

MACUA & WAMUA

# Presentation to the Portfolio Committee on Mineral Resources & Energy

30 August 2022

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# WHY ARE WE HERE?

1. The South African Constitution is premised on the Rule of Law and has come to embody the fundamental demand for the fair and democratic exercise of public power.
2. The Role of the Law is thus to:
  - a) **Order the Behaviour of Individuals and Organisations** so that the economic and social policies can be converted into outcomes.
  - b) Define the structure of Government by **Ordering Power** –Establishing and Distributing Power.
  - c) **To Order Contestation:** by providing the substantive and procedural tools needed to promote accountability, resolve disputes peacefully and to change the rules.
3. But the mere existence of laws by no means lead to their intended outcomes and effects.
4. The Law itself may be used as a means of perpetuating insecurity, stagnation/underdevelopment and inequality.
5. The law is both a product of social & power relations & a tool for challenging and shaping those relations
  - a) By changing Incentives
  - b) Establish Different payoffs
  - c) Increase contestability.
6. **We are here because the lived experience of mining affected communities tells us that the law needs to change**



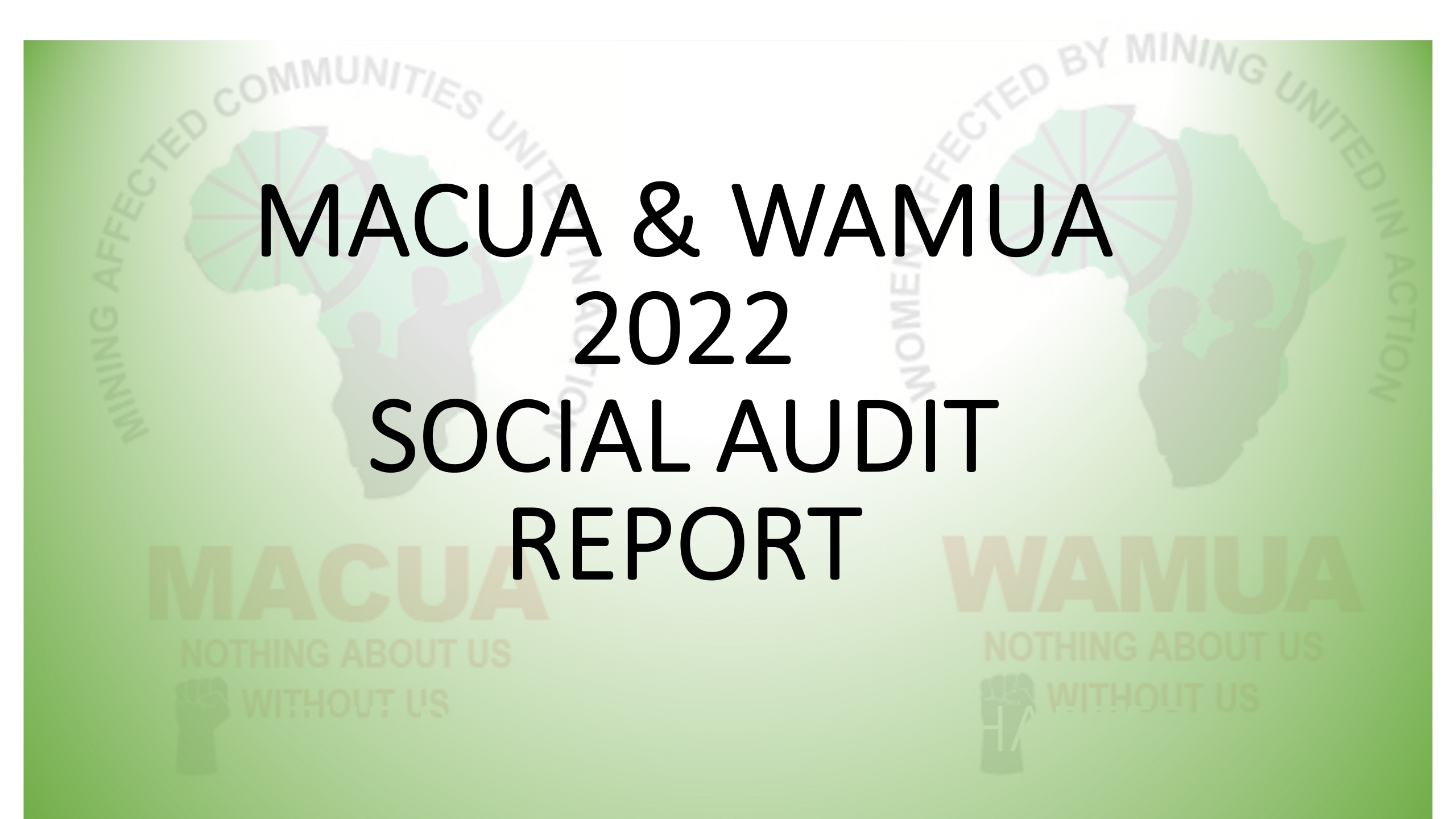
# Characteristics of Good Governance according to the UNITED NATIONS

