

Community-Based SEIAS Review of the 2025 MPRDA Amendment Bill

To:

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Director-General: Jacob Mbele
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General: Dr. Robert Nkuna
4. **South African Human Rights Commission (SAHRC):** Chairperson: Chris Nissen
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6. **Leader of Government Business:** Deputy President: Paul Mashatile

From: Mining Affected Communities United in Action (MACUA)

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Executive Summary

The Counter-SEIAS Submission on the 2025 MPRDA Amendment Bill presents the collective concerns of mining-affected communities regarding the proposed amendments to the Mineral and Petroleum Resources Development Act (MPRDA) and the government's *Socio-Economic Impact Assessment System (SEIAS) Final Assessment Report*. Our central conclusion is that the SEIAS report – and by extension the Amendment Bill it endorses – fails to address critical issues of justice and accountability, and in some cases misrepresents the likely impacts of the Bill. The proposed amendments, as currently framed, betray the transformative intent of South Africa's mining laws and entrench patterns of exclusion and inequality under the guise of “regulatory reform”.^{1 2}

Key omissions include the absence of genuine community consent in decision-making, the dilution of transformation and ownership targets, weak accountability for Social and Labour Plan (SLP) commitments, neglect of environmental and land rights, and a lack of substantive measures for gender equity. Unless these issues are addressed, the Amendment Bill will repeat past injustices and undermine the constitutional rights of mining-affected communities.

Main Conclusions & Recommendations:

- **Community Consent and Participation:** The Bill perpetuates a “**weak consultation**” model instead of enshrining Free, Prior and Informed Consent (FPIC) for communities on customary land, sidestepping Constitutional Court precedents (e.g. *Baleni* and *Maledu*)³ that require consent for mining on communal land⁴. We urge that **FPIC be codified in the MPRDA**, and that consultation processes be expanded (not narrowed) to include *all* affected groups and civil society actors. Definitions of “interested and affected” parties

¹ MACUA. “MPRDA 2025 Amendments – The Betrayal of Transformation.” Policy Discussion Document, 30 May 2025. (Analysis of the Amendment Bill by Mining-Affected Communities United in Action)

² MACUA & WAMUA. “Looted Promises: The Crumbs Economy of Mining and the Myth of the Just Transition.” Social Audit Report on the systemic failure of SLPs, 2023/24. (Findings from 11 mining-affected communities' SLP audits)

³ Constitutional Court of South Africa – *Maledu and Others v Itereleng Bakgatla Mineral Resources* (2018); *Baleni and Others v Minister of Mineral Resources* (2019). (Judgments affirming the requirement of community consent under IPILRA for mining on communal land)

⁴ Department of Mineral Resources and Energy (DMRE). *SEIAS Final Impact Assessment: Mineral and Petroleum Resources Development Amendment Bill*, Revised 10 January 2025. (Government report evaluating the socio-economic impact of the Bill)

must be broadened to align with principles of inclusive, meaningful participation, consistent with the National Environmental Management Act (NEMA)⁵.

- **Transformation with Binding Obligations:** Despite government claims, the Bill provides “transformation without teeth,” containing noble language on Black empowerment but no binding targets or enforcement mechanisms⁶. Crucial elements: Black ownership, employment equity, local procurement, community equity participation, are left optional or subject to ministerial discretion, effectively neutralising the Mining Charter’s intent. We recommend the Act be amended to embed the Charter’s substantive thresholds in law, including *legally binding minimums* for ownership by historically disadvantaged persons (HDPs) and communities, gender/youth representation, and community development, with non-compliance linked to licensing consequences. Transformation must shift from policy promise to enforceable legal obligation.
- **Social and Labour Plan Accountability:** The SEIAS report notes weaknesses in SLP implementation but offers only superficial fixes (e.g. better “alignment” of projects with community needs) and ignores the depth of SLP failures. Community-led audits by MACUA & WAMUA expose a national crisis of SLP non-compliance: on average only 23% of promised SLP projects are completed, and barely 24% of committed SLP funds translate into tangible community benefits, the rest (over R284 million across 11 audited sites) is unaccounted for or “lost” to misreporting and non-delivery⁷. This reflects what communities’ term “*developmental theft*,” where mining companies’ token social investments mask systemic looting of the funds meant for the poor. We call for strict SLP accountability measures in the law: mandatory disclosure of SLPs and progress reports, independent monitoring (with community participation), and penalties up to suspension or non-renewal of mining rights for companies that fail to fulfill SLP commitments. Critically, mine closure should be contingent on SLP fulfillment: no operation should be allowed to wind up without delivering on its social obligations.
- **Environmental Justice and Land Rights:** The Amendment Bill’s much-touted alignment with environmental laws is largely *bureaucratic*, providing no meaningful role for communities in environmental governance or remedy. The SEIAS glosses over the Bill’s

⁵ MPRDA Coalition (MACUA, WAMUA, LRC, CALS, etc.). Joint Submissions and Proposed Amendments to the MPRDA, 2024. (Collective recommendations from civil society on MPRDA reform, as referenced in MACUA’s Policy Document)

⁶ Republic of South Africa. Mining Charter 2018 (Department of Mineral Resources, 2018). (Policy document on mining transformation, referenced for Charter targets and principles, though not legally binding after 2018 court ruling)

⁷ MACUA/WAMUA Social Audit Findings. Data on SLP non-compliance and community impacts. (Included in Looted Promises report and previous Parliamentary presentations)

failure to address mine-related displacement and the legacy of spatial injustice: despite proposals from civil society, the Bill remains silent on protections for communities facing relocation, lacking any framework for fair resettlement, compensation, or rehabilitation. As South Africa embarks on a “Critical Minerals” push for the green energy transition, this omission is glaring, it risks a *“green rush without justice,”* essentially greenwashing continued extraction on unequal terms. We recommend integrating environmental justice provisions: community-based monitoring of environmental compliance, requirements for integrated social & environmental impact assessments, and legal safeguards for land rights and resettlement (consistent with IPILRA and constitutional rights to property and environment). Environmental authorisations and mine plans must be subject to community consultation and consent; and no community should be displaced without a binding, negotiated agreement that ensures their livelihoods and dignity are protected.

- **Gender Equity in Mining:** The Bill’s approach to gender is wholly inadequate: it acknowledges women only in passing, requiring companies to report workforce statistics by gender, but sets no targets, no quotas, and creates no enforceable rights or benefits for women. This is unacceptable in a sector where women bear a disproportionate share of the burdens of mining while enjoying few of its benefits. In mining-affected communities, women are systematically excluded from consultations and decision-making, and shoulder the worst impacts of poverty, environmental degradation, and social disruption. Even in employment, progress is painfully slow: as of 2023, women comprised only 12% of the mining workforce (mostly in lower-paid roles)⁸. MACUA has consistently advocated for binding gender equity measures, including quotas for women’s employment and participation, set-asides for women-owned businesses in procurement, and special protections for women-headed households in affected areas. We urge that the Amendment Bill be revised to explicitly incorporate gender transformation criteria (in alignment with Section 9 of the Constitution’s equality clause), rather than merely collecting data. Empowering women in mining governance and benefit-sharing is not optional; it is a prerequisite for genuine transformation.

In summary, this submission challenges the optimistic conclusions of the government’s SEIAS report and exposes how the MRD Amendment Bill, in its current form, falls short of a people-centred reform. We provide evidence, from official data, court rulings, MACUA’s policy analysis, social audits like *“Looted Promises,”* and prior community submissions, to demonstrate that

⁸ Statistics South Africa. Labour Force Survey (Q1 2023): Mining Sector Gender Breakdown. (Cited statistic of ~12% female workforce in mining, highlighting ongoing gender disparity)

without significant changes, the Bill will reinforce elite capture of mineral wealth at the expense of mining-affected communities. We call on the DMPR and Parliament to halt the rubber-stamping of this Amendment Bill and instead undertake a fundamentally revised, consultative process that puts communities at the heart of mining law reform. Our recommendations above outline the pillars of a more just and inclusive MPRDA: one that truly redresses past injustices, demands corporate accountability, and secures the rights of future generations in South Africa's mining zones.

Introduction and Context

Mining Affected Communities United in Action (MACUA) is a national social movement representing the interests of communities living in the shadows of mining operations. Alongside our allied formations, including Women Affected by Mining United in Action (WAMUA) and Youth Affected by Mining United in Action (YAMUA), and a broader civil society coalition known as the MPRDA Coalition, we have actively engaged in the policy discourse around the 2025 MRD Amendment Bill. This Counter-SEIAS submission is presented as a formal response to the Department of Mineral and Petroleum Resources' Final Socio-Economic Impact Assessment System (SEIAS) Report on the 2025 MPRD Amendment Bill. It is intended for the urgent attention and consideration of the Department of Mineral and Petroleum Resources, the Department of Planning, Monitoring and Evaluation (DPME), and the Parliamentary Portfolio Committee on Mineral and Petroleum Resources. This submission seeks to highlight material gaps, analytical shortcomings, and the absence of community-validated data in the current SEIAS process. We write on behalf of the people who bear the direct consequences of mining, to ensure that their voices, rights, and developmental needs are not sidelined in this legislative reform.

We note at the outset that MACUA and its partners have participated in consultations and submitted detailed inputs throughout the MPRDA amendment process, including policy documents and community-drafted clauses. Unfortunately, many of these inputs have been ignored in the draft Bill and the SEIAS analysis. The result is a proposed law that omits or weakens core tenets of post-apartheid mining justice, reconfiguring the regulatory framework in ways that may entrench exclusion rather than remedy it. This submission, therefore, serves as a "*counter-SEIAS*", a critical assessment from the perspective of mining-affected communities, aiming to correct the record on the Bill's impacts and to advocate for a truly *people-centred* approach to MPRDA reform.

