no process of seeking agreement in line with IPILRA	Amend Section 10 to	to provide for a process of seeking an agreement to give effect to the right to consent in respect of land rights protected by IPILRA.	See above.
Capacitation/levelling of negotiating playing fields				
Issue	Status Quo	MPRDA Coalition proposal	Draft amendment Bill	Discussion
Need for measures to level the playing fields given vast inequality between mining companies with their army of experts and communities	An absence of mandatory measures to level playing fields	Include measures to level the playing fields (for example giving the rights holders the opportunity to appoint an independent expert to facilitate the process and prepare an integrated report which must be completed prior to the decision whether to consent).	Not addressed in the Draft Amendment Bill	Inequalities in bargaining power and proposals for capacitation of communities have repeatedly been brought to the attention of the Department but remain unaddressed.
Opening Regional Mining Development and Environmental Committee (“RMDEC”) to public involvement				

Issue	Status Quo	MPRDA Coalition proposal	Draft amendment Bill	Discussion
Need to address the fact that the body adjudicating objections to mining applications is not transparent and inclusive of communities and civil society	No requirements for transparency and open RMDEC proceedings	make the proceedings of RMDEC open to the public and specifically interested and affected parties, and to require that the minutes and other documents of RMDEC be made available for public inspection.	Not addressed in Draft Amendment Bill	The body that hears initial objections to applications for rights under the Act remains opaque and inaccessible to the communities who experience the most significant impacts on their basic rights.
Currently community and holders of land rights have no input in the decision-making around transfers of mining rights which means no say in the company which will impact their environment	No requirement in Section 11 (1) of the MPRDA (transferability of mining rights) for consent or even consultation of landowner/rights holders and interested and affected parties	Amend Section 11 (1) of the MPRDA to require the written consent of the landowner/community/land rights holders and Interested and Affected parties.	Not addressed in Draft Amendment Bill	
Alignment of consultation requirements with FPIC				
Issue	Status Quo	MPRDA Coalition proposal	Draft amendment Bill	Discussion
Need to align all process for application for rights pertaining to mining with IPILRA requirement of consent	None of the sections of the MRPDA dealing with applications for rights under the act such as prospecting rights (section 16) and mining rights (section	Align all application clauses, for example for prospecting (section 16), and mining rights (section 22), as well as renewable application clauses to require consent.	Not addressed in Draft Amendment Bill	

	22) are aligned with the right to free prior and informed consent			
Need to align provisions pertaining to rights and obligations of holders of right with consent under IPILRA	None of the sections of the MPRDA dealing rights and duties of license holders e.g. of prospecting rights (section 19) and mining rights (Section 25) require respect for right to free prior and informed consent	align the clauses pertaining to the rights and obligations of rights holders to require consent	Not addressed in draft Amendment Bill	

4. RELOCATION AND RESETTLEMENT

Legislative framework to protect the rights of communities in resettlement and relocation				
Issue	Status quo	MPRDA Coalition proposal	Draft amendment Bill	Discussion
Communities, often in the former homelands' areas subject to communal land where mining often occurs, continue to face land dispossession to make way for mining often against the will of the community or the affected rights holders	<p>There is no coherent legislative framework protecting the rights of communities, households and individuals facing resettlement.</p> <p>There are only non-binding draft resettlement guidelines</p>	Amend the MPRDA to provide processes and standards to protect communities against the violation of constitutional and statutory rights in resettlement and, where applicable, in line with IPILRA	Not addressed in Draft Amendment Bill	

<p>in contrary to IPILRA. This leads to loss of home, livelihoods but also community and violation of cultural and religious rights. Consultation often only occurs with traditional leaders and compensation is often narrow and inadequate.</p> <p>Therefore, a number of constitutional rights are violated including:</p> <ul style="list-style-type: none"> - Dignity - Security of land tenure - Housing - Property - Culture 	<p>with many deficiencies over and above their lack of legal force:</p> <ul style="list-style-type: none"> - Do not address to economic and other harms of mining to land where resettlement or loss of land is absent. - Only apply to new mines and existing operations where expansion is envisaged and not where mining has already commenced and prior displacement has occurred absent adequate planning, mitigation, and compensation - No guidance on determining affected parties. 			
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	<ul style="list-style-type: none"> - No ringfenced financial provision for compensation - No methodology or standards for determining compensation for resettlement and other loss and damage 			
Amendments to existing provisions of Act relevant to resettlement to protect communities' rights				
Issue	Status quo	MPRDA Coalition proposal	Draft amendment Bill	Discussion
Need to align timeframes for consultation of lawful owners and occupiers (Section 10 of MPRDA) with timeframes for environmental impact assessments under the National Environmental Management Act ("NEMA"). ³⁰	Section 10 short timeframe not aligned to NEMA.	Amend timeframes in Section 10 to align with EIA public participation process	The Draft Amendment Bill does not address this issue and objections period remains 30 days.	Section 10's 30-day period to submit comments undermines rights of I&APs as will not at this stage be informed about impacts of project or mitigation measures. It is also not aligned with the timeframes under the Environmental Impact Assessment Regulations, 2014 under NEMA ("NEMA EIA Regulations"). ³¹ The

³⁰ Act No. 107 of 1998.

³¹ Chapter 2 (timeframes) read with Chapter 4 Part 3 (pertaining to full Scoping and Environmental Impact Reporting Process), and Chapter 6 ('Public Participation') of GNR 982.

				<p>timeframe for the full Scoping and Environmental Impact Assessment Process is ordinarily (in the absence of substantive revisions requiring further public input) is around 193 days from the application for EIA to the submission of the final report (the competent authority has a further 107 days to decide on the report). It is therefore over 6 months (often in practice longer) before a thorough and final environmental impact assessment has been completed and therefore communities within the 30-day period have grossly insufficient information.</p>
Resettlement plans and financial provision (where rights involve displacement) should be required in the application to prospect or mine	No requirement for resettlement plan and financial provision (where displacement is relevant) in clauses pertaining to applications for licenses under MPRDA	Insert Requirements for resettlement plans and financial provision as part of any application (if displacement is relevant / necessary) to be inserted into all Sections pertaining to	Not addressed in Draft Amendment Bill	

	e.g. prospecting rights (Section 16) and mining rights (Section 22)	applications for the different rights and permits under the MPRDA		
Need for exemption to the prohibitions of use of surface of land contrary to object of act to include communities' residential rights not limited to town planning schemes (to protect residential rights of communities)	Currently the exemptions to the prohibition of use of surfaces contrary to objects of act do not include communities' residential rights	Amend Section 53 (use of surface right contrary to objects of act) to include additional exemption for residential rights that are not limited to town planning scheme.	Not addressed in Draft Amendment Bill	
		Amend compensation clause (section 54) and Ministers' power to expropriate land for prospecting or mining (Section 55) to align with resettlement provisions as proposed in coalition submission (see below)	Not addressed in Draft Amendment Bill	Coalition has proposed a resettlement process and set of standards which require the amendment of other sections of the MPRDA such as Section 54.
Need for a coherent framework for displacement and resettlement				
Issue	Status quo	MPRDA Coalition proposal	Draft amendment Bill	Discussion
Communities facing displacement and resettlement lack protective statutory framework regarding	No section of current MPRDA devoted to displacement and resettlement planning	Insert a new dedicated section of the MPRDA to displacement and resettlement planning which addresses:	Proposal not addressed in Draft Amendment Bill	The failure to provide specific protections and processes for resettlement/displacement and fair compensation

both process and contents		<ul style="list-style-type: none"> - Objectives and contents of resettlement plans - Displacement and resettlement planning - Meaningful consultation in developing plans. - Principles and mechanisms for determining quantum of fair compensation and other support including expert and legal fees. - Requirement for applicants to make financial provision for displacement costs (physical, economic, other) - Monitoring and evaluation 		allows for widespread and systemic violations of communities' rights to dignity (Section 10), property (Section 25), housing (Section 26), socio-economic (Section 27) and environmental (Section 24) and other rights in the Bill of Rights and international human rights law to continue unabated.
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		<ul style="list-style-type: none"> - Independent grievance mechanism - Grant department power to order mines to retrospectively address inequities of no resettlement, and lack of/inadequate resettlement planning. - Access to information requirements (or amend Section 30 to require disclosure of resettlement plans, monitoring and evaluation, audit reports etc.) - Alignment of offences and penalties provisions of the act so non-compliance with 		
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		resettlement provision of MPRDA constitute offences with penalties		
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5. ACCESS TO INFORMATION, COMPLIANCE MONITORING AND ENFORCEMENT