|   | Characteristic             | Business | Labour | Community |
|---|----------------------------|----------|--------|-----------|
| 1 | Participation              | ✓        | ✓      | ✗         |
| 2 | Rule of Law                | ✓        | ✓      | ✗         |
| 3 | Transparency               | ✓        | ✓      | ✗         |
| 4 | Responsiveness             | ✓        | ✓      | ✗         |
| 5 | Consensus Oriented         | ✓        | ✓      | ✗         |
| 6 | Equity & Inclusiveness     | ✓        | ✓      | ✗         |
| 7 | Effectiveness & Efficiency | ✓        | ✓      | ✗         |
| 8 | Accountability             | ✓        | ✓      | ✗         |

# **BASELINE REPORT OF 2018 & SOCIAL AUDIT REPORT OF 2022**

- 1. Points to the way in which legality is biased towards powerful actors**
- 2. Points to the extensive UNLAWFUL behaviour of POWERFUL ACTORS which ultimately serves to maintain the Status Quo and Deepens Inequality**
- 3. Marginalised groups are easy targets for criminalisation**
  - Young Black Men.**





# MACUA & WAMUA 2022 SOCIAL AUDIT REPORT

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# 10 Communities and mines were selected for Social Audits were conducted

**Springbokpan** – North West – Sephaku Aganang Plant

**Merafong** – Gauteng – Sibanye Stillwater & Harmony Kusasalethu

**Phalaborwa** – Limpopo – Foskor Mine

**Sekhukhune** – Limpopo – Sefateng Chrome Mine

**Atok** – Limpopo – Bokoni Platinum Mine

**Mokopane** – Limpopo – Ivan Plats Mine

**Mapela** – Limpopo – Mogalakwena Mine

**Kutloanong** – Free State – Harmony Gold Tsephong-Phakisa

**Kraalhoek** – North West – Kalaka Mining



# SLPs are supposed to:

- **Be developmental** in consultation with affected communities, not through representative structures, but rather through a public participatory process
- **Drive sustainable development** in historically disadvantaged communities
- **Contribute to the socio-economic development** of affected communities
- **Enhance elements of social cohesion**

## Themes:

Three clear core themes emerged from the surveys conducted as well as the physical verification of the projects, with regards to the challenges faced by mining affected communities.

These are:

1. **An unwillingness to consult with mining affected communities** as key stakeholders and update them on the progress of projects that are due to be implemented in their communities, and a general lack of a developmental approach.
2. **Widespread non-compliance by mining corporations** with legally binding obligations to implement local economic development projects within host communities.
3. **A lack of political** (by the Portfolio Committee on Mineral Resources and Energy) **and regulatory** (by the Department of Mineral Resources and Energy) **oversight** and compliance monitoring.



In total 2673 surveys were conducted across the various mining affected communities.