Context: The 2025 MPRDA Amendment Bill: After years of policy uncertainty and legal contestation (including the 2018 *Chamber of Mines v Minister* judgment), the government has introduced a new Amendment Bill to update the MPRDA. Key stated objectives include streamlining licensing, promoting investment, aligning mining and environmental laws, formally recognising artisanal mining, and advancing transformation in the industry. These goals, on paper, address important issues. However, the manner in which the Bill tackles (or fails to tackle) these areas has raised serious concern. MACUA's own policy discussion document, "*MPRDA 2025 Amendments: The Betrayal of Transformation*" (30 May 2025), analyses the Bill clause-by-clause and finds that **many provisions represent regressions or missed opportunities** when measured against constitutional imperatives and community proposals.

The SEIAS Final Assessment Report: As required by Cabinet, a SEIAS report was produced to evaluate the socio-economic impacts of the proposed amendments. The Final SEIAS Report (revised 10 January 2025) should ideally present an objective, evidence-based analysis of the Bill's costs and benefits, distributional impacts, and stakeholder inputs. In practice, the SEIAS report exhibits a bias toward the status quo and administrative perspective, downplaying the concerns raised by civil society. While it identifies certain problems (for example, lack of prior consultation in SLP planning, or the prevalence of illegal mining), it largely fails to grapple with deeper structural issues like community disempowerment, corporate accountability, and environmental injustice. Moreover, some significant changes in the Bill are not critically examined; for instance, the narrowing of public participation rights is portrayed as a technical clarification rather than a curtailment of rights. Our submission will highlight these gaps and misrepresentations in the SEIAS report. Each section below is organised around a key theme (consultation, transformation, SLPs, environment, and gender), aligning with the structure of the MACUA 2025 Policy Document for cross-reference, and contrasting the SEIAS's conclusions with on-the-ground evidence.

We conclude with a set of recommendations and an appeal for the Executive and Legislature to reorient the MRD amendment process toward inclusivity, transparency, and justice, consistent with the constitutional values of South Africa. The tone of this submission is deliberately firm and evidence-based: the issues at stake (land rights, livelihoods, environment, equality) are matters of fundamental rights and should be treated as such by our lawmakers.

Community Consultation and Free, Prior & Informed Consent

SEIAS Portrayal:

The SEIAS Final Impact Assessment Report acknowledges, almost in passing, that there is a “lack of meaningful consultation” with communities in certain mining governance areas, such as the development and implementation of Social and Labour Plans (SLPs). It also identifies “poor community consultation” as a recurring behavioural issue within the mining industry. However, these acknowledgements are treated as peripheral and are not substantively developed or connected to the legislative reforms that the SEIAS itself is intended to assess.

Most importantly, the SEIAS fails entirely to evaluate a critical structural change now introduced in the Amendment Bill: the replacement of the long-standing terminology of “interested and affected parties” with “interested and affected persons,” narrowly defined as those with a “direct interest” in the prospecting or mining operation. As demonstrated in the previous section, this new formulation risks excluding a wide range of stakeholders, including downstream communities, informal collectives, NGOs, and coalitions like MACUA that represent the interests of those most impacted by mining activity.

The SEIAS report, which predates the publication of the final Amendment Bill, does not flag or substantively engage with this definitional narrowing, despite its profound implications for participatory democracy, environmental justice, and the realisation of socio-economic rights. Indeed, while the SEIAS gestures toward improvements in consultation by noting that the Bill proposes procedural guidelines and definitions, it never interrogates whether those procedures and definitions will advance or impair the participatory rights of affected communities. It does not ask whether the new language may limit the scope of public involvement, nor does it acknowledge that such changes introduce potential constitutional and administrative law concerns.

This omission is compounded by the SEIAS’s one-sided account of the public consultation process surrounding the Bill. While the report references input from “internal and external stakeholders,” it frames engagement as having taken place with “interested and affected parties within the mining industry.” This phrase reveals a telling bias: while industry actors were clearly prioritised in the consultation process, grassroots community organisations, rural landholders, and customary rights holders, those most directly impacted by mining operations, were excluded or, at best, marginalised. The SEIAS fails to ask whether affected communities were consulted in culturally and linguistically appropriate formats, or whether Free, Prior and Informed Consent (FPIC) obligations were considered at any point during the legislative design. This is particularly troubling given South Africa’s international legal commitments under the UN

Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention 169, which enshrine FPIC as a binding principle in cases of land and resource extraction.

Moreover, the only meaningful engagements offered to community formations, such as MACUA and the MPRDA Coalition, were structured as top-down, unilateral presentations of pre-drafted content. These were not consultations but informational briefings, designed to convey decisions already taken. No scope was provided for community representatives to shape the content of the Bill, propose alternatives, or raise long-standing concerns rooted in decades of exclusion, dispossession, and regulatory failure. The SEIAS does not capture or critique this power imbalance. It omits any discussion of how the terms and formats of consultation themselves may perpetuate historical injustices and violate constitutional guarantees of public participation and procedural fairness.

The SEIAS cannot credibly claim to provide a balanced, evidence-based assessment of policy impacts when it neither interrogates the most significant participatory restriction in the Bill, nor reflects the lived reality of community engagement. By ignoring the shift in legal definitions, failing to explore FPIC obligations, and uncritically endorsing a process dominated by industry voices, the SEIAS effectively functions as a legitimising mechanism for a legislative process that continues to exclude, rather than empower, mining-affected communities.

MACUA therefore rejects the SEIAS report as incomplete, biased, and incompatible with the democratic and constitutional obligations of public policy making. A credible socio-economic impact assessment cannot merely adopt the assumptions of its drafting institution, it must test those assumptions against constitutional principles, international law, and the lived realities of those who stand to be most affected. This SEIAS fails that test.

Narrowing of Participation in the Bill:

Far from expanding democratic participation, the 2025 MRD Amendment Bill introduces language that materially constrains it, particularly in how it redefines who qualifies as an “affected” stakeholder and how consultation is structured. Two interconnected textual changes in the Bill illustrate this erosion:

Section 1 introduces a definition of “interested and affected persons,” restricting this category to those with a “direct interest” in the mining or prospecting activity.

Throughout the Bill, the long-standing term “interested and affected parties” is replaced with “persons”.

At face value, these revisions may appear to provide clarity or legal precision. However, the actual language adopted is unduly exclusionary and legally regressive. By limiting recognised stakeholders to those with a “direct” interest, the Bill threatens to exclude a wide range of communities and actors who are tangibly but indirectly impacted by mining operations including:

- Downstream communities facing water contamination,
- Villages impacted by cumulative environmental degradation (e.g. dust, noise, blasting),
- Workers in secondary or informal sectors linked to mining activity,
- NGOs, churches, community-based organisations, and social movements who operate in the public interest but lack formal ownership or legal title over affected land.

This narrowing could result in entire categories of vulnerable yet affected people being denied formal standing in consultation processes, even as they bear the brunt of mining’s social and ecological costs.

The change from “parties” to “persons”, although seemingly semantic, is jurisprudentially significant. In South African environmental law, “interested and affected parties” has been consistently interpreted to include both natural persons and collective, non-juristic actors (such as community forums or grassroots coalitions). The use of “persons,” by contrast, aligns more closely with the restrictive definitions in commercial or private law, potentially limiting recognition to individuals and juristic entities only. This would undermine the legitimacy and legal recognition of informal yet representative bodies such as unregistered community associations, precisely the kinds of structures most common in rural and under-resourced communities.

Crucially, **the SEIAS Final Impact Assessment Report**, which is supposed to serve as the evaluative foundation for such legislative changes, **fails entirely to identify or assess these definitional shifts**. It does not mention the change in terminology. It offers no justification for narrowing the scope of stakeholder recognition. And it does not assess the likely socio-economic or constitutional implications of excluding indirectly affected persons or collective formations from formal consultation rights.

Instead, the SEIAS misleadingly frames the Bill’s provisions as enhancements to consultation, based merely on the inclusion of a definition and some procedural guidance, without interrogating the substance or impact of that definition. This is a serious failure of policy analysis and due diligence. What is being presented as a benign clarification is in fact a

substantive rollback of participatory rights, tipping the balance of power further in favour of state and private sector actors at the expense of communities.

MACUA views this as a grave omission, both by the drafters of the SEIAS and the architects of the Bill. The exclusion of those without a “direct interest,” and the sidelining of non-juristic community structures, contradicts Section 195 of the Constitution, which demands inclusive and participatory governance, and the Promotion of Administrative Justice Act (PAJA), which guarantees procedural fairness in state decision-making. It also violates South Africa’s commitments under international law, including Free, Prior and Informed Consent (FPIC) obligations arising from UNDRIP and other instruments governing indigenous and community land rights.

As such, MACUA rejects this narrowing of participation as unconstitutional, anti-democratic, and incompatible with the principles of restorative justice and equitable governance that must define post-apartheid resource regulation.

Conflict with Constitutional and Legal Standards:

The narrowing of public participation and the exclusion of Free, Prior and Informed Consent (FPIC) in the 2025 MRD Amendment Bill stand in direct conflict with South Africa’s constitutional, statutory, and customary law frameworks. Rather than advancing constitutional justice, the Bill re-entrenches outdated, top-down modes of regulation that marginalise community voices.

Section 33 of the Constitution guarantees the right to just administrative action, which has been repeatedly interpreted by the courts to include reasonable opportunities for all affected parties to be heard, not only those with a narrowly defined “direct interest.” This principle is further entrenched in the Promotion of Administrative Justice Act (PAJA), which codifies procedural fairness in state decision-making. By limiting participatory standing through the Bill’s revised definition of “interested and affected persons,” the legislature is undermining this constitutional guarantee.

The Bill also deviates from the National Environmental Management Act (NEMA), which provides a broader and more inclusive definition: “any person, group of persons or organisation interested in or affected by an activity.” This expansive interpretation recognises that the environmental and social impacts of mining often extend beyond directly adjacent landowners. The narrowing of scope in the MRD Amendment Bill risks creating legal uncertainty and breaking the coherence of South Africa’s environmental governance framework, particularly

around who may object to or appeal authorisations, a critical mechanism for accountability and environmental justice.