Clear provisions on Mandatory and proactive disclosure to address communities' obstacles in accessing information				
Issue	Status quo	MPRDA Coalition proposal	Draft amendment Bill	Discussion
Overarching issue: Communities, Community-based Organisations and Non-Profit Organisations face enormous obstacles in obtaining access to the documents they require to realise their environmental and other Constitutional rights. Such obstacles are the direct result of mining companies' refusal to make	<p>Access to mining information is in addition to PAIA the following sections of the MPRDA:</p> <p>Section 30 is the provision in the act in relation to access to information by the public (Section 28 and 29 concern reporting to the regulator by the rights holder and minister's power to direct provision of</p>	The Coalition has proposed a set of amendments to the MPRDA to break down the barriers to access to information	<p>The Draft Amendment Bill does not include any of the reforms to address barriers to access to information proposed by the Coalition.</p> <p>The Draft Amendment has however changed the wording of provisions regarding prohibition of information by applicants/licence holders on the basis of</p>	The Draft Amendment Bill represents a missed opportunity to change a status quo in which most communities have very little information on the mining operation, its impacts and compliance.

<p>available key documents to interested and affected parties, and the failure of both the DMPR Information Officers, and the Regional Offices, to comply with the Promotion of Access to Information Act, 2000 (Act 2 of 2000) (PAIA) and even the DMPR's own PAIA Manual.</p> <p>Notably the South African Human Rights Commission has in its 2018 Hearing report on challenges of mining communities recommended the department to consider proactive disclosure (i.e. online databases of information)</p>	<p>information respectively). Section 30 provides for when the department <i>may</i> provide information they have received from applicants and rights holders but does not provide duties of disclosure.</p> <p>The only duty to disclose information in the MPRDA framework is the duty of mining rights holders to publish the approved (final) social and labour plan.</p> <p>The DMPR's PAIA manual provides a list of documents available on request (where PAIA is not required) and which includes the SLP, mining/prospecting rights, environmental management plans and authorisations etc. However there have been instances where officials have insisted</p>		<p>confidentiality namely Section 30 (2) and (3). A specific comment will be made on the interpretation of the wording (which is not a model of clarity)</p>	
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	on PAIA forms for documents on the list. In addition, the list excludes some important documents like compliance reports.			
“	No direct duty in the MPRDA on applicants to make automatically available the full application to all applicants. The NEMA EIA regulations do require that I&APs be furnished with the documents (e.g. scoping reports, EIAR etc.)	Amend MPRDA to place a direct obligation on all applicants for rights under the MPRDA to make available the full application for rights under the MPRDA to interested and affected parties, automatically.	Not addressed in Draft Amendment Bill	Direct obligations on mining companies to make available (as well as sanctions for not doing so) could go along way (together with online publication by the DMPR) to address the inequality in access to information that prejudices their participation during the licensing process.
	No duty on rights holders to automatically disclose the rights, the environmental authorisation and the full suite of licensing documents imposing conditions	Amend the MPRDA sections that set out duties of holders of rights and permits under Act to include the automatic disclosure to the public of the right and all conditions attached to it	Not addressed in draft amendment Bill	
	No database of rights conditions of rights and compliance status	A public, online database of rights issued by the DMPR,	Not addressed in the MPRDA amendments.	The DMPR has in essence ignored a directive of SAHRC and

	<p>documentation is publicly available.</p> <p>The SAHRC hearing report on mining communities (2018) directed as follows:</p> <p><i>'The DMR must ensure that all reports and documents, with the exception of strictly confidential information as determined by the DMR, are immediately made available to the public. The DMR must develop a dissemination strategy and should consider making this information available through the Open Data Portal initiative led by the Department of Public Service and Administration which seeks to improve access to information, data and services offered by government.'</i>³²</p>	<p>should be hosted by the DMPR, and must be made available for scrutiny to all interested and affected parties.</p>		<p>a recommendation on how to implement said directive.</p> <p>Amending the MPRD regulations to require (only final approved SLPs) be published by mining companies is grossly inadequate.</p> <ul style="list-style-type: none"> - Very narrow (only one document) - No proactive enforcement by the department - The directive was towards the DMR since as regulator it is the only repository of comprehensive licensing information
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³² SAHRC Hearing Report on Socio-economic Challenges of Mining Communities at 72.

6. ARTISANAL AND SMALL-SCALE MINING

Need for a permitting system for Artisanal mining that addresses realities of sector				
Issue	Status Quo	MPRDA Coalition proposal	Draft amendment Bill	Discussion
Current MPRDA does not contain a licensing process designed for artisanal mining	No provision	<p>section 5 of the MPRDA be amended to include an AMP, as part of the mining titles to which section 5 relates. This will allow the holders of AMPs to have the same statutory rights and entitlements as other mining title holders under the MPRDA.</p> <p>Insert a new Section 27B to Include a specific AMP that is like the mining permit but has distinct features. The new section should indicate a clear preference for co-operatives but should allow individual</p>	<p><i>Application for, issuing and duration of Artisanal mining permit</i></p> <p>27A. (1) <i>An artisanal mining permit may only be issued if-</i></p> <p>(a) <i>the mineral in question can be mined optimally within a period of two years; and</i></p> <p>(b) <i>the mining area in question does not exceed 1.5 hectares in extent.</i></p> <p>(2) <i>Any person who wishes to apply to the Minister for an artisanal mining permit must simultaneously</i></p>	<p>Many artisanal miners work informally and intermittently due to access to resources, weather, or equipment. A two-year timeframe is too short to be economically viable, especially if delays arise during licensing or environmental authorisation.</p> <p>- Implement a phased application system, where basic eligibility is confirmed first, before requiring costly compliance steps. Also, reduce or waive</p>