- **None (0%)** of the mining companies completed their SLP commitments within the 5 year SLP timeframe.
- **None** of the mining companies audited undertook a process of public participation in the communities, in order to formulate a social and labour plan.
- **92.4%** of the respondents did not know what a social and labour plan is.
- **95.7%** of the respondents have never been consulted by a mine operating in their community on the formulation of an SLP.
- **96.2%** of the respondents had never seen an SLP before.
- **Only 1 (2%)** project out of 50 projects, across all of the SLPs audited, was specifically **catered to woman** empowerment and aimed directly at improving the lives of women.
- Out of the 10 mining companies audited, **only 4 (40%) have their current SLPs available on their websites** (Harmony Gold, Anglo Platinum Mogalakwena Mine, and Ivan Plats).
- **5 (50%)** of the companies **do not have their current SLPs published on their websites** (Kalaka Mining, Aganang Sephaku, Foskor, Bokoni Platinum and Sefateng Chrome Mine).

# Ivan Plats Mine 2014-2018

- **Sanitation for Schools and Community Clusters – R18.3 million**
- **Multipurpose Centres – R11.5 million**
- **School support and development Programme – R14.4 million**
- **SMME development and poverty alleviation project - R31.5 million**
- **Lesedi Early Childhood Development and Business Centre – R12 million**



# Ivan Plats Mine 2014-2018





# Harmony Gold Kusasaletu 2013-2017

- **Merafong Digital Hub (2012-2014) - R1 200 000.00**
- **Merafong Waste Recycle (2012-2014) - R3 000 000.00**
- **SMME Development (2014) - R120 000.00**
- **Nooidgedacht Farm Support(2014) - R1 294 000.00**
- **Merafong Education Infrastructure (2014-2017) - R5 000 000.00**
- **Merafong Health Infrastructure (2014-2017) - R5 000 000.00**
- **Deelkraal Community Rental Units - R180 000 000.00**



# Harmony Gold Kusasalethu 2013-2017

Digital Hub





# Harmony Gold Kusasalethu 2013-2017

**Deelkraal**





# FOSKOR 2013-2018

- **Upgrade and refurbish electricity network – R10 million**
- **Establish a landfill site – R4 million**
- **Rehabilitation of streets – R13 million**
- **Upgrading Bollanoto – R3 million**
- **Build School – R5 million**



# FOSKOR 2013-2018

## Construction of the School





# FOSKOR 2013-2018

Landfill Site



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# **Aganang Sephaku 2017-2021**

**Cement Brick/Block Making and Distribution  
Facility – Budget: R 4 600 000.00**

**Verdwaal and Springbokpan Safe Hub – Budget: R  
2 550 000.00**

**Verdwaal and Springbokpan Youth Development  
Centre – Budget: R 4 100 000.00**

**Springbokpan Agri Park Project – Budget: R 4 700  
000.00**



# Aganang Sephaku 2017-2021

|                                                                                   |                                                                                                                                                                                                                                                             |
|-----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <b>DEVELOPMENT OF SPRINGBOKPAN<br/>AGRI-PARK<br/>CONSTRUCTION OF FEED MILL</b><br><br>BID REF. NUMBER: 5/2/2/1 NW CON (0006) 18/19<br>DURATION: 18 MONTHS                                                                                                   |
| SKILLS<br>DEVELOPMENT                                                             | NATIONAL RURAL YOUTH CO-OPS (NARYSEC)                                                                                                                                                                                                                       |
| IMPLEMENTATION<br>AGENT                                                           | DRDLR, RURAL INFRASTRUCTURE DEVELOPMENT<br>Cnr James Moroka & Sekama Dr<br>Megacity Complex Mmabatho 018 338 700/7025                                                                                                                                       |
| FINANCIAL SPONSOR                                                                 |  HENWILL CHICKENS                                                                                                                                                          |
| PROFESSIONAL<br>SERVICE PROVIDER                                                  |  FEMPLAN (PTY) LTD 011 592 4900                                                                                                                                           |
| OCCUPATIONAL<br>HEALTH AND SAFETY                                                 |  GREEN VISION CONSULTING 011 312 6042                                                                                                                                    |
| CONTRACTOR                                                                        |   NKOMABA TRADING & PROJECTS<br>JV VHUYANI NCABANE TRADING<br>ENTERPRISE 081 413 3743 |