Moreover, **the Bill is silent on the rights of informal and customary landholders**, a silence that flies in the face of jurisprudence from the Constitutional Court in cases like *Maledu v Itereleng Bakgatla Mineral Resources* and *Baleni v Minister of Mineral Resources*. Both rulings affirmed the constitutional and customary law rights of communities living on communal land to withhold consent for mining on their territories. These rulings are grounded in the Interim Protection of Informal Land Rights Act (IPILRA), which requires consent (not merely consultation) before any deprivation of land rights.

Yet, **the Amendment Bill fails to mention IPILRA, ignores the Maledu and Baleni precedents, and omits any reference to FPIC**, despite repeated calls for its inclusion from affected communities and civil society. This omission is neither incidental nor technical; it is a deliberate regression, signalling a policy orientation that prioritises investor access over indigenous and community land rights.

Even **the SEIAS Final Impact Assessment Report fails to grapple with these critical issues**.

While the report notes that the National House of Traditional Leaders raised the issue of community consent, calling for mining companies to obtain permission from traditional authorities before rights are granted, it merely acknowledges that “the issue of consent is still [at] loggerheads.” No resolution is offered, and no assessment is made of the implications of excluding FPIC. Instead, the SEIAS moves on, leaving the reader with the impression that the unresolved status of FPIC is a minor technicality rather than a fundamental constitutional fault line.

This approach reveals a pattern of avoidance and obfuscation. Not only is there no legislative provision for FPIC in the Bill, but the SEIAS also fails to evaluate its necessity, even though it is a key issue in mining-related conflict across South Africa. Likewise, there are no provisions in the Bill for the protection of communities from forced displacement, nor any new mechanisms for compensation, resettlement planning, or legal redress. This is especially disturbing in a country where mining has, for decades, been synonymous with the violent uprooting of black communities, the destruction of ancestral land, and the hollowing out of rural economies.

MACUA and its coalition partners submitted detailed proposals for clauses that would entrench community consent, regulate mine-related displacement, and establish clear obligations for equitable compensation and rehabilitation. These proposals were grounded in the lived experiences of communities subjected to extractive violence and dispossession. Yet neither the Amendment Bill nor the SEIAS report engage with these proposals in any meaningful way.

MACUA's 2025 Policy Document rightly characterises this legislative path as a "betrayal" of constitutional values, particularly the right to land, dignity, and meaningful participation. The policy document warns that the deliberate omission of FPIC and community protections reflects alignment with extractive capital rather than social justice. **The current version of the Bill is a blueprint for ongoing displacement and conflict; a continuation of colonial and apartheid patterns of exploitation dressed in the language of regulatory reform.**

We conclude that the failure to integrate FPIC, the narrowing of participatory definitions, and the absence of community protection mechanisms constitute a systemic constitutional failing. The Amendment Bill must be revised to include full recognition of IPILRA rights, embed FPIC into the granting of mining rights, and provide detailed safeguards against the displacement and exclusion of vulnerable communities. Anything less is not just a policy gap, it is a constitutional crisis.

People-Centred Reforms as a Constitutional Imperative

To transform South Africa's extractive regime into one that respects dignity, equity, and democratic accountability, the MPRDA must be fundamentally reoriented toward people-centred governance. This is not a matter of policy preference but of constitutional obligation. The Bill's current form fails to meet that standard. The following reforms are essential and urgently needed:

1) Legally Enshrine Free, Prior, and Informed Consent (FPIC)

The Bill must require binding community consent, not mere consultation, for any prospecting or mining activities on communal land or customary territories. This consent must be obtained from affected communities as a whole, not only from traditional leaders, and must include the active participation of women, youth, and other marginalised members. This aligns with:

- Constitutional protections of property, equality, and administrative justice (Sections 25, 9, 33);
- International obligations, including the UN Declaration on the Rights of Indigenous Peoples (UNDRIP);
- South African legal precedent, particularly the Baleni and Maledu cases, which establish that customary land rights holders cannot be dispossessed without consent, not just consultation.

By codifying FPIC into the MPRDA, Parliament would align the Bill with constitutional and international norms and address the deeply embedded injustices of historical land dispossession.

2) Restore and Broaden the Definition of ‘Interested and Affected Parties’

The definition of “interested and affected persons” in the current draft is both narrow and regressive. It limits stakeholder recognition to those with a “direct interest” in the mining operation, which excludes:

- Downstream communities affected by pollution or infrastructure strain.
- Neighbouring villages experiencing cumulative environmental or social impacts.
- NGOs, churches, unions, and unregistered community groups working in the public interest.

MACUA’s policy submission offers a more inclusive and rights-aligned alternative, drawing on the National Environmental Management Act (NEMA) definition, which recognises any person, group, or organisation with an interest in or affected by an activity. This broader framing is essential for ensuring that indirect and collective interests, often the most vulnerable, are not erased from decision-making.

3) Strengthen and Codify Meaningful Consultation Procedures

Genuine consultation is not a tick-box exercise. It must be embedded into every stage of the licensing and development process and must meet minimum procedural and substantive standards. These include:

- Early engagement, prior to the finalisation of project terms;
- Access to project information in plain language and accessible formats;
- Opportunities for communities to shape, object to, or revise proposals;
- Public notice and comment periods for all major rights applications or amendments.

Earlier MPRDA drafts included stronger language in Section 10, requiring the Minister to invite public representations when considering applications. The current draft removes this

safeguard, a concerning reversal. These provisions must be restored and expanded, or the promise of community participation will remain illusory.

4) Institutionalise Community Oversight and Dispute Resolution

To level the playing field between communities and powerful mining companies, the Bill must provide dedicated institutional mechanisms to hear grievances, monitor compliance, and resolve disputes. These could include:

- Independent Mining Ombudsperson or Community Oversight Committees;
- Local-level forums empowered to review SLP compliance and raise red flags;
- Dispute mediation systems that are accessible, affordable, and culturally appropriate.

Leaving communities to navigate the courts, or to rely on the goodwill of mining companies, is both inadequate and unjust. It entrenches power asymmetries and shields noncompliant actors from accountability.

5) Ensure Radical Transparency and Access to Information

Participation without information is hollow. Communities must have real-time access to all documents that affect their rights and futures, including:

- Mining right applications and environmental authorisations;
- Environmental and Social Impact Assessments (ESIAs);
- Social and Labour Plans (SLPs) and Mining Work Programmes (MWP);
- Progress reports and compliance audits.

This information should be published in public portals, but also made available locally, in multiple languages and accessible formats. Without transparency, there can be no oversight, and without oversight, communities remain voiceless.

SEIAS Report's Failure to Advance People-Centred Reform

The SEIAS Final Impact Assessment Report fails to grapple with any of the people-centred reforms outlined above. It does not evaluate:

- The Bill's silence on FPIC or its implications for land rights;
- The narrowing of I&AP definitions and its impact on public interest participation;
- The removal of procedural safeguards (e.g., Section 10);
- The lack of institutional mechanisms for community grievance resolution;
- The barriers communities face in accessing critical project information.

This omission is not technical, it is ideological. It reflects a governance culture that continues to treat mining-affected communities as obstacles to investment rather than as rights-holders. By failing to demand stronger participatory guarantees, the SEIAS misses the opportunity to use law as a tool of redress.

MACUA reiterates: a people-centred MPRDA is not optional. It is the constitutional and moral imperative of post-apartheid governance. It cannot be achieved by repackaging the same elite-led, capital-friendly frameworks under the guise of reform. It requires power-sharing, legal accountability, and dignified inclusion.

Transformation and Broad-Based Empowerment

SEIAS Portrayal: The SEIAS Final Impact Assessment frames the 2025 MRD Amendment Bill as aligned with the state's transformation agenda. It characterises the original MPRDA as a key tool for post-apartheid redress, supplemented by the Mining Charter, which it describes as a "transformation instrument." The SEIAS claims the Amendment Bill enhances this trajectory by making the Charter "binding" and by introducing new instruments such as the Artisanal Mining Permit, intended to uplift small-scale miners. It also notes that the Minister will be empowered to set transformation standards under section 100 of the principal Act. In doing so, the SEIAS repeats the government's narrative: that the Bill furthers Black Economic Empowerment (BEE), local beneficiation, and economic inclusion, all purportedly without imposing additional costs or burdens on industry.

This portrayal is both superficial and misleading. Rather than advancing substantive transformation, the Bill, and by extension the SEIAS, presents a cosmetic repackaging of retreat. Key transformation provisions have been watered down or left intentionally vague, while enforcement mechanisms remain non-existent or reliant on unchecked ministerial discretion.

The SEIAS fails to engage the fundamental contradictions embedded in the Bill:

- The removal of explicit empowerment requirements from sections relating to prospecting rights weakens the link between transformation and the full mining value chain.
- The discretionary nature of empowerment compliance, without binding obligations, creates space for continued industry evasion.
- Provisions allowing the Minister to "set standards" through regulation are presented as transformation tools, but they offer no clear thresholds, timelines, or accountability measures.
- Critically, the Bill provides no remedial or punitive framework to deal with transformation failures, something MACUA and others have long identified as a core weakness of the Charter-based model.

These omissions are not accidental; they are structurally consistent with the preferences of industry stakeholders like the Minerals Council South Africa, who have vigorously opposed transformation measures that are binding, measurable, and enforceable. Yet the SEIAS makes no mention of this political economy dynamic, no assessment is offered of the legal battles over "once empowered, always empowered," nor is there any reflection on the state's repeated failure to enforce compliance with BEE targets in mining rights. This silence amounts to a

misrepresentation by omission, presenting a hollowed-out version of transformation as progress.

The “Artisanal Mining” Illusion:

While the introduction of an Artisanal Mining Permit is celebrated by the SEIAS as a boost to small-scale operators, the mechanism as proposed is administratively convoluted and practically inaccessible to most community-based miners. It lacks:

- Dedicated financial support or institutional infrastructure;
- Technical assistance or regulatory guidance for informal miners;
- Land and mineral rights security for existing informal mining communities.
- Moreover, the Bill maintains the criminalisation of unlicensed artisanal mining, placing many community miners in legal jeopardy rather than on a path to formalisation.

Again, the SEIAS glosses over these contradictions, opting for a narrative of upliftment while ignoring the realities of exclusion.