		<p>ownership under specific conditions such as their being resident in the community; the individual working the site themselves; no exploitative shareholding arrangements such as non-participating shareholders; and no individuals employed elsewhere or deriving income from other sources to prevent the system being abused by connected individuals to enrich themselves.</p>	<p><i>submit an artisanal mining environmental authorisation. as prescribed, and must lodge the application-</i></p> <p><i>(a) at the regional office in which the land is situated or on the designated application system;</i></p> <p><i>(b) in the prescribed manner; and</i></p> <p><i>(c) together with the prescribed non-refundable application fee.</i></p> <p><i>(3) An application for an artisanal mining permit must be accepted if-</i></p> <p><i>(a) the requirements contemplated in subsection (2) are met;</i></p> <p><i>(b) no other person holds a prospecting right, mining right, small-scale mining permit, artisanal mining permit or retention permit for the same mineral</i></p>	<p>fees for qualifying applicants from disadvantaged groups.</p> <p>- The section is silent on whether the state will provide technical support, legal assistance, or capacity-building to assist artisanal miners through the process.</p> <p>- Section 27A(3)(b), (c), and (d) disqualifies applicants if another permit exists in the same or adjacent area, or if any previous application has been accepted and not yet finalised. This may lock artisanal miners out of viable land, especially where large mining companies</p>
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			<p><i>and land;</i></p> <p><i>(c) the granting of a permit will not result in the applicant being granted more than one artisanal mining permit on the same or adjacent land; and</i></p> <p><i>(d) no prior application for a prospecting right, mining right, small-scale mining permit, artisanal mining permit or retention permit has been accepted for the same mineral on the same land, and which remains to be granted or refused.</i></p> <p><i>(4) If the Minister accepts an application, the Minister must notify the applicant, in writing, within 14 days to consult, in the prescribed manner, with the</i></p> <p><i>landowner, lawful occupier and any interested and affected party, and include the result of the consultation in the relevant environmental reports.</i></p>	<p>hold but do not actively use rights.</p> <p>- Section 27A(10)(b) states that the permit may not be transferred, ceded, let, sublet, alienated, disposed of, encumbered or mortgaged. It may be worth allowing limited transferability or cession, subject to approval, particularly for community-based mining cooperatives.</p>
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			<p>(5) <i>The Minister must, within 30 days of receipt of the application , issue an</i></p> <p><i>artisanal mining permit if-</i></p> <p>(a) <i>the requirements contemplated in subsection (1) are satisfied;</i></p> <p>(b) <i>an artisanal mining environmental authorisation is issued; and</i></p> <p>(c) <i>the applicant has the ability to comply with health and safety guidelines.</i></p> <p>(6) <i>The holder of an artisanal mining permit must submit the artisanal mining permit for recording at the Mineral and Petroleum Titles Registration Office within 30 days after the permit has been issued.</i></p>	
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			<p>(7) Any holder of an artisanal mining permits who wishes to apply to the</p> <p>Minister for the renewal of such permit must lodge the application-</p> <p>(a) at the office of the Minister in whose region the land is situated or on the</p> <p>designated application system.</p> <p>(b) in the prescribed manner; and</p> <p>(c) together with the prescribed non-refundable application fee.</p> <p>(8) An application for renewal of artisanal mining permits must-</p> <p>(a) state the reasons for the renewal; and</p>	
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			<p><i>(b) be accompanied by a report reflecting the extent of compliance with the conditions of the artisanal mining environmental authorisation.</i></p> <p><i>(9) The Minister must grant the renewal of an artisanal mining permit if the application complies with subsections (1) and (2) and the holder of the artisanal mining permit has complied with the-</i></p> <p><i>(a) terms and conditions of the artisanal mining permit, and is not in contravention of any relevant provision of this Act; and</i></p> <p><i>(b) conditions of the artisanal mining environmental authorisation.</i></p> <p><i>(10) An artisanal mining permit-</i></p>	
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			<p>(a) is valid for the period specified in the permit, which may not exceed a</p> <p>period of two years, and may be renewed for another period of two years;</p> <p>and</p> <p>(b) may not be transferred, ceded, let, sublet, alienated, disposed of,</p> <p>encumbered or mortgaged."</p>	
Need for process for identifying land suitable for artisanal mining	No provision in current iteration of the Act	The state would be tasked with ensuring that there is a broad-based community consultation process on all matters including but not limited to the identification of areas for ASM.	<p>'Designation of certain areas for small-scale and artisanal mining</p> <p>7A. In order to give effect to the objects referred to in section 2(c) and (d), the Minister</p> <p>may, by notice in the Gazette-</p>	Although the introduction of a dedicated artisanal mining permit is a step in the right direction, it is noticeable that there is no provision for consultation with the artisanal mining sector or the broader

			<p>(a) <i>after consultation with the Council for Geoscience, designate certain areas for black persons for small-scale and artisanal mining; and</i></p> <p>(b) <i>invite applications for small-scale and artisanal mining as contemplated in section 9A.'</i></p>	community in identifying land and, further, the government gazette is inadequate notice that is unlikely to reach a sizable proportion of artisanal miners.
Need for capacitation and support for ASM sector (to enable environmental compliance and development of sector)				
Issue	Status Quo	MPRDA Coalition proposal	Draft amendment bill	Discussion
Need for duty on state (potentially via levy on mining companies) to capacitate ASM sector to form co-operatives, adopt optimal technologies access markets etc	Artisanal mining not addressed at all in current iteration of MPRDA	A mechanism would be required to oversee consultation and environmental impacts assessments and provide training and resources to artisanal and small-scale miners.	Not addressed in draft amendment Bill	<p>Assistance in capacity building of artisanal miners would bring South Africa in line with the African continental human rights framework.</p> <p>The African Commission on Human and Peoples' Rights Reporting Guidelines on the African Charter state that Section 21 requires measures 'for regulation, monitoring</p>

				<p><i>and providing support for persons engaged in artisanal and small-scale mining in applying minimum environmental, health and safety standards, as well as steps taken to formalize the sector.</i>³³</p> <p>Further, artisanal miners are entitled to safety measures, other protections and that further the state should capacitate them in 'safeguard[ing] against environmental damages and health hazards,'³⁴</p>
Need for state to support ASM with environmental management so that environmental requirements not weaponised against the sector	Artisanal mining not addressed at all in current iteration of MPRDA	"	<p>Not addressed in Draft Amendment Bill.</p> <p>The Draft Amendment Bill invests ASM permit applicants and holders with environmental obligations: It provides for an artisanal mining environmental authorisation [Section 27A (5) (b),</p>	<p>As stated above, this support is provided for in commentary by the African Commission on Human and Peoples Rights.</p> <p>The lack of provision for environmental</p>

³³ African Commission on Human and Peoples Rights State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and the Environment at 14-15. <https://achpr.au.int/sites/default/files/files/2021-05/statereportingguidelinesandprinciplesonarticles21and24eng.pdf>

³⁴ African Commission on Human and Peoples Rights *State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and the Environment* at 23. <https://achpr.au.int/sites/default/files/files/2021-05/statereportingguidelinesandprinciplesonarticles21and24eng.pdf>

			and (8) the latter which makes compliance with environmental authorisation a condition of renewed permit BUT provides NO support mechanism for the sector	capacity building is concerning given the hostile rhetoric of state officials and the events in Stilfontein.
Imperative of promoting gender equity in the ASM Sector				
Issue	Status quo	MPRDA Coalition submission	Draft amendment Bill	Discussion
Need to ensure that ASM serves interests of community as a whole: this requires gender equality and an emphasis on broad-based community benefit	ASM not addressed in present MPRDA	Include principles for AMPs including measures to promote the participation of women and other marginalised groups including gender parity requirements, as well as the objective of broad-based community benefit.	Not addressed in draft Amendments	There is no overarching vision in the Draft Amendment Bill of an ASM sector that promotes substantive equality and social justice. Nor are there principles, rules, and/or mechanisms to promote this.
Need to decriminalise ASM sector				
Issue	Status Quo	Coalition position/SAHRC Directive (if any)	Draft amendment Bill	Additional comment