# Aganang Sephaku 2017-2021





# Kalaka Mining 2015-2020

## Kraalhoek Water Project

### Phase 1 – Focus on borehole 1

- Commitment to **erect 2 x 10000L Jojo tanks** within 500m of said borehole, to feed into existing pipeline
- Commitment to **do maintenance on existing pipelines** (blue, yellow and black) and taps.
- **Build in drinking troughs for animals**, with a ball valve (to control water supply).

### Phase 2 – boreholes 1-3

- Commitment to **equip the community with a 3.7kW submersible pump and connect a 10000L JoJo tank**.
- Investigate **new pipeline from borehole 1 to borehole 3** which will be used for emergency use.

### Phase 3

- **Investigate further water supply**, using the school's borehole 2 and another borehole "4" which is not in use and has two 2000L tanks and 2 unused pipelines and taps.
- Proposes to **install a submersible pump by borehole 4**; if JoJo tanks are unusable then commitment to replace along with pipeline. If not viable, borehole 4 water supply will be incorporated into boreholes 1 & 2 water supply.



# Kalaka Mining 2015-2020



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## KEY FINDINGS

**Three clear core themes emerged** from the surveys with regards to the **challenges faced by communities** affected by mines. These are:

- 1. Environmental issues** such as air, land and water pollution which impacts on human and livestock health, soil and water quality.
- 2. Living in an Unsafe environment**, relating to blasting close to houses and the tremors experienced as a result of blasting, as well as concern about the rising crime levels within communities.
- 3. The constant threat to health** ranging from TB and HIV to skin rashes and infections, asthma, silicosis and chest and lung problems.



## KEY FINDINGS

When the respondents (OF THE BASELINE REPORT) were asked about what they would want to change in the relationship between the mine and the community, four clear themes were highlighted:

- 1. 39% wanted more employment, skills development and livelihood options.**
- 2. 35% wanted more accountability, consultation and communication by the mine.**
- 3. 20% wanted more basic services and infrastructure.**
- 4. 6% wanted some form of compensation**



## KEY FINDINGS:

**PWC reports estimate that:**

- **Government takes approximately 24% of value reported** among the listed JSE mining corporates,
- **Employees** (which includes management) **takes 47% of value reported and**
- **Shareholders take 29% of value reported.**
- **Community investments by contrast has only amounted to 0.9% over the same period (Mincosa says 0.15% of Sales)**
- **Between 70 – 90% of the benefits of SLP projects are not accruing to communities.**



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## RECOMMENDATIONS

We call on the Portfolio Committee to:

1. **The inclusion of MACUA\WAMUA, and mining-affected communities more broadly** as well as civil society partners on multi-stakeholder law/ policy engagement structures, such as on the Mining Industry Growth, Development and Employment Task Team (MIGDETT);
2. **The opportunity for communities to provide input throughout the law/ policy-making cycle** (before the written comments stage) as a core stakeholder; and
3. **Enhancements to the manner in which broad public participation processes are conducted** including proper notice of public participation meetings (nature of meeting, time and venue communicated more than a week before the meeting)
4. **The commencement of a process aimed at amending the MPRDA** to bring it into alignment with communities' right to free prior and informed consent as affirmed in international law, the Constitution, the Interim Protection of Informal Land Rights Act and judgments such as Maledu and Baleni.
5. The inclusion of **specific targets and elements for women** within the transformation objectives of the MPRDA.
6. Demand urgent **accountability from the Minister of Mineral Resources and Energy** for his lack of oversight of the DMRE in advancing the transformation of the mining sector.
7. Demand urgent **accountability from the Department of Mineral Resources and Energy, for its failure to uphold the law** and to comply with regulations of the MPRDA.