Transformation Without Redistribution:

The SEIAS’ framing also reflects a deeper flaw: its reliance on elite-centric BEE models as proxies for systemic transformation. By narrowly equating “empowerment” with equity ownership or managerial representation, and by failing to address land restitution, environmental justice, or social wage guarantees, both the Bill and the SEIAS uphold a version of transformation that benefits a few politically connected actors, not the communities most impacted by mining.

This is precisely the critique raised by MACUA in its 2025 Policy Document and in community-driven reports such as *Looted Promises*: that current empowerment models have not delivered material change in mining-affected areas, and that transformation without redistribution is a façade. In many such communities, unemployment exceeds 70%, youth remain structurally excluded, and SLP commitments are rarely fulfilled. Yet the SEIAS does not engage with this evidence, nor does it interrogate whether the Bill is capable of closing the widening gap between mining profits and community wellbeing.

In its treatment of transformation, the SEIAS functions as a legitimising narrative for a Bill that hollowly recites transformation language while eroding its substance. The absence of critical engagement with enforceability, redistribution, and community participation makes it unfit to serve as a foundation for legislative reform.

MACUA therefore rejects the SEIAS' framing of the Bill as a progressive transformation tool. In truth, it enables elite capture, undermines hard-won gains, and reinforces a status quo of extraction without justice.

“Transformation Without Teeth”:

MACUA's 2025 Policy Document powerfully describes the transformation provisions of the Amendment Bill as “Transformation Without Teeth”, and for good reason. The Bill gestures toward inclusive procurement, employment equity, and community development but fails to embed these goals in binding legal obligations. It does not set mandatory targets, impose enforceable timeframes, or articulate sanctions for non-compliance. In short, it reduces transformation to a voluntary aspiration, a matter of ministerial discretion rather than legal right or duty.

This is a serious regression from the original promise of the MPRDA. Section 2 of the principal Act identifies the expansion of opportunities for historically disadvantaged persons (HDPs) and the promotion of socio-economic development in mining areas as core objectives. For years, these objectives were operationalised through the Mining Charter, a policy instrument intended to give practical effect to transformation. However, the 2018 High Court ruling confirmed that the Charter is not law, but a non-binding policy, which meant its targets could not be enforced. In the wake of that judgment, there was widespread expectation, even a public assurance from the Minister, that the Amendment Bill would close this legal gap by codifying the Charter's critical elements into law or regulation.

The Bill fails to do so.

While it nominally empowers the Minister to issue codes or standards on transformation under the proposed amendments to section 100, these standards remain non-binding and revocable at will. There is no legal obligation for mining right holders to comply with specific empowerment quotas, local procurement benchmarks, or gender equity goals. There is no legal guarantee that any percentage of ownership will go to black South Africans or that community trusts will hold a stake in mining operations. There are no enforceable commitments to hire or train local workers. Even Social and Labour Plans (SLPs), once treated as binding conditions of mining rights, are increasingly de-linked from compliance enforcement mechanisms.

This introduces a dangerous contradiction: mining companies could theoretically obtain, operate, and renew mining rights without fulfilling any meaningful transformation duties. And should they fail to meet transformation objectives, the Bill provides no mechanism for accountability or sanction. As MACUA's Policy Document puts it starkly: “Ownership by historically disadvantaged persons (HDPs) becomes optional; employment equity and

procurement are no longer enforceable; community development is de-linked from legal accountability.”

The SEIAS report not only fails to flag this retreat, but it also misrepresents the Bill as a transformation advance. It repeatedly suggests that by making the Charter “binding,” the Bill will address long-standing implementation gaps. Yet the SEIAS fails to interrogate the mechanism of this binding effect and ignores the fact that no substantive targets or thresholds have been translated into enforceable legal provisions. It accepts at face value that the Bill promotes transformation, without engaging with how it actively disempowers communities and workers who previously relied on Charter targets to hold companies accountable.

Moreover, the SEIAS provides no assessment of how this deregulation of transformation will impact existing disparities in ownership, procurement, and labour conditions, despite ample public evidence, including from MACUA’s Looted Promises report, that current transformation models have failed to deliver tangible benefits to mining-affected communities.

The net result is a Bill that presents transformation as branding, rather than as a constitutional and developmental imperative. It places power in the hands of the Minister without binding that power to any outcome. It enables behind-the-scenes weakening of commitments, especially when facing industry pressure. And it fosters a climate in which mining companies can meet the technical requirements of licensing without meeting any of the moral and social obligations associated with redress.

The failure to legally mandate transformation goals, and the SEIAS’s complicity in obscuring this failure, is a grave misstep. It violates the letter and spirit of Section 2 of the MPRDA, undermines the equity vision of the Constitution, and betrays public trust. A truly transformative MPRDA would embed empowerment obligations in law, backed by enforceable compliance and clear penalties. What this Bill offers instead is legal theatre, in which transformation is performed for Parliament but abandoned in practice. MACUA urges Parliament to reject this façade and to craft legislation that delivers real transformation with real consequences.

Omissions and Weaknesses in the Bill:

A close analysis of the 2025 MRD Amendment Bill reveals a series of fundamental weaknesses that render its transformation commitments largely symbolic. The Bill references transformation in vague terms but offers no enforceable architecture to ensure that transformation occurs in practice. This deliberate vagueness creates significant loopholes, many of which the SEIAS report fails to identify, let alone assess.

1. No Mandatory Ownership Thresholds

The Bill does not prescribe any minimum equity shareholding for historically disadvantaged persons (HDPs) or for host communities in mining rights. The 26% threshold (previously central to the Mining Charter, and even the revised 30% target) is completely absent from the legislation. Without legislated ownership floors, mining companies can obtain and operate rights with 0% black ownership, as long as they nominally commit to general transformation goals.

This is not a theoretical concern. The 2018 *Chamber of Mines v Minister of Mineral Resources* ruling effectively gutted the enforceability of the Charter's equity requirements. Without codifying ownership expectations in the Act or regulations, the Amendment Bill cements that regulatory vacuum. It offers no remedy to past shortcomings, only further retrenchment.

2. Exclusion of Community Ownership or Free Carried Interest

The 2018 Mining Charter included a progressive provision encouraging 5–10% community ownership through structured trusts. This mechanism was imperfect but at least signalled an intent to link communities directly to the economic value generated by resource extraction. The Amendment Bill, by contrast, makes no mention of community equity or free carry mechanisms.

This omission has profound consequences. By excluding communities from ownership, the Bill confines them once again to the role of passive stakeholders, rather than rightful co-beneficiaries of the wealth derived from their land. It perpetuates the logic of dispossession under a veneer of democratic resource governance.

3. Voluntarisation of Socio-Economic Obligations

Transformation commitments around employment equity, human resource development, skills transfer, local procurement, and enterprise development are not embedded in the Act. The Bill allows the Minister to develop transformation standards or codes, but compliance with these remains vulnerable to legal challenge and evasion, especially given that such standards are framed as policy rather than law.

MACUA's Looted Promises report provides evidence of companies bypassing or delaying Social and Labour Plan (SLP) obligations, often with no consequences, by exploiting precisely this regulatory ambiguity. A continuation of this pattern under the Amendment Bill is not only likely, but predictable.

4. Absence of Enforcement Mechanisms and Legal Consequences

Unlike violations of environmental or safety standards, non-compliance with transformation objectives is not defined as a breach of the Act. The Bill fails to articulate transformation failure as a basis for suspension, revocation, or refusal of rights. In practice, this means that mining companies can ignore or delay obligations with no legal risk.

This is a glaring design flaw. The Bill's Memorandum of Objects proudly asserts that the proposed reforms "do not add costs" to industry. But **a transformation framework that carries no cost to violators also carries no consequence, and therefore no power.** The failure to attach enforceable penalties for transformation non-performance exposes the performative nature of the Bill's empowerment rhetoric.

5. Reliance on Future Regulation: A Dangerous Deferral

The SEIAS report uncritically accepts that "regulations on transformation will include all the elements of the Charter" yet provides no analysis of whether the enabling provisions in the Bill actually require this. **Parliament is being asked to approve the skeleton of a transformation framework on faith, with details deferred to regulations that can be quietly amended, weakened, or ignored by future Ministers.**

MACUA's long-standing experience in the sector makes clear: **transformation not legislated is transformation not delivered.** The sector's history is replete with examples of companies "complying on paper" during rights applications, only to later disavow obligations, citing legal ambiguities or the notorious "once empowered, always empowered" argument. The SEIAS fails to acknowledge this risk.

The transformation regime proposed in the Bill is not a platform for empowerment, it is a façade. The Bill omits essential protections, evades enforceable obligations, and relies on future regulatory discretion in ways that weaken accountability. By failing to interrogate these omissions, the SEIAS report becomes complicit in masking the true impact of the Bill's design.

Transformation in mining cannot be advanced through rhetoric and revocable standards. It must be anchored in binding legislation with clear thresholds, timeframes, institutional mechanisms, and penalties. The failure to do so will ensure that the racial and spatial inequalities of the mining economy continue, and that communities remain excluded from the wealth beneath their feet.

Evidence of Ongoing Inequality:

The persistent failure to meaningfully transform South Africa's mining sector underscores the urgency for legislative reform with clear, enforceable obligations. Eighteen years after the MPRDA's enactment, the industry remains structurally skewed: ownership, control, and

benefits remain highly concentrated among historically privileged actors, while mining-affected communities continue to bear the environmental, social, and economic burdens of extraction.

Ground-Level Realities: Inequality Despite Rhetoric

MACUA's Looted Promises social audit (2025) and earlier community-based audits document a widespread pattern of unfulfilled Social and Labour Plans (SLPs), failed or phantom development projects, and chronic non-compliance by mining rights holders. These failures are not isolated incidents but systemic features of a regime that lacks teeth. In many mining regions, unemployment exceeds 70%, infrastructure promised in SLPs remains unfinished or non-existent, and youth face endemic exclusion from employment and enterprise opportunities.