<p>The Stilfontein Massacre represents the logical conclusion of a militarised, punitive, and criminal law-based response to informal mining that is in large measure a response to mining companies and the state shirking their obligations to rehabilitate mines and invest in local economic development to provide livelihoods post-mining</p>	<p>No specified offence and penalties for illegal mining</p>	<p>[a draconian militarised approach harms vulnerable sectors of society and fails to deal with the underlying causes and fails to promote sustainable development of artisanal mining]</p>	<p style="text-align: center;">21</p> <p>5. Section 5A of the principal Act is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading:</p> <p style="padding-left: 40px;">"Illegal prospecting and mining activities";</p> <p>(b) by the substitution for the words preceding paragraph (a) of the following words:</p> <p style="padding-left: 40px;">"No person may prospect for or remove, mine, conduct [technical co-operation operations,] reconnaissance operations, [explore for and] produce any mineral [or petroleum] or commence with any work incidental thereto on any area without—";</p> <p>(b) by the substitution for paragraph (a) of the following paragraph:</p> <p style="padding-left: 40px;">"(a) an environmental authorisation in terms of National Environmental Management Act, 1998 (Act No. 107 of 1998) as amended;"</p> <p>(c) by the substitution for paragraph (b) of the following paragraph:</p> <p style="padding-left: 40px;">"(b) a reconnaissance permission, prospecting right, permission to remove, mining right, [mining permit] small-scale mining permit, artisanal mining permit [,] or retention permit, [technical co-operation permit, reconnaissance permit, exploration right or production right,] as the case may be;"</p> <p>Insertion of section 5B and 5C in Act 28 of 2002</p> <p>6. The following sections are hereby inserted after section 5A of the principal Act:</p>	<p>The Sections 5A-C together with the escalated offences and penalties represent a regressive measure that undermines the progress of having a licensing system for artisanal mining as:</p> <ul style="list-style-type: none"> - The amendments suggested as per 5A with the insertion of 5B and 5C of opens the floodgates for further criminalization of the activities of ASM. - the inevitable time lag in onboarding a new permitting system, the existing problem of lack of capacity in the DMPP, and the lack of strong guarantees of capacitation and notice and the narrowness of the scope of the permits make it a near inevitability that much
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				<p>of the sector will need to mine without a permit. Even artisanal miners who are aware of the system and apply may well find themselves unable to wait for the permit to be issued before mining, unless and until the department ensures a swift turnaround time.</p> <ul style="list-style-type: none"> - Furthermore 5A(b) add further barriers to access to the extent that it adds more red tape to the process and creates further bureaucratic structures which further -excludes the Black working class. - 5C needs to further outline what is meant by documentation and how this would operate in the informal sector - the penalties (up to 10 years imprisonment are highly draconian
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7. GENDER EQUALITY

Need for gender transformation requirements to be in clearly binding legislation and regulations				
Issue	Status Quo	MPRDA Coalition proposal	Draft amendment Bill	Discussion
Overall need for sanctions for non-compliance with transformation. Especially the case with neglected area of gender transformation	No binding transformation standards (see comments regarding mining charter and compliance/enforcement)	See comments regarding mining charter and compliance/enforcement	“	“
Need for concrete mechanisms for centring women's interests				
Issue	Status Quo	MPRDA Coalition proposal	Draft amendment Bill	Discussion
Need for MPRDA and regulations to provide safeguards in processes that take into account inequality of power along gender lines.	No specific measures to ensure inclusion of women's interests in decision-making processes	<p>The Coalition has proposed the MPRDA include</p> <ul style="list-style-type: none"> - Provide for a platform to support efforts of women in communities and sector to advocate for interests. - Require thresholds for 	Not addressed in amendments	<p>Women bear the greatest burdens of mining environmental impacts, loss of land and the mining industry remains male dominated. Their interests are sidelined in decision-making around mining.</p> <p>Addressing this issue would also bring South</p>

		<p>participation of women and persons in vulnerable categories in the overarching strengthened consent and consultation processes under the MPRDA the Coalition calls for</p>		<p>Africa in line with African human rights standards. The African Commission on Human and Peoples Rights have interpreted the Charter as requiring 'Legislative provisions which ensure equal representation of women in legislative and decision-making fora and consultations.'³⁵</p> <p>Yet the MPRDA and regulations contain little in the way of supportive measures for supporting organisation of women and ensuring their particular needs and priorities are not overlooked in licensing and other decision-making around mining.</p>
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³⁵ African Commission on Human and Peoples Rights State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and the Environment at 14. <https://achpr.au.int/sites/default/files/files/2021-05/statereportingguidelinesandprinciplesonarticles21and24eng.pdf>

				An opportunity to rectify this gap is being missed.
Protection of women's land and housing rights				
Issue	Status quo	MPRDA Coalition proposal	Draft amendment Bill	Discussion
Women first to lose their housing and land rights (e.g. to agricultural land they work) in resettlement processes	No present mechanisms (there is not even a legally binding set of rules and procedures governing resettlement and relocation)	Women should have mechanisms to allow for compensation if they head a household and not be sidelined by male members of the household or community. Alternatively, the ability to receive compensation should be mitigated and controlled to allow the bona fide party to receive benefits such as in the instance of historically owned houses (like in the instances of the Upgrading of Land Tenure Rights Act 6 of 2021).	Not addressed in amendments	
Requirements for social programmes targeted at women				
Issue	Status quo	MPRDA Coalition Proposal	Draft amendment Bill	Discussion

Local economic development projects and education/training opportunities specifically targeted at women are seldom found in SLPs	MPRDA does not require projects targeted at women	<p>The coalition has called for:</p> <ul style="list-style-type: none"> - The MPRDA should require a designated and meaningful percentage of SLP projects to be specifically provided for women. - MPRDA should require positive measures and minimum participation requirements in training and education opportunities including that target at communities 	Not addressed at all in Bill	
Need for sanctions for non-compliance with gender (and other transformation requirements)				
Issue	Status quo	MPRDA Coalition proposal	Draft amendment Bill	Discussion
Overall need for sanctions for non-compliance with transformation.	Dealt with in comments dealing with mining charter and compliance/enforcement	“	“	“

8. SOCIAL AND LABOUR PLANS

Need for Act to define SLPs				
Issue	Status Quo	MPRDA Coalition proposal	Draft Amendment Bill	Discussion
<p>The MPRDA does not provide a definition of Social and Labour Plans. The lack of a definition in the Act:</p> <ul style="list-style-type: none"> Is contrary to the imperative of defining instruments in legislation which is important due to the greater level of broad-based participation required in the lawmaking process (vs regs and guidelines) and also protects regulations from being challenged as ultra vires (not authorised by the 	No definition of SLPs in the MPRDA	<p>The Coalition proposed the following definition that captures their binding nature and who is meant to benefit. This is important as we have encountered SLPs that exclude key beneficiaries in particular host communities. e.g. SLPs in geographically dispersed municipalities that do not focus on the host community (e.g. projects primarily in town centre)</p> <p><i>‘...means legally binding commitments with respect to the development of employees, contract employees, and affected communities (comprising of host and labour sending communities). Social and labour plans once approved have the status of license conditions. Social and Labour Plans and are a</i></p>	Not addressed in amendments (though there is more guidance on SLPs than previously as will be shown below)	