## RECOMMENDATIONS

### THE DEPARTMENT OF MINERAL RESOURCES AND ENERGY:

We call on the DMRE to:

1. **Place a moratorium on the issuing of mining and prospecting licenses**, until the DMRE can adequately account for its failure to hold currently operating license holders to account or to enforce compliance of existing legislation and regulations.
2. **Account for the continued reduction in compliance budgets** and to present a compressive plan to urgently address the lack of compliance by the department.
3. **Commit to the principles of Batho Pele when dealing with affected communities** and **publish agreed service standards for general comment** and input.
4. **Commit to investigating the non-compliance brought to light in this report** and to provide a clear timetable of the process for each report of non-compliance.
5. **Commit to immediately publishing the Annual Compliance Reports** submitted to the DMRE in order to ensure that mining affected communities and other interested parties are able to hold mining companies accountable for non-compliance with their commitments.
6. Commit to **urgently revising the SLP regulations to ensure that SLP and IDP commitments are clearly delineated and accounted for** and that;
7. **a specific allocation of the SLP is directed towards directly affected communities**
8. Commit to **urgently notifying all regional offices and license holders of the regulations with regard to the right of communities to access information** and to ensure that failures to comply by DMRE staff is met with an appropriate sanction.
9. Commit to **urgently reviewing regulations which impose a burden on communities** when seeking to access information, support or redress.



# MACUA & WAMUA Comments on the Mining Charter Judgement

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1. There can be very little doubt that the **mining sector remains largely untransformed** and that the sector only pays lip service to objectives of the MPRDA to ensure that “*holders of mining rights contribute towards the socio-economic development of the areas in which they operate in*”.
2. The Mining Charter (with proper stakeholder engagements from communities and with binding implications and penalties and with open and transparent auditing processes ) was the most practical way to work towards collective targets for transformation, but the judgement has removed that option.
3. **Current Legislative accountability measures are vague**(does not provide targets and reporting standards ), **with inadequate penalties** or consequences for non-compliance with **no transparency** requirements and are **not enforced**.
4. **Mines and the State have a historical, ethical and legal obligation** to ensure the social and economic welfare of all south Africans and mines carry a specific obligation to the people who are directly impacted by their mining operations.
5. We support the call by MINCOSA for a **Transformation Council** that includes community, labour, industry and the Department, so that all parties can meet quarterly to discuss transformation in a structured and consistent process.
6. We reject the claim by MINCOSA that the problem is merely a lack of standardised reporting...Instead our research shows that there is a fundamental lack of focus on the developmental objectives.
7. This can only be remedied **if the MPRDA is more explicit in its intentions** to ensure transformation and if there are **severe consequences for non-compliance** together with **greater transparency** and **rights afforded to communities**.



# MACUA & WAMUA Comments on the Artisanal and Informal Mining

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**2016:** MACUA, AASA and other stakeholders host the first conference in South Africa to exclusively discuss the issue of ASM.

**2017:** MACUA works with artisanal Miners in Kimberly to mobilise thousands of Artisanal Miners in the first march of artisanal miners demanding recognition and regulation of the sector. During 2017 the miners engage in protracted battles with Mining companies, the police, the province and the DMRE.

Eventually MACUA, AASA and the Kimberly Miners enter into negotiations for the miners to acquire permits to legitimately mine the area.

This is the first indication that the DMRE realises that the problem cannot be dealt with as a criminal activity but that it requires a societal solution.

**2017:** We make a submission to the Minerals and Petroleum Board with regards to the need to regulate the artisanal mining Sector.

**2018:** The DMRE starts the process of undertaking a comparative research project into how other jurisdictions on the content have legislated and regulated the ASM sector.