This stands in sharp contrast to the profit trajectory of the mining sector, which has seen a 4,900% increase in nominal profits since 1980.⁵ Despite periodic boom-and-bust cycles in commodity prices, long-term trends demonstrate a sector that generates immense wealth that is systematically diverted away from the communities who host and support its operations.⁹

The SEIAS Final Assessment Report fails to confront these facts. It offers generic assertions that transformation "will be promoted," without analysing why previous transformation mechanisms have failed, or how the Amendment Bill addresses those failures. Worse, it claims that the Bill imposes "no additional cost" on industry, a framing that signals that transformation remains optional, rather than a legal obligation.

Weaknesses in the Bill Reinforce Structural Inequality

MACUA's position, as outlined in our 2025 Policy Document, is that genuine transformation must be embedded into the MPRDA itself, not deferred to policy or left to ministerial discretion. The Amendment Bill, however, dismantles the limited gains made through the Mining Charter, offering rhetorical support for transformation while removing its legal anchors. To reverse this retreat, the following reforms are imperative:

Recommended Reforms:

1. Legislate Charter Commitments

The MPRDA must be amended to include specific targets from the Mining Charter, including:

⁹ <https://www.news24.com/citypress/voices/christopher-rutledge-profits-up-people-down-the-dangerous-illusion-of-sas-growth-agenda-20250524-1137>

- Minimum HDP ownership percentages (e.g., 30%)
- Procurement quotas from BEE-accredited suppliers
- Employment equity and gender representation targets
- Community shareholding or free-carried interest

Transformation should not rely on policy guidelines that lack binding legal effect. These targets must be embedded in the Act or regulations to ensure enforceability. As MACUA argued in its 2024 submissions, a mining right should only be granted or renewed if these minimums are met.

2. Tie Licensing to Transformation Compliance

Transformation obligations must be made explicit in licensing conditions. MACUA has proposed a new Section 100A to this effect, where non-compliance with transformation standards constitutes grounds for suspension, refusal of renewal, or termination of rights. This would introduce accountability where none currently exists.

3. Enforce Community Development Requirements

The Bill includes vague provisions encouraging producers to “set aside” a portion of their production for local beneficiation, a measure aimed at promoting domestic value addition to raw minerals. While industrial beneficiation is important for national economic development, it does not automatically translate into tangible improvements in the lives of host communities. These provisions are market-oriented and do little to address the socio-economic deprivation experienced by those who live near mining operations.

MACUA therefore calls for a distinct and binding legal requirement that a fixed percentage of profits or revenue from mining activities be reinvested directly into host communities. This reinvestment must be channelled through transparent, accountable, and inclusive structures, such as community development trusts that represent a broad spectrum of local stakeholders, including women, youth, and customary landholders. Such a mechanism is essential to ensure that communities see real, measurable benefits from the extraction of resources from their land, and that development is not left to the discretion or goodwill of companies.

4. Maintain and Expand BEE Thresholds

Instead of loosening empowerment obligations, the state should recognise that Charter targets are minimums, not maximums. The MPRDA should encourage creative and redistributive models, such as carried interest, royalty-sharing schemes, and community equity, to accelerate economic justice. The Amendment Bill’s silence on these issues is a signal of regression.

5. Institutionalise Monitoring and Transparency

Transformation metrics, including ownership structures, employment demographics, procurement patterns, and SLP implementation, must be published annually, disaggregated by right-holder. This would enable Parliament, communities, and oversight bodies to track performance and expose under-delivery. MACUA proposes the creation of an independent Transformation Regulator to carry out this function, a provision absent from both the Bill and SEIAS report.

SEIAS Blind Spots: A Failure of Analysis

The SEIAS Final Impact Assessment Report does not engage critically with any of the shortcomings outlined above. It claims that transformation objectives will be met through regulations to be issued by the Minister, but defers all detail, ignoring the legal vacuum this creates. It also fails to question why companies have consistently resisted transformation, or how vague, unenforceable standards will fare any better.

The SEIAS functions, in this respect, as a legitimising tool, offering bureaucratic cover for a Bill that effectively neuters transformation law. Communities and civil society actors are asked to accept promises without enforcement, and to trust a regulatory regime that has repeatedly failed them.

MACUA has stated plainly: “The Amendment Bill fails to transform the Charter’s intentions into enforceable rights ... the entire transformation project risks being neutralised.” This is not hyperbole. It is a diagnosis rooted in hard evidence, lived experience, and the ongoing dispossession of resource-hosting communities.

Transformation as Constitutional Imperative

MACUA urges the Executive and the Legislature to treat transformation as more than an investor-facing slogan. It is a constitutional imperative, flowing from:

- Section 9: The right to substantive equality
- Section 25(7): The right to restitution of property and redress of past dispossession

The mining sector cannot claim to be a foundation of development while it systematically excludes the people most affected by its operations. Unless the MRD Amendment Bill is substantially revised to include binding, enforceable, and community-centred transformation provisions, it will fail in both law and legitimacy.

True transformation requires not only intention, but legislation with teeth.

Social and Labour Plan (SLP) Accountability and Community Development

SEIAS Portrayal:

The SEIAS Final Impact Assessment Report briefly acknowledges that Social and Labour Plans (SLPs) suffer from implementation problems, specifically citing “poor community consultation prior to development” and suggesting that the law’s “silence on prior consultation” is to blame. It claims the Amendment Bill will improve alignment of SLPs with community needs, seemingly by virtue of procedural refinements alone. However, this diagnosis is cursory and superficial. Nowhere does the SEIAS confront the systemic nature of SLP failure or grapple with the structural reforms needed to remedy it.

Most alarmingly, the report concludes that these changes will incur “no implementation cost” for the state. This assertion undermines the credibility of the SEIAS itself: meaningful reform of SLP design, enforcement, and accountability would inevitably require stronger regulatory oversight, improved intergovernmental coordination, and community monitoring capacity, all of which entail institutional investment. The SEIAS’s failure to acknowledge this suggests a dismissive view of SLP dysfunction, treating it as a minor technical glitch rather than a site of ongoing socio-economic injustice.

Community Reality: Broken Promises and Structural Neglect

For mining-affected communities, SLPs have become symbols not of upliftment, but of betrayal. Intended as binding commitments by mining companies to contribute to local development, through investments in schools, clinics, housing, water infrastructure, and skills training, SLPs are too often manipulated as public relations tools, while on-the-ground delivery is weak or non-existent.

MACUA and WAMUA’s social audit of 11 communities, compiled in the Looted Promises report, offers quantitative evidence of this failure:

- Only 23.25% of promised SLP projects were found to be completed or partially completed.
- Just 21.5% of total pledged value materialised as tangible benefits (such as infrastructure or services).
- In some cases, such as Mononono and Meloding, the figure was as low as 10%, and in one audited community, none of the SLP commitments were implemented.

- Of a total R376.25 million committed through SLPs, only R92.25 million could be independently verified as benefiting communities. That leaves over R284 million (or more than 75%) unaccounted for, diverted, or left unspent.

These figures are not statistical anomalies. They represent a structural pattern of evasion, enabled by regulatory indifference, lack of public transparency, and communities being systematically excluded from decision-making.

Systemic Causes and Consequences: Crumbs Capture and False Benevolence

The “Looted Promises” audit describes this phenomenon as a system of “Crumbs Capture”, where even the tiny fraction of value earmarked for communities is captured by company insiders, consultants, local elites, or lost to inefficiency and inaction. The report also critiques what it calls a “False Benevolence Economy”: a public narrative in which companies claim to be delivering social value, while in practice, the lives of affected communities remain unchanged or worsened.

This broken system fosters deep community alienation and distrust. In the audited areas:

- Only 13.1% of community members had ever seen an SLP document.
- Over 97% had no knowledge of the projects promised in their names.

This disconnect is not coincidental. It reflects a fundamentally top-down system where SLPs are drafted, approved, and reported upon without meaningful participation, transparency, or accountability.

The result? Communities adjacent to some of the most profitable mining operations in the world still lack clean water, dilapidated roads, and non-functional schools. Meanwhile, companies continue to enjoy tax breaks, profit repatriation, and political access, all while failing to deliver even the most basic legally-required community investments.

SEIAS Failure: Missed Opportunity for Structural Redress

The SEIAS does not engage with any of this reality. It fails to:

- Examine why the current SLP enforcement regime has failed so comprehensively;
- Propose any monitoring mechanisms, sanctions, or performance-based conditions;

- Explore institutional reforms, such as community oversight committees or transparency portals;
- Identify the real cost of regulatory failure, including increased protests, legal disputes, and loss of trust.

Instead, it offers a surface-level assurance that things will improve, without any structural changes to ensure that they do.

MACUA asserts that the SEIAS's failure to interrogate SLP delivery is one of its gravest shortcomings. It betrays the very communities whose lives depend on these commitments being real, not rhetorical. If the Executive and Parliament are serious about social justice, it must look past the SEIAS's shallow optimism and confront the documented reality of SLP collapse.

Weaknesses of the Amendment Bill: Social and Labour Plan (SLP) Reform

Superficial Reform, Systemic Risks

Given the well-documented failures of the Social and Labour Plan (SLP) system, including the abysmal delivery rates, lack of community consultation, and widespread unaccounted funds, one would reasonably expect the 2025 MRD Amendment Bill to introduce bold structural reforms. Instead, the Bill makes minimal changes, many of which fall short or even roll back existing protections. It fails to address the core problems that have allowed billions in community development promises to go undelivered.

1. No Mandatory Upfront Consultation

Although the SEIAS report acknowledges that the law has historically been silent on consultation during the development of Social and Labour Plans (SLPs), the Amendment Bill does not resolve this gap. While the DMRE has issued SLP Guidelines that recommend community consultation during the needs assessment phase, these remain non-binding policy documents, not statutory requirements. They do not carry the legal force needed to compel compliance or impose penalties for failure to engage affected communities meaningfully.

The Amendment Bill misses the opportunity to codify these obligations in law. It introduces no explicit, enforceable requirement that companies consult with host communities during the drafting of SLPs, either at the time of applying for a mining right or during the operational phase. In the absence of such a statutory obligation:

- Companies may continue to draft SLPs **unilaterally**, often in consultation with local elites or pre-selected gatekeepers.
- Community voices, especially those of **women, youth, informal workers, and land-rights holders**, remain sidelined.
- There is **no mechanism for communities to verify**, contest, or approve the needs assessment and project prioritisation within SLPs.