<p>MPRDA) by mining companies seeking to avoid sanctions for non-compliance</p> <ul style="list-style-type: none"> Creates impression that they are not a high priority. The colonial and apartheid patterns of extraction and exploitation continue as the Black and marginalised host communities living closest to the impacts still derive the least benefits from mining 		<p><i>requirement for mining and production rights under the Act.'</i></p>		
Need to define objectives in the MPRDA				
Issue	Status Quo	MPRDA Coalition Proposal	Draft Amendment Bill	Discussion
<p>MPRDA does not provide the purpose of SLPs. While the finer details should be left to regulations, the basic objectives, content, and fundamental process requirement as well as all substantive rights and duties should be in the</p>	<p>Objectives of SLPs (Section 2) not explicitly listed in legislation only in regulations. Two of the regulations' objectives are listed in MPRDA but not connected to SLPs</p>	<p>Place SLP as found in Regulation 41 in the MPRDA (and supplement objectives) as a section in a short new chapter of the Act entitled 'Social and Labour Plans'</p>	<p>Amends objects so that 2 (i) reads as follows: 'Ensure that holders of mining rights contribute towards the socio-economic development through the</p>	<p>Act has included SLPs in objects but only one object listed</p>

primary legislation (i.e. the MPRDA) that has gone through the democratic law-making process	<p>The Regulations list three objectives</p> <ul style="list-style-type: none"> - Promote employment and advance the social and economic welfare of all South Africans - Contribute to the transformation of the mining industry; and - Ensure that holders of mining rights contribute towards the socio-economic development of the areas in which they are operating as well as labour sending areas 		implementation of social and labour plans in areas in which they are operating, including labour sending areas'	
Need to ensure objectives of SLP include ensuring post-mining economic development. Need a legislative mandate	Only addressed in regulations under measures to address downscaling and retrenchment. However no clear	Insert additional object of SLPs in the Act: 'Promote pro-active and participatory planning throughout the mining operation to ensure a just transition to a	Not addressed in Draft Amendment Bill.	Not addressed

	objective for local economic development that is participatory even there.	viable post-mining local economy that includes alternative skills for employees and communities as well as investment in viable economic sectors'		
Need for act to give guidance on content of SLPs				
Issue	Status quo	MPRDA Coalition proposal	Draft amendment Bill	Discussion
No content requirements for SLPs are in the MPRDA and only in the Regulation 46 and Guidelines.	No guidance in MPRDA on what SLPs must contain	We proposed the MPRDA should import the content requirements from regulations to a new section entitled 'content of Social and Labour Plans' in a new specific chapter of the Act entitled 'Social and Labour' plans. Further, we proposed some changes to what currently in regulations to fill gaps we have identified (see below in these comments).	The amendments do not address the lack of legislative guidance on the content of SLPs	The lack of guidance on the content of SLPs in the Act itself presents a problem This is a problem because the lawmaking process affords more scope for input by communities and workers who SLPs are meant to benefit. The absence of content guidance in the Act and Draft Amendment Bill, coupled with failures to address other identified challenges around

				SLPs also suggest low prioritisation of SLPs and community development.
<p>Need to address some gaps in the human resources/skills development section of SLPs:</p> <ul style="list-style-type: none"> - Include a basic statement of required content of human resources development/skills development plan in the Act itself - Specify that communities should benefit as well as workers. - Should be required to offer that enable employment outside of mining 	<p>HRD/Skills development and all other content requirements of SLPs left <i>entirely</i> to the regulations with no guidance in Act.</p> <p>Regulations do not explicitly require host and labour sending communities to benefit from skills development, nor are there requirements to not confine programmes to education and skills required by the mining operations</p>	<p>Human resources and skills development programmes for both employees and community members to advance objectives which include race and gender transformation of the work force, career development, alternative sources of livelihoods, and skills development designed to equip workers and communities to work in a post-mining economy in line with the imperative of a just transition</p>	<p>Amendments do not address any of these issues, leaving all the content to regulations.</p>	
<p>Need to specify that SLPs include projects designed to assist in building viable local economic sectors for workers and communities that are not dependent on mining in long term.</p>	<p>While the regulations require SLPs to include measures to address downscaling and retrenchment there is not mention of this in current MPRDA</p>	<p>The MPRDA Coalition proposed the following provision:</p> <p><i>'(i) Socio-(iv) Projects involving investment and support by rights holders towards setting up industries whose long-term</i></p>	<p>Amendments do not address any of these issues, leaving all the content to regulations.</p>	

	<p>and even regulations have important gaps</p> <ul style="list-style-type: none"> - No concrete requirement for measures to create local industry/sectors that can outlast mining. 	<p><i>viability is not dependent on mining activity.'</i></p>		
<p>Currently the process of addressing socio-economic issues around downscaling and closure excludes communities, is not transparent, and is not occurring early enough in operations. The MPRDA should enhance the current provisions regarding downscaling and retrenchment to promote proactive and participatory planning for a post-mining economy. In particular the following principles:</p> <ul style="list-style-type: none"> - Proactive planning to realise a viable and inclusive post- 	<p>Not addressed in current act (nor regulations)</p>	<p>The following subsections were proposed by the Coalition to address these issues:</p> <ul style="list-style-type: none"> (i) <i>Proactive planning and measures for downscaling and retrenchment that commence from inception of the mining operation and designed to realise a viable and inclusive post-mining economy for host communities and employees</i> (ii) <i>Planning is inclusive with</i> 	<p>Amendments do not address any of these issues, leaving all the content to regulations.</p>	

<p>mining local economy.</p> <ul style="list-style-type: none"> - Future forums must be opened to include communities, civil society etc. 		<p><i>future forums to be established comprising of representatives of labour; all interested and affected parties including but not limited to independent community organisations; civil society organisations; local government and representatives of relevant government departments identified in regulations</i></p>		
Public participation and access to information				
Issue	Status quo	MPRDA Coalition proposal	Draft amendment Bill	Discussion
<p>There is a lack of broad-based community participation the various processes of designing, reviewing, and reporting back on SLPs. SLPs are largely documents of municipalities and mining</p>	<p>The act does not require specific and appropriate participation processes for SLPs and there are none in the regulations.</p>	<p>The Coalition has proposed a new provision of the MPRDA to address this:</p> <p><i>(1) The Minister shall in the regulations pursuant to this act enact tailor-made participation processes that</i></p>	<p>The lack of fit for purpose SLP public participation processes and standards is not addressed at all in the draft amendments</p>	<p>An opportunity is being missed to provide guidance on the public participation process for design, review and progress reports</p>