**2018-2019:** AASA, MACUA and Wits undertake the first scoping exercise of the ASM sector revealing the extent of ASM operations in the country and the economic contribution of ASM activities to the livelihoods of thousands. The research clearly points towards the need for additional research to understand the challenges of the sector

**2019:** The AASA, Wits, MACUA, Research is published, and the Formation of the National Association of Artisanal Miners (NAAM) is facilitated by MACUA.

**2020:** The DMRE invites various stakeholders to comment on initial efforts to draft an ASM Policy and MACUA, NAAM and LRC meet with the DMRE to preliminary submissions based on our research.

**2021:** A draft ASM Policy is Published for comment and MACUA, NAAM and other stakeholders submit comments.



**ZAMA ZAMA'S  
ARTISANAL MINERS  
ARE NOT CRIMINALS**

**HUMAN RIGHTS DAY CONFERENCE. 21 MARCH**

The Human Rights Day can no longer be celebrated blind to the realities facing our communities. Epidemic poverty and unemployment levels are driving our people into old mine shafts to scavenge for the very "gold" of survival. This day cannot be celebrated while the dependency, desperation, violent killings and exploitation of the Zama Zamas by both mining companies and criminal syndicates are allowed to continue. If we fail to speak up when we see our brothers and sisters dying of excessive exposure to toxic substances such as mercury, substances which at the end contaminates our rivers, soils, vegetation and every aspect of the ecosystem, then we are failing ourselves. We cannot exclude Zama Zamas from society. Zama Zama' are our brothers, sisters, mothers, fathers and after all community members. They, like all of us, have human rights guaranteed by the bill of rights and the constitution of SA. They risk their lives every day to escape poverty and unemployment. In a country beset by unemployment and the social ills this brings, MACUA is proud to lead this discussion towards finding alternatives solutions to the corporate plunder which leads to the impoverishment and criminalisation of our people



## **ASM and Informal Mining**

1. South Africa has a problem of
  - a) High Unemployment
  - b) Over 6000 abandoned Mines and extensive areas of unused mines.
  - c) High Levels of Inequality.
  - d) Low levels of regulation
2. The convergence of these factors have resulted in a growing Storm.
3. A solution lies in utilizing the existing drivers of the storm(  
unemployment/abandoned mines/inequality/low levels of regulation) to
  - a) Use ASM to reduce unemployment
  - b) Rehabilitate abandoned mines and unused mines
  - c) To distribute wealth
  - d) Improve regulation ( this remains one of the biggest obstacles)



## ASM and Informal Mining

1. **Artisanal miners have never been recognized** within the current mining regulations. The MPRDA has excluded ASM's and **government has sort to criminalize** those who have sort to find a livelihood through artisanal or informal mining.
2. We would suggest that contrary to the draft policies claim that the problem is merely one of not “defining concepts”, it is our contention that **the discrimination against poor and marginalised communities and individuals inherent in the MPRDA regulations, is at the heart of the problem.** As such we fear that **many of the class discriminations inherent in the MPRDA continues to be advanced in the Draft Regulations.**
3. One such unashamed effort to discriminate against the poor and marginalised is the clause which would allow for the **“Reservation of ASM permits for locals”** while **no similar regulations are contemplated in terms of LSM.** Besides its questionable legal standing the proposal is deeply problematic in that it **seeks to treat working class individuals and communities are subject to a different set of laws than those that apply to the wealthy.**
4. **The lack of effort by the DMRE to try and understand the local conditions and drivers of artisanal mining,** is contrasted against its research into how other mining jurisdictions have regulated the sector instead. While it is undisputed that some comparison with other mining jurisdictions are important, **the need to understand our own conditions first, before we can compare it with others, is not only putting the cart before the horse,** it is also indicative that that the focus of the DMRE is not so much to understand the local issues and context with a view to finding a lasting and sustainable solution, but rather **approaches this process from a top down perspective in which the current legislation which has a bias towards protecting large scale mining interests** are placed before the dignity of the miners and wellbeing of mining affected communities in particular and marginalized communities in general.





THANK YOU  
FOR YOUR  
TIME!