This omission entrenches the **status quo of exclusion**, in which SLPs are often used as corporate public relations tools rather than as genuine instruments of community development. Given the consistent failures of SLP implementation documented by MACUA and others, the lack of legally enforceable consultation rights is a serious weakness, one that should have been identified in the SEIAS and corrected in the Amendment Bill.

2. Hollow Five-Year Review Clause

The introduction of Section 23(1)(e), which requires that mining right holders “review” their SLPs every five years, may appear constructive on the surface. However, the provision lacks specificity:

- It does not require community participation in the review process.
- It does not mandate publication of either the revised SLP or the outcomes of the review.
- There is no enforcement mechanism compelling implementation of changes arising from the review.

As such, the clause risks becoming a procedural box-tick rather than a meaningful avenue for course correction or accountability.

3. Removal of Annual Reporting Obligation

MACUA’s legal analysis has confirmed that the Amendment Bill deletes the clause that previously required annual reporting on SLP implementation. This is a major regression. In the absence of such a clause:

- Regulators lose visibility into what is being delivered on the ground.
- Communities are left in the dark, unable to track promises or progress.
- Communities lose leverage to challenge false or incomplete reporting.

The SEIAS report fails to highlight or analyse this deletion. Instead, it offers a misleading sense of improvement, while a key tool for enforcement is quietly eliminated.

4. No Independent Monitoring or Community Oversight

The Bill retains full oversight authority within the Department of Mineral and Petroleum Resources(DMPR), despite its known capacity and credibility constraints. MACUA and Parliament's own Portfolio Committee have repeatedly raised the issue of DMPR's failure to enforce SLP compliance. No new provisions are introduced to empower communities to help monitor SLP delivery or to establish an independent oversight mechanism. The continued reliance on company self-reporting, which the Looted Promises audit shows is frequently false or incomplete, ensures that oversight remains toothless.

5. No Link Between SLP Completion and Mine Closure

Shockingly, the Bill does not condition mine closure certification on the fulfilment of SLP obligations. Despite extensive public commentary on this point, the updated Section 43(5A) makes no reference to SLPs. This omission enables companies to walk away from unfulfilled promises at the end of a mine's life, leaving communities without recourse.

Many mining companies defer SLP obligations to the latter years of operation. Without a statutory link to closure certificates, these promises can be ignored with impunity. MACUA finds this omission indefensible and deeply irresponsible.

Reality on the Ground: MACUA's Evidence Base

MACUA and WAMUA's social audits and legal analyses reveal the real-world consequences of these legislative weaknesses:

- **Vanished Funds:** In one audit, over R284 million of R376 million in committed SLP spending was unaccounted for or ineffectively spent.
- **Irrelevant Projects:** Examples include the construction of an internet café in a village without electricity, a result of no community input¹⁰.

¹⁰ As documented in the Looted Promises social audit (2022), Mononono community members identified the construction of an internet café , in a village with no reliable electricity, as emblematic of the lack of meaningful consultation in SLP design.

- **“Double Dipping”**: Companies have counted infrastructure built primarily for their own operations (e.g., staff housing or access roads) as SLP projects.
- **Zero Consequences**: No known criminal or regulatory action has been taken against companies that flagrantly fail to deliver.

The DMPR, according to a response to Parliament by the Director General of the DMPR, accepts self-reporting from companies with minimal to no verification. Meanwhile, community members are often unaware of the very existence of their SLPs. In the audit sample, only 13.1% of residents had ever seen an SLP, and 97% had no knowledge of what was promised in their name.

Recommendations: Restoring Credibility to the SLP System

To repair the integrity of the SLP framework, MACUA calls on the Executive and the Legislature to:

- a) **Mandate Community Participation** in SLP Design and Review
- b) Require documented, participatory consultation processes for all SLPs.
- c) Formalise the role of representative community forums in reviewing and approving plans.
- d) **Ensure Public Transparency**: Make all SLP documents, review reports, and compliance updates publicly accessible.
- e) Include SLP summaries in plain language and local languages.
- f) Require Independent Audits
- g) Introduce third-party verification of SLP implementation.
- h) Use audits to inform decisions on licence renewals and enforcement actions.
- i) **Strengthen Legal Enforcement**: Make failure to deliver SLP obligations a statutory breach, subject to:
 - i) Fines
 - ii) Suspension of rights
 - iii) Escrowed guarantees for project completion
 - iv) In cases of false reporting, initiate criminal investigations for fraud, with referrals to the Hawks or NPA.

- v) Link SLP Delivery to Mine Closure Certification
- vi) Amend Section 43 to stipulate that no closure certificate shall be issued unless:
 - (1) All SLP commitments are fulfilled, or
 - (2) Alternatives are agreed upon with affected communities.
- vii) Require that SLP projects include funding for operations and maintenance where relevant (e.g., staffing clinics or maintaining boreholes).

From Tokenism to Transformation

SLPs are not a charitable gesture; they are a legal and moral obligation, designed to mitigate the destructive social and environmental effects of mining. When SLPs fail, the consequences for communities are not theoretical, they are immediate and devastating. The Bill's refusal to correct the known failures of the SLP system amounts to legislative neglect.

MACUA urges the DMPR and Parliament to revise the Amendment Bill in line with the above proposals. Anything less would perpetuate the betrayal of trust that mining-affected communities have endured for decades and would further erode the legitimacy of the MPRDA as an instrument of inclusive development.

Environmental Justice and Protection of Community Land

SEIAS Portrayal:

The SEIAS Final Impact Assessment report presents the Amendment Bill's environmental provisions largely in terms of administrative efficiency. It praises the Bill for aligning with the National Environmental Management Act (NEMA) and the National Water Act, and frames these changes as efforts to reduce duplication, streamline regulatory processes, and integrate mining authorisations under the so-called "One Environmental System." This harmonisation, according to the SEIAS, is expected to facilitate smoother decision-making and expedite mining projects.

What the SEIAS fails to address is how these proposed efficiencies interact with environmental justice, community participation, or equitable burden-sharing. The report treats environmental governance as a technocratic issue of legal coherence, not as a site of contested power, where poor and rural communities disproportionately suffer the consequences of pollution, land degradation, and water scarcity. Critically, the SEIAS does not interrogate whether the Bill's proposed changes will empower communities to prevent harm, seek redress, or influence decisions that directly affect their health, land, and livelihoods.

Nor does the report mention climate change, energy transition, or the constitutional imperative to secure ecologically sustainable development, all of which are increasingly central to environmental governance, especially in a sector as carbon-intensive and ecologically destructive as mining.

Technocratic Alignment vs. Community Rights:

MACUA's analysis finds that while the Bill aligns on paper with NEMA and other statutes, this alignment is formal rather than functional. Instead of bolstering protections or deepening democratic oversight, the Bill entrenches a procedural model of compliance that lacks teeth and ignores community-centred safeguards. MACUA characterises this shift as a move "**From Environmental Rights to Bureaucratic Rhetoric.**" Key shortcomings include:

No Integrated Socio-Environmental Assessment: The Bill retains a conventional Environmental Impact Assessment (EIA) framework that prioritises biophysical indicators but fails to integrate social, cultural, and health-related impacts in a meaningful way. MACUA had called for a Sustainability Impact Assessment (SIA) framework, a globally recognised approach that

holistically evaluates environmental and human consequences in tandem. This proposal was ignored.

Absence of Community Monitoring Provisions: The Bill provides no legal mechanisms for affected communities to participate in environmental monitoring, request inspections, or hold polluters accountable. MACUA's recommendation to establish community-based environmental monitoring committees, drawing from international best practices (e.g., in India and Latin America), was not adopted.

Narrowing of "Interested and Affected Persons": As discussed in previous sections, the Bill's redefinition of "interested and affected persons" (I&APs), limiting recognition to those with a "direct interest", poses serious risks to community inclusion. Since NEMA has historically applied a broad, inclusive definition of I&APs (including NGOs and collective actors), the Bill's more restrictive language could create conflict between the MPRDA and NEMA. The SEIAS does not flag or explore this legal inconsistency.

Lack of Access to Remedies and Responsive Institutions: Communities suffering environmental harm, such as toxic water, air pollution, or land degradation, require fast, accessible, and effective remedies. Yet the Bill provides no grievance mechanisms, ombud structures, or emergency response frameworks to support affected communities. Nor does it establish a rehabilitation fund accessible to the public when companies default on their obligations.

Artisanal Miners Penalised, Not Supported: The introduction of the Artisanal Mining Permit, while a welcome recognition of informal miners, is undermined by requiring full environmental authorisation without offering support to comply. For artisanal miners operating on zero budgets, this effectively criminalises poverty while allowing well-resourced companies to skirt more serious accountability. This double standard represents a profound environmental injustice, punishing the most marginalised while privileging powerful actors.

In effect, the Bill's environmental reforms are designed to accelerate approvals, not to strengthen protection or democratise oversight. Regulatory harmonisation, while important, is meaningless if it weakens accountability or sidelines the very people most affected by mining-

related harm. As MACUA warns, the Bill risks turning environmental compliance into a “tick-box exercise”, where paperwork substitutes for substantive safeguards and community agency.

The SEIAS report’s failure to grapple with these critical issues, especially the social distribution of environmental harm is a glaring omission. It fails to ask whether the reforms support the right to an environment that is not harmful to health or well-being (Section 24 of the Constitution), or whether they empower communities to assert this right in practice.

Recommendations:

To ensure environmental justice is not sidelined:

- Mandate Integrated Social and Environmental Assessments (SIAs) that incorporate community-defined impacts and livelihoods.
- Reinstate a broad definition of I&APs consistent with NEMA’s participatory model.
- Create community monitoring mechanisms with statutory powers to observe, report, and intervene in cases of harm.
- Establish independent grievance structures, including a Mining Environmental Ombud, with authority to investigate and order remedies.
- Provide support (not just regulation) for artisanal miners to comply with environmental standards.