<p>consultants. Lack of access to information, short and limited notice, confining participation to insiders approved by Mines are some of the problems. Underlying this is a lack of a tailor-made SLP participation processes for</p> <ul style="list-style-type: none"> • Development of first SLP for new mining operation • Every 5 year 'review' of SLP (assessment of compliance and formulation of SLP commitments for next 5 years) • The three times a year public meetings on progress of SLPs 		<p><i>cater to the specific requirements of</i></p> <ul style="list-style-type: none"> <i>(a) The formulation of a Social and Labour Plan as part of the initial mining right application process for a new operation</i> <i>(b) The five-yearly review of Social and Labour Plans and development of five-year iterations of the Social and Labour Plan</i> <i>(c) Public meetings held three times a year to update communities and other stakeholders on the progress of the Social and Labour Plan and provide for feedback and input by communities and other stakeholders</i> 		<p>on SLPs. At present there are several uncertain aspects including what documents communities are entitled to access and when (e.g. draft SLPs), the need for initial meetings (pre-draft) to frame projects, support to communities to participate on an equal footing, the inclusivity of consultation, aligning the SLP and IDP processes in a transparent manner, gender representivity etc.</p>
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<p>The need for the MPRDA to provide a basic public participation framework and standards for SLPs</p>	<p>The MPRDA does not include guiding principles for the making of regulations on SLP processes</p>	<p><i>The Coalition proposed including in the MPRDA a number of overarching principles with which SLP processes must adhere to. These include:</i></p> <ul style="list-style-type: none"> - <i>Opportunity must be given to communities and employees to shape the content of SLPs prior to first draft.</i> - <i>Inclusivity and self-determination (diversity of groups and not just traditional leaders and the community forum recognised by the mine. Independent civics, civil society organisations must be included)</i> - <i>Process must promote gender parity and require gender representivity.</i> - <i>Adequate notice tailored to the ways in which local community receive information and sufficient time before meetings.</i> - <i>Capacitation to assist in inputting prior to meetings.</i> - <i>Public meetings in sufficient number of areas to enable all in community to participate.</i> - <i>All materials required to participate to be shared</i> 	<p>The lack of fit for purpose SLP public participation processes and standards is not addressed at all in the draft amendments</p>	
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		<p><i>enough time prior to meetings to prepare</i></p> <ul style="list-style-type: none"> - <i>Predominant language of community used at meeting and translation.</i> - <i>Meaningful engagement and not merely information sessions require Sufficient time for communities and employees to make inputs and for company to respond.</i> - <i>Outcomes must meaningfully reflect inputs.</i> - 		
<p>Lack of access to information and no proactive disclosure by DMPR.</p> <p>In practice communities are unable to access the information/documentation required to hold mining companies accountable for their obligations. The Human Rights Commission recommended the DMPR explore proactive disclosure as PAIA in practice frustrates access to information. The DMPR only partially responded</p>	<p>Not addressed in current MPRDA</p>	<p>The Coalition has proposed:</p> <ul style="list-style-type: none"> - Proactive disclosure of a comprehensive set of mining licensing and compliance information by DMPR (i.e. pertaining to SLPs and environmental obligations/performance) - Include in the MPRDA (and not just regs) a duty on mining companies to publish comprehensive in as duty in the Act and not just regulations 	<p>Not addressed in Draft Amendment Bill.</p>	<p>Access to information issues persistently raised by MPRDA Coalition, communities and civil society as well as SAHRC (see final section of comments) remain unaddressed. This indicates a low prioritisation of transparency by the DMPR.</p>

by requiring companies to in regulations make approved SLPs public. This however leaves it in hands of mining and in practice there are still mining companies that refuse. Secondly approved SLP is very narrow and excludes key documents including drafts of SLPs to input on, annual compliance reports, reports of department inspections etc. The same challenges apply to environmental information so a comprehensive and proactive system of disclosure of mining licensing information led by government is required.				
Compliance and enforcement				
Issue	Status quo	MPRDA Coalition proposal	Draft amendment Bill	Discussion
Clearly Binding nature of SLPs	Duty of mining rights holder under current wording of Section 25 (2) (f) to comply with SLP	Clearly binding nature of SLPs one of strong points of existing framework so coalition has not proposed changing this wording just making it more concrete	Language of Section 25 (2) (f) has changed to 'implement SLP'	We are concerned that this new language might weaken perception of SLPs as

		with clearer duties and accountability mechanisms through other provisions		binding. A duty to comply more clearly communicates that this is a matter of legal compliance
<p>Currently there are gaps in Act around questions of review and amendment of SLPs that create room for companies to argue against accountability for non-compliance:</p> <ul style="list-style-type: none"> - Neither act nor regulations specify when in 5-year SLP cycle obligations are due and enforceable - No explicit prohibition on companies repackaging old unfulfilled SLP projects as new project in next 5-year cycle (kicking the can) - No requirement for community consultation in amendments 	Not addressed in current MPRDA	<p>The MPRDA Coalition proposed a new clause 'amendment of social and labour plans to close these loopholes:</p> <p>(a) <i>All obligations under the 5-year cycle of the SLP mature at the end of the cycle and the Minister shall not consider any amendments pursuant to Section 102 of the MPRDA that would have the effect of deferring obligations to the next 5-year cycle</i></p> <p>(b) <i>In accordance with companies' duties to secure their financial provision for the Social and Labour Plan under section...of the MPRDA as amended entitled 'Financial provision' the Minister shall not consider any requested amendments to the SLP to reduce the financial commitment of the SLP as long as the mining right remains in force and no</i></p>	Not addressed in the Draft Amendment Bill beyond requiring the review of the SLP every five years	

- No limits to timing and content of amendments		<p><i>closure certificate has been issued</i></p> <p><i>(c) Mining companies are required to consult communities in the amendment process and the regional stakeholders forum shall oversee the process and provide a recommendation to the Minister</i></p> <p><i>(d) All approved amendments shall be published by the rights holder in accordance with its duties specified in Section 25 of the MPRDA as amended'</i></p>		
Need for law to be more explicit that SLP obligations continue regardless of status e.g. care and maintenance until a closure certificate is issued	A gap in law as it stands		<p>Amendments address by adding to duty to implement SLP – Section 25 (2) (f):</p> <p><i><u>'Implement the approved social and labour plan despite the operational status of the mine...'</u></i></p>	A positive intervention by the regulator which should be retained.
A role for communities in compliance monitoring and enforcement with the Act. This is not a specific SLP issue but applies to	No formal role for local communities. DMPR in practice tends to ignore reports of non-compliance from	MPRDA Coalition have proposed regional multistakeholder compliance/oversight bodies to include communities and civil	Not addressed at all in proposed amendments.	Exclusion of communities persists.

environmental and other obligations	communities even when they have taken trouble to monitor performance on the ground and compile findings.	society organisations as well as other role players.		
Need for clear, sufficient and ring fenced SLP budgets				
Issue	Status quo	MPRDA Coalition Proposal	Draft amendment Bill	Discussion
Companies do not commit enough to SLP financial provisions and what is committed is not required to be ring-fenced	Issues of minimum SLP spend and securing financial provision (against changes in commercial fortune of company) not addressed in current act and regulations	<p>The MPRDA Coalition has proposed a new section of the Act entitled ‘financial provision of Social and Labour Plans’ to address key challenges we have observed.</p> <p><i>‘Financial provision of Social and Labour Plans</i></p> <p>(1) <i>All rights holders are required to make arrangements for securing a financial provision in order to guarantee the fulfilment of the SLP in full regardless of the actual performance of the company</i></p> <p>(2) <i>The Minister shall via regulations develop and publish a formula for ensuring that companies’ financial provision for the prescribed Social and Labour Plan is</i></p>	Not addressed in draft amendment bill	

		<p><i>commensurate with its resources and the needs of employees, host and labour sending communities</i></p> <p><i>(3) That formula shall</i></p> <p><i>(a) Be based on projected turnover (not profits) of the company</i></p> <p><i>(b) Be based around a 5% range of projected turnover</i></p> <p><i>(c) Will draw an appropriate balance between allocation of the financial provision for human resources development, local economic development, downscaling closure and all other required content areas based on circumstances including the needs of employees, the needs of communities and other relevant factors</i></p> <p><i>(4) The financial provision must be secured via vehicles identified by the Minister in regulations</i></p>		
The securing of financial provision so SLP expenditure not cut during commercial downturns	Not addressed in current act and regulations		Not addressed in draft amendment Bill	

etc. Law governing winding up etc. also needs to be aligned to ensure SLPs and environmental obligations are ring fenced against claims by creditors.				