Without these reforms, the environmental sections of the Bill will continue the trend of legalised pollution and institutional neglect, a pattern the SEIAS report appears unwilling to confront.

Critical Minerals and the Green Transition – “Green Colonialism”:

The SEIAS Final Impact Assessment is entirely silent on one of the most strategically significant policy shifts in South Africa’s mining sector: the push for critical minerals as part of the green energy transition. Government has positioned the MRD Amendment Bill as a foundational piece in enabling the Critical Minerals Strategy, with the Minister touting South Africa’s potential to supply key inputs: platinum, lithium, vanadium, rare earth elements, etc., to global clean technology markets. This is presented in public discourse as a national economic opportunity. Yet nowhere in the SEIAS is this policy context mentioned, let alone interrogated.

This omission is not trivial. It conceals the fact that the Amendment Bill is designed to fast-track critical minerals extraction under a development model that repeats the extractivism of the past, this time in the name of decarbonisation. As MACUA warns, without community safeguards, the Bill risks ushering in “green colonialism in a new bottle”. That is: the appropriation of land and resources from rural and indigenous communities under the banner of global environmental goals, but with localised harm, weak benefit-sharing, and environmental sacrifice zones.

Bill Omissions and Community Risks:

The Amendment Bill contains no provisions to ensure that the green minerals boom:

- Respects community consent (no inclusion of FPIC),
- Guarantees community beneficiation (no community ownership or revenue-sharing linked to critical minerals),
- Addresses environmental degradation (no lifecycle assessment for high-impact minerals like lithium), or
- Links to just transition policies (no planning for economic diversification or mine closure in coal-reliant regions).
- The Bill does not even mention climate change, despite the fact that it is being marketed as part of South Africa’s climate adaptation and transition toolkit. This is a contradiction in terms.

Spatial Justice and Ongoing Displacement

Another glaring omission in both the Bill and SEIAS is the issue of mine-induced displacement. Mining continues to result in the forced removal of communities, loss of agricultural land, and erosion of ancestral graves and sacred sites. Yet South Africa still lacks a dedicated legal framework to govern displacement linked to mining, relying instead on piecemeal administrative practices that lack fairness, predictability, or accountability.

Despite repeated calls by MACUA, mining-affected communities, and even some traditional authorities, the Amendment Bill includes no resettlement framework, no compensation standards, and no rehabilitation planning requirements when people are displaced. This is particularly alarming given that many of the new critical mineral’s projects are expected to use opencast mining, with large land footprints and high risk of dislocation.

The SEIAS, once again, is silent. It does not raise the risks of displacement, nor acknowledge the historical legacy of forced removals under apartheid mining. This silence constitutes a profound failure of impact assessment, especially given the rise in community resistance cases like Xolobeni, where the fear of dispossession remains central.

Enforcement Tilt – “Policing, Not Participation”: **New Enforcement Powers and Misaligned Priorities:** The Bill introduces Section 91A, which grants police officers powers to enforce compliance in mining areas. On paper, this is aimed at combating illegal mining. In practice, it is part of a broader trend toward securitising mining regulation: treating informal mining and protest as criminal threats, while turning a blind eye to environmental abuses and legal violations by corporations.

Operations like “Vala Umgodi” (Fill the Hole), which deploy police and military forces to target zama-zamas (informal miners), highlight this imbalance. Meanwhile, community protests over broken SLPs or environmental harm are met with intimidation, SLAPP suits, or in some cases, violence. At the same time, no known prosecutions exist for toxic spills, failed rehabilitation, or misappropriated development funds by large mining firms.

MACUA calls this imbalance the “enforcement tilt”: a system that protects capital but criminalises the poor. The Bill does not correct this. It introduces more tools for state policing but no new institutional mechanisms to empower communities to monitor or challenge abuse. There is no Ombud for mining, no independent grievance platform, and no expansion of Mine Health and Safety Committees to deal with environmental harms affecting communities.

The SEIAS reflects this same bias. It praises “tougher enforcement” on illegal mining but fails to question whether enforcement is being applied equitably. This perpetuates environmental injustice and erodes the rule of law.

Recommendations for Embedding Environmental Justice

To uphold Section 24 of the Constitution, which guarantees the right to an environment that is not harmful to health or well-being and to ecologically sustainable development, the MRD Amendment Bill must be amended as follows:

1. Incorporate Critical Minerals Safeguards:

- a.** Require community benefit agreements for any critical minerals project.
- b.** Mandate lifecycle environmental assessments for minerals linked to “green tech.”

- c. Link any fast-tracking mechanism to robust FPIC, community consultation, and sustainable local industrialisation.

2. Displacement and Spatial Planning Protections:

- a. Add a new chapter or clause requiring Resettlement Action Plans (RAPs) for all projects that may lead to displacement.
- b. Include standards for compensation, land rehabilitation, and community approval prior to relocation.
- c. Integrate mining and municipal spatial development frameworks (SDFs) to ensure sustainable land use.

3. People-Centred Enforcement:

- a. Establish an independent Mining Ombudsperson for grievances related to health, environment, and social obligations.
- b. Rebalance enforcement to include proactive compliance assistance, not just policing.
- c. Ensure transparency of enforcement data, including publication of inspection reports and sanctions.

4. Community Environmental Monitoring:

- a. Create Community Environmental Monitoring Committees, with legal rights to review compliance reports, request inspections, and participate in licensing reviews.
- b. Provide funding and technical support to build community capacity for environmental oversight.

5. Climate and Just Transition Integration:

- a. Require that any fossil fuel project undergo a Climate Impact and Transition Assessment.

- b.** Include provisions for post-mining economic regeneration, especially in coal-reliant areas.
- c.** Incentivise renewable energy projects on rehabilitated mine land with community ownership models.

6. Transparency and Public Access to Information:

- a.** Mandate public disclosure of Environmental Management Plans (EMPs), real-time pollution data, and rehabilitation funds.
- b.** Ensure that information is available in local languages and via accessible platforms (e.g., online dashboards, local info centres).

The Bill's failure to address critical minerals policy, displacement, and enforcement imbalance exposes a deep contradiction in its environmental posture. It claims to align with NEMA but fails to uphold its participatory spirit. It claims to prepare for the green economy but does so in a way that risks reproducing old forms of extraction and exclusion. And it claims to enforce the law but does so unevenly, policing informal miners while letting corporate violators off the hook.

The SEIAS Final Assessment mirrors these gaps. It evaluates environmental alignment technocratically, without addressing the real-world consequences for communities. As a result, the SEIAS misrepresents the socio-environmental impacts of the Bill and fails its mandate as a tool for evidence-based legislative reform.

We therefore urge the DMPP and Parliament to reject the current environmental provisions in the Bill as inadequate, and to adopt the community-centred recommendations outlined above. Only then can we claim to be building a just, sustainable, and democratic mining future.

Gender Equity and Women's Rights in Mining

SEIAS Portrayal: The SEIAS Final Assessment is virtually silent on issues of gender equity in the mining sector. It does not discuss how the Amendment Bill will affect women, nor does it analyse the gender-differentiated impacts of mining policy. This omission is disappointing but not surprising – too often, socio-economic assessments treat “affected communities” and “workers” as homogeneous groups, failing to acknowledge internal disparities such as gender. In the few places the SEIAS hints at gender, it does so indirectly (for instance, mentioning beneficiaries including “women and people living with disabilities” in a generic list). There is no dedicated consideration of how the proposed legal changes might either advance or hinder gender transformation in mining.

Current State of Gender in Mining: The mining industry has historically been male-dominated and rife with patriarchal norms. Under apartheid, women were even legally barred from working underground. Although that changed post-1994, progress has been slow and uneven. As noted in MACUA & WAMUA's reports, **women remain severely underrepresented in mining jobs** (around 12% of the workforce as of 2023) and are often concentrated in the lowest paid, least skilled positions. Women in mine-host communities face multiple burdens: they often endure the social and environmental harms of mining (e.g., caring for family members who fall ill from pollution, losing access to water or arable land which women rely on, increased gender-based violence associated with mining booms) while receiving few of the benefits (jobs or contracts tend to go to men, compensation payouts often go to male heads of households, etc.). Moreover, women's *voices* are frequently marginalized – traditional leadership structures and community consultation meetings are often male-led, and women's grievances (like concerns about community safety, or sexual harassment by mining security) may not be heard.

The “*Looted Promises*” audits explicitly highlight **women's exclusion and extra burdens**. In one section titled “Women in Mining-Affected Communities: Exclusion, Exploitation, and the Crisis of Representation,” it documents that “*women bore the heaviest burdens of mining-induced poverty, environmental degradation, and failed development*”. Women are “*excluded from consultation processes*” and “*denied promised infrastructure, employment, and safety nets*”, and the regulatory ecosystem fails to protect them^[79]. Simply put, any policy or law that does not consciously attempt to correct these gender imbalances risks perpetuating them.

Bill's Treatment of Gender: The Amendment Bill's only notable reference to gender is the introduction of reporting requirements in some sections e.g., companies might be required to submit data on employment by gender or plans for women in mining. However, as MACUA points out, the Bill **offers only data collection, not action**. There are **no targets or quotas** for including women, no set-asides for women-owned businesses in procurement, no requirement that community trust or committee structures have gender balance, etc. In fact, by removing

many of the Charter's provisions from the realm of obligation, the Bill also removes whatever implicit pressure existed to boost women's participation (the Mining Charter had, for instance, a goal for women to make up 10% or more of staff in core mining jobs, and aims for women-owned businesses to get a share of procurement, modest targets which themselves were not fully met). The Bill is a missed opportunity to hardwire such goals into law.

MACUA had explicitly **called for binding gender measures** during consultations. These included:

- A **quota for women's employment** (e.g., at least 20% of core mining jobs within a certain timeframe, with a longer-term goal of parity).

Protections for women landowners and women-headed households in community negotiations (to ensure, for instance, that they receive compensation directly and have a seat at the table, rather than being represented only by male leaders).

Inclusive governance requirements, such as mandating that any Community Trust or Community Committee associated with mining must have a certain percentage of women in leadership roles.

Gender-responsive budgeting in SLPs, ensuring projects address women's needs (e.g., childcare facilities, clinics that offer maternal health, support for women's micro-enterprises).

Strengthened measures against gender-based violence in mining areas (for example, requiring mining companies to implement and fund programs on GBV prevention and to have clear policies for handling sexual harassment or abuse by any company personnel or security).

None of these suggestions found their way into the Bill. The Bill's transformation and SLP clauses are gender-blind, save for those perfunctory mentions of women as one of many beneficiary groups. The SEIAS report's failure to critique this is another example of a crucial omission. By not raising gender, the SEIAS gives the impression that the Bill has no gender impact, which is false: **an ostensibly "neutral" law can perpetuate inequality if it ignores structural disadvantages.**

Implications of Gender-Blind Policy: What does it mean if the MPRDA Amendment goes through as written, with no gender-specific provisions? It likely means: Mining companies will continue to approach community engagements and benefit programs in a gender-neutral way, which in practice often means benefits accrue to men first. For example, if new jobs are created or if community compensation is paid out, without deliberate inclusion efforts, men might capture those, as has happened historically. The government will lack any leverage to push for increased roles for women in mining, aside from moral persuasion. Companies that do not prioritize gender diversity will face no legal consequence. Issues like women's safety (around mines, or in housing provided by mines) will remain unaddressed in the mining law framework.

We know from reports that in some mining areas, women face harassment or even are coerced into transactional sex to obtain jobs. The law does not speak to this at all.

The potential of mining as a catalyst for improving women's socio-economic status will remain largely unrealized. Mining could be an opportunity, for instance, by involving women in artisanal mining formalisation, or giving women ownership stakes in community mining ventures, but that requires intentional support which the Bill lacks.

Evidence & Testimonies: It is worth noting some evidence to emphasize why gender equity needs urgent attention in mining governance: As referenced, women are only 12% of the workforce in mining and concentrated in lower-paying jobs. This shows the glass ceiling is very much intact. Traditional laws and practices have often excluded women from decision-making on land. In Baleni (2018), the community's victory for consent was led by women, but they had to fight both the mining company and sceptical traditional structures. Ensuring women can exercise land rights is vital. Many social challenges in mining towns (sex work, family disintegration, drug abuse) disproportionately impact women and children. If SLPs were more gender-aware, they might invest more in family services or women's economic projects. But most SLPs are silent on these issues. On the positive side, where women have been empowered (for example, some community trusts that decided to fund women's projects, or women leaders in MACUA), we see more equitable outcomes and less conflict.

Recommendations for Gender-Responsive Mining Law:

To correct the gender-blind spot, we recommend:

1. **Reintroduce and enforce Charter gender provisions:** The Amendment should explicitly incorporate the goals of the Mining Charter regarding women's participation, making them obligatory. For instance, require a minimum percentage of women in various tiers of the workforce, and penalise companies that fail to make progress.
2. **Gender Quotas in Community Structures:** Any statutory committees, boards, or advisory councils established under the MPRDA (for example, if there's a Mining Community Advisory Council or similar) should have a mandated representation for women (e.g., at least 50% women members).
3. **Women-Focused SLP Initiatives:** The law should instruct that SLPs must include programs addressing women's needs (like skills training specifically targeting women in communities or supporting local women entrepreneurs). DMPR should not approve SLPs that ignore half the population.

4. **Monitoring and Reporting on Gender Outcomes:** Beyond just requiring companies to report the number of women employed, there should be monitoring of qualitative outcomes; are women moving into skilled positions? Are wage gaps closing? Are women in communities reporting improved livelihoods due to mining? This could be facilitated by commissioning periodic studies or by involving the Commission for Gender Equality in oversight of mining.
5. **Support for Women's Voices:** Government should formally recognise women's associations (like WAMUA) as key stakeholders in mining policy consultations. One practical step: ensure that any public consultation on mining laws or projects explicitly reaches out to women's groups and schedules meetings in a way that women can attend (taking into account child care, etc.).
6. **Protection against Exploitation:** Strengthen provisions that any mining-related housing or accommodation must ensure the safety and dignity of women (e.g., proper lighting, separate facilities). Also, possibly include a requirement for mining companies to have policies addressing gender-based violence in their operations and supply chains.
7. **Gender Impact Assessment:** We propose that any significant mining project should undergo a "gender impact assessment" as part of the social impact evaluation, identifying how women and men might be differently affected and ensuring mitigation measures respond to those differences.

The SEIAS report should have included a section on gender, recommending measures like the above. Since it did not, this submission fills that gap by outlining why gender matters and what should be done.

In conclusion, **the Bill's current approach to gender equity is a profound disappointment** to the women in mining-affected communities who have been fighting for recognition and inclusion. It essentially says, ***"we will count you, but we won't empower you."*** This data-centric, laissez-faire approach is inadequate for transforming a sector known for its "supernormal patriarchy". If mining is to contribute to social justice, it must uplift those most disadvantaged by past and present practices, and women surely rank high in that category. We call on the Executive and the Legislature to amend the Bill to correct this bias: make the law explicitly work for women, as well as for men, in the mining industry and its surrounding communities. Gender equality is not a side issue; it is integral to the constitutional vision of equality and dignity for all.

Conclusion

South Africa's mineral wealth has long underpinned a deeply unequal economy, from colonial conquest to apartheid-era dispossession. In the democratic era, the MPRDA was envisioned as a corrective tool: to democratise mineral governance, protect communities, and redistribute the value extracted from land and labour. However, the 2025 MRD Amendment Bill, as currently drafted, falls short of this transformative promise. Instead of closing historical wounds, it risks entrenching new forms of exclusion, inequality, and impunity.

This submission, grounded in MACUA's social audit evidence, independent policy analysis, and constitutional principles, demonstrates that the Bill, and the SEIAS Final Assessment that purports to justify it, reflect a technocratic and top-down approach that marginalises mining-affected communities.

The following core concerns emerge:

1. Participation without Power

While claiming to broaden participation, the Bill in fact narrows legal recognition of who qualifies as an "interested and affected person." The shift from "parties" to "persons," combined with the requirement of a "direct interest," risks excluding indirect stakeholders, grassroots movements, and informal community formations from critical decision-making. The Bill fails to legally mandate Free, Prior and Informed Consent (FPIC) for customary and communal landholders, despite domestic court precedents (e.g. Baleni, Maledu) and international legal obligations. Communities remain objects of regulation, not co-authors of it.

2. Accountability Undermined

Instead of strengthening obligations on mining companies, the Bill often removes existing accountability mechanisms, such as the duty to report annually on Social and Labour Plan (SLP) implementation. Transformation goals, already weakened by the once empowered, always empowered logic, are rendered largely voluntary under the Bill's framework. The SEIAS report fails to critically evaluate this erosion of accountability, presenting hollow commitments as progress. This undermines Section 33 of the Constitution, which requires just, transparent, and participatory administrative action.

3. Social Justice Gaps and Omitted Safeguards

Key community rights, including protection from displacement, access to benefit-sharing, and enforceable resettlement standards, are missing from the Bill. The failure to codify ownership thresholds, tie compliance to licensing, or guarantee community equity participation is a betrayal of the original vision of mining transformation. The Bill makes no provision for gender quotas, local economic linkages, or the long-term rehabilitation of affected lands. Nor does it recognise the socio-economic fallout from mine closures, or the burden this places on host communities.

4. Environmental Justice as Afterthought

The Bill's environmental provisions focus on regulatory streamlining, not substantive protection. It aligns superficially with NEMA but fails to secure participatory environmental governance, access to remedies, or community monitoring rights. It does not address the urgent need for climate resilience, decarbonisation, or just transition planning in historically polluted mining zones. Artisanal miners are burdened with complex compliance rules, while large corporations escape effective oversight — reinforcing a double standard in environmental justice.

5. Misleading SEIAS Framing

The SEIAS Final Assessment provides an unbalanced and incomplete foundation for the Amendment Bill. It frames industry and administrative efficiency as primary goals, while downplaying constitutional rights, community participation, and lived experiences. It fails to identify the Bill's retreat from transformation, its conflict with established jurisprudence, or the documented failures of SLP implementation. It also neglects credible alternative proposals, including those already submitted by civil society and MACUA. A genuine socio-economic impact assessment must centre those most affected, not treat them as an afterthought.

A Path Forward

We urge the Executive and the Legislature to reject this Bill in its current form. A new, people-centred process of co-creation must be launched, one that meaningfully engages mining-affected communities in every region, in appropriate languages, formats, and forums. This process should:

- Be guided by constitutional rights and aligned with judicial precedent (especially on land rights, administrative justice, and environmental protection).

- Include extensive hearings in mining-affected areas, not just metropolitan centres.
- Re-evaluate the SEIAS process, possibly commissioning a new independent assessment that includes voices previously excluded.
- Integrate specific, legally binding reforms, such as:
 - A legal right to FPIC;
 - Enforceable transformation targets and public reporting obligations;
 - Clear community benefit-sharing frameworks;
 - Stronger SLP compliance mechanisms, linked to mine closure and licensing;
 - A dedicated Mining Ombud or independent grievance mechanism;
 - Climate-responsive just transition planning, especially in coal-dependent areas.

MACUA, WAMUA, and the MPRDA Coalition have already proposed draft legal clauses that can serve as a foundation for this reform. These include inclusive definitions of affected parties, community-focused transformation sections, resettlement safeguards, and SLP accountability tools. We call on the Executive and the Legislature to adopt these proposals not as symbolic gestures, but as substantive commitments to a democratic and sustainable mining future.

In Closing

The Constitution mandates that South Africa belongs to all who live in it. This includes the people whose land is mined, whose water is polluted, and whose labour produces mineral wealth. If the MRD Amendment Bill is to have legitimacy, it must be written with them, not against them.

We reject the SEIAS report's failure to address the deep inequities in the mining regime. We urge lawmakers not to rubber-stamp a flawed process. Instead, send the Bill back for redrafting, with clear directives to centre transformation, consent, community benefit, environmental justice, and meaningful participation. This is not just good policy, it is a constitutional imperative.

Nothing about us, without us.