9. TRANSFORMATION & THE MINING CHARTER

Issue	Status quo	MPRDA Coalition proposal	Draft amendment Bill	Discussion
Need for binding transformation requirements	Section 100 (2) of MPRDA provides for the Minister to develop a Mining Charter for broad-based black economic empowerment but courts has declared the mining charter non-binding	The MPRDA Coalition has called for S100 (2) to be amended to provide for legally binding transformation standards to be contained in regulations	The bill addresses this not by legislating transformation requirements but by adding by conferring in new section 100 (3) discretion on the Minister to impose license conditions in line with relevant codes and regulations with respect to BEE ownership, procurement, supplier and enterprise development, human	Transformation of a mining economy that remains in few and disproportionately white hands is a historical constitutional imperative and should not be left purely to ministerial discretion which may be relaxed especially as the industry frequently issues threats of withdrawing investment against measures requiring transformation

			<p>resources development, employment equity and mine community development.</p> <p>100 (4) gives the Minister the power to amend and update the housing and living conditions standard for the minerals industry, codes of good practice for the minerals industry as well as the BEE empowerment elements</p>	<p>or any additional obligations in the public interest as can be seen in the flurry of media activity from the industry, neo-liberal parties like the Democratic Alliance and other aligned interests.</p>
Need for offences and penalties for non-compliance with transformation requirements	No specific offences and penalties for non-compliance with charter in current MPRDA and the courts has declared charter under 100 (2) non-binding	The MPRDA Coalition has called for specified penalties for mining license holders that fail to comply with the legislated charter commitments	The Draft Amendment Bill 'indirectly' does make non-compliance with the Charter an offence since compliance with the charter elements via section 100 (3) (b) is a requirement of Section 25 and non-compliance with Section 25 is an offence under the amended Section 98 (a) (i). The penalty as per the amended 99 (a) is up to 10% of person/right holders SA	It represents progress that the Bill is designed to allow for steep penalties for non-compliance with charter. It would be more robust if Charters were explicitly given the status of regulations/incorporated into the existing MPRD regulations.

			turnover and exports in their preceding financial year and up to 10 years imprisonment.	
Need to retain, strengthen, and legislate community (and worker) ownership for truly broad-based empowerment	<p>The 2017 and 2018 iterations of the Mining Charter represented progress in allocating percentages of the BBBEE 30% share to communities and employees. The 2017 Charter required a minimum of 8% to communities and employees each while in the 2018 Charter that was reduced to a 5% carried interest each.</p> <p>However, since as stated above the courts have declared the Charter non-binding and ownership distribution requirements ultra vires the status quo is no required community ownership share.</p>	<p>The Coalition has proposed both incorporating the community and worker ownership requirements into binding statutory transformation requirements and members have called for increasing the share of BBBEE to be allocated to communities and employees each since the economically marginalised and workers rather than a minority of businesspeople should be the primary beneficiaries of any empowerment that is broad based.</p>	<p>The Bill regresses from the 2017 and 2018 iterations of the Mining charter by not mentioning any requirements for community and worker ownership as part of the BBBEE share.</p> <p>This is a setback since part of the Mineral Councils legal challenge was that requiring allocations of the Charter BEE share was ultra vires/not authorised [confirm] so the community share is also in danger.</p> <p>Further, in practice community shares are common through vehicle of trusts controlled by traditional leadership and not characterised by any</p>	

			transparency, accountability and broad-based development on ground and documented and alleged instances of theft and corruption. A participatory and transparent vehicle for community ownership with clear objectives, mandates etc. should be required by the MPRDA.	
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10. ANALYSIS OF WHETHER DRAFT AMENDMENT BILL HAS IMPLEMENTED KEY DIRECTIVES AND RECOMMENDATIONS OF SAHRC

Social and Labour Plans				
Issue	SAHRC finding	SAHRC recommendation/directive	Addressed in draft amendment Bill?	Score ³⁶
Need for systematic review of SLP framework		DMPR directed to amend the regulatory framework governing SLPs, to consult affected communities, local	Not addressed in draft amendment Bill	?

³⁶ The following symbols are used: A V signifies where the draft Bill comprehensively and satisfactorily addressed the directive/recommendation; A ? signifies where the Bill has addressed the directive/recommendation but in a very limited/unsatisfactory manner; and a x signifies where the draft Bill (or preceding legislative/policy measures) has not in our view addressed the directive/recommendation at all.

		government (SALGA), mining companies and other stakeholders and report to SAHRC on how it will conduct the review and on its public participation process. ³⁷	Limited review occurred but only via amendments to the regulations do not act and limited online public participation (during COVID). ³⁸ Many directives regarding procedural and substantive reforms of SLPs not addressed Unclear if DMR reported back to SAHRC	
Gender responsiveness of SLPs		Review must assess current SLP framework in terms of its gender responsiveness. ³⁹	Not addressed in the content of the draft amendment Bill or the 2020 amendments to the regulations	×
Need for an adequate framework to guide and guarantee adequate community consultation while harmonising this process with the consultation of		Review must determine extent of consultation and municipalities, and this consultation should be legislatively mandated to be responsive to local socio-economic context. ⁴⁰	Partially addressed in 2020 amendments to the regulations as consultation of communities and municipalities required in the development (for new operations) and five	×

³⁷ SAHRC *Hearing Report on Socio-economic Challenges of Mining Communities* at 59.

³⁸ Regulations 40-46C of the MPRD Regulations as amended.

³⁹ Ibid.

⁴⁰ Ibid.

<p>municipalities regarding IDPs.</p>			<p>yearly reviews of SLPs but</p> <ul style="list-style-type: none"> - No clear consultation processes and standards specified (only refers to EIA regulations under NEMA governing consultation process for development of SLP for new mining right application. But EIA regulations do not speak to notice, access to information, incorporation of inputs as they relate to SLPs specifically and are silent about content areas of SLPs like local economic development and alignment with municipal IDPS etc. 	
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			<p>MPRDA amendments do not assist in providing</p> <ul style="list-style-type: none"> - Standards guiding consultation of communities, municipalities and how the two process align - Making meaningful consultation a requirement for approval of mining right and its retention 	
Need for clear ring-fenced minimum contribution towards SLP projects	<i>'DMR should define the minimum amount of financial contribution towards SLP projects. This amount must be ring-fenced.'</i> ⁴¹	The amendment review process must include the explicit consideration of the introduction of prescribed and ring-fenced financial contributions by mining companies towards the implementation of SLPs. ⁴²	No prescribed ring fenced minimum financial contributions for SLPs in draft amendment Bill or 2020 amendment regulations	×
Amending SLPs only require written consent of minister and may be applied for or		<i>'The review process must consider the introduction of an express prohibition of the amendment of SLPs without prior consultation with</i>	No prohibition of amendment of SLPs without consulting communities or local	×

⁴¹ Ibid.

⁴² Ibid.

authorised without consulting or even notifying community. It is difficult for communities to hold companies to account when obligations can shift without them being		<i>both mining-affected communities and relevant local government authorities.</i> ⁴³	government in draft amendment Bill or 2020 amendment regulations	
Communities still face considerable difficulties in accessing SLPs (and other mining information) and in practice PAIA is being implemented in a manner that obstructs access to information		The DMR ‘...directed to electronically publish all SLPs in its possession.’ ⁴⁴	No steps towards electronically disclosing all SLPs in its possession by the Department and not addressed in the draft Amendment Bill. Department responded by making it duty of mining right holder but adherence not universal, no specific penalties and undermines purpose of having all SLPs available online in one web page	?
Meaningful participation, consultation and access to information				
Issue	SAHRC finding	SAHRC recommendation/directive	Addressed in draft amendment Bill?	Score

⁴³ Ibid.

⁴⁴ Ibid.

Need for processes under the MPRDA to respect, protect and advance the right to Free Prior and Informed Consent in line with the Constitution and IPILRA's protection of security of tenure for those whose rights were rendered insecure by past discrimination.	<i>'The approach applied of collective consent (i.e. the community as a whole consenting to everything) falls short of the standard of free prior and informed consent as does not address lack of representation of groups experiencing systemic disadvantage such as women...'</i> ⁴⁵	<i>'Where a proposed mining activity requires the relocation of specific community members' homes, a two-thirds majority of the specific persons affected by the relocation must consent to the mining activity. This is a necessary requirement, without which the community as a whole cannot consent to such activity.'</i> ⁴⁶	Not addressed. The soft standard of consultation remains the standard under Section 10 even for rights protected by Section 25 (6) of the Constitution and IPILRA.	×
The lack of adequate and timely access to information to facilitate the exercise of free prior and informed consent under African Customary Law.	Communities not given enough time and accessible information to enable them to reach decisions through their customary law processes. ⁴⁷	"	These issues are not addressed in Bill	×
Access to information requests process under PAIA is a barrier to accessing mining information and confidentiality used in	<i>'...the fundamental right to information as envisaged both in terms of the bill of rights and statute are inconsistently observed...This finding</i>	<i>DMR must</i> <i>- '...Develop formal criteria for classification of information as "confidential" '</i>	The Bill makes no steps towards - A clear criterion for what information can	×

⁴⁵ Ibid at 66.

⁴⁶ Ibid at 93.

⁴⁷ Ibid at 93.

a blanket manner without motivation by mining companies to restrict access to information	<p><i>relates both to the duty to proactively release information, and in respect of limiting rights to information through clear criteria for the classification of information of certain mining-related information as “confidential.”</i></p> <p><i>Information is also not consistently made available in languages and formats which render them accessible. A large percentage of mining-related information, including SLPs, are not currently available to the public where such information should in fact be automatically publicly available in terms of the PAIA.⁴⁸</i></p>	<ul style="list-style-type: none"> - ‘include the duty to disseminate information that is timely, adequate, and accessible in all guidelines, regulation and legislation.’⁴⁹ <p>Department should:</p> <ul style="list-style-type: none"> - require mining companies to provide a motivation for classification of documents as confidential <p>Some documents like SLPs are public documents which should not be classified as confidential.⁵⁰</p>	<p>be classified as confidential</p> <ul style="list-style-type: none"> - Duties to disseminate information in timely, adequate and accessible manner - Requiring motivation (based on clear criteria) for mining companies for information to be confidential - Clear exclusion of public documents as confidential 	
Very limited mining information is publicly available without having to request it		<ul style="list-style-type: none"> - DMR must immediately make all reports and documents publicly available (with 	<ul style="list-style-type: none"> - DMPR has not made all reports and licenses available to the public 	?

⁴⁸ Ibid at 94.

⁴⁹ Ibid at 94.

⁵⁰ Ibid.

		<p>exception of information it classifies as confidential).⁵¹</p> <ul style="list-style-type: none"> - 'DMR must develop a dissemination strategy and should consider making this information available through the Open Data Portal initiative led by the Department of Public Service and Administration which seeks to improve access to information, data and services offered by government.'⁵² 	<ul style="list-style-type: none"> - The DMPR has no dissemination strategy (that has been publicly communicated) and has not made its licensing documents available through the Open Data Portal (if it has considered this it has never communicated this publicly) - The draft Amendment Bill does not address directives and recommendations regarding dissemination of public information - The 2020 regulations require mining companies to publish their approved SLPs, 	
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⁵¹ Ibid.

⁵² Ibid.

			but this is far narrower than SAHRC directive (a comprehensive range of licensing information that excludes compliance reports, environmental records etc.), has not uniformly been adhered to by mining companies especially smaller companies, and lacks the advantage of SAHRC's recommendations (i.e. information available in one place)	
Compliance, monitoring and enforcement				
Issue	SAHRC finding	SAHRC recommendation/directive	Addressed in draft amendment Bill?	Score
Insufficient penalties for non-compliance	Current penalties for non-compliance with environmental law not enough to address or	<i>The DMR must consider introducing a policy or legislative amendment to impose sanctions in instances of non-compliance by mining companies,</i>	The draft amendment Bill does increase penalties for non-compliance with provisions of act	√

	deter compliance. ⁵³	non- <i>including on SLPs. Sanctions could include the suspension or cancellation of mining licences, possible imposition of community service and/or fines for persons responsible for ensuring compliance; public exposure of non-compliant companies, and possible criminal sanctions for serious breaches.</i> ⁵⁴	including Section 25 which sets out the duties of mining rights holder which is an offense in terms of Section 98 (a) (i) – now fines increased from up to R100 000 to up to 10% of annual turnover in SA and exports in previous financial year and with jail terms from up to ten years	
No effective mechanism for monitoring compliance and enforcement	<i>'The Commission finds that there are a lack of mechanisms to monitor compliance and ensure enforcement of SLP-related obligations.'</i> ⁵⁵	<i>'The DMR is directed, in collaboration with the DPME, to establish adequate mechanisms to monitor compliance and ensure enforcement of SLP-related obligations. These mechanisms should include roles for local government and mining-affected communities as well as education and training on the function and requirements of SLP projects to ensure clear and transparent delineation between</i>	Draft Amendment Bill does not provide for specific SLP enforcement mechanisms at all and does not provide a role for communities in compliance monitoring and enforcement	×

⁵³ Ibid at 95.

⁵⁴ Ibid.

⁵⁵ Ibid.

		<i>government responsibilities and the classification of SLP projects.⁵⁶</i>		
Lack of effective grievance mechanisms	<i>'there is an immediate need for...effective complaints mechanisms by mining companies, the DMR, and local government.'⁵⁷</i>	<i>'The DMR, together with relevant agencies and/or departments, should work with industry bodies such as the CoM, and through the DMR's tripartite forums, to encourage independent monitoring of members' compliance with applicable laws and policies.'⁵⁸</i>	Not addressed in amendment Bill	×

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

11. CONCLUDING REMARKS

26. Thank you for providing the opportunity to provide inputs on the draft Mineral Resources Development Amendment Bill.

27. Our overarching comments is that, while we welcome the recognition and development of a regulatory system for artisanal mining we have fundamental concerns regarding the content of the Bill not limited to what appears to be a near-global failure to engage with the reform proposals by communities and civil society as well as the directives of the Human Rights Commission intended to bring the Bill in alignment with the Bill of Rights and address systemic violations of communities rights. In particular we are gravely concerned about the following:

- 27.1. The narrowing down of the definition of ‘community’ and ‘interested and affected persons’ for consultation processes to only the directly affected community which allows for the de-legitimisation of the role of community networks and civil society organisations who provide support and solidarity to individual communities;
- 27.2. The continued failure to respect and protect the right to Free Prior and Informed Consent and align decision-making processes with IPILRA;
- 27.3. The draconian approach to ‘illegal mining’ coupled with a proposed artisanal mining regulatory system that is too narrow to accommodate much of artisanal mining in the form it actually takes place;

28. 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