



MACUA Submission on the MPRDA 2025 Amendments: A Call for Justice, Participation, and Transformation

In response to the Government Notice published by the Department of Mineral and Petroleum Resources (DMPR) on 20 May 2025, inviting submissions from interested and affected parties on the Draft Mineral and Petroleum Resources Development Amendment Bill, 2025 (the 'MPRDA Amendment Bill'), the Mining Affected Communities United in Action (MACUA) hereby submits the following formal response.

This submission reflects the collective voices, concerns, and proposals of mining-affected communities across South Africa. It incorporates the lived experiences of communities from across South Africa. It presents a legally grounded, socially just, and transformation-driven alternative to the current proposed amendments. These proposals seek to uphold the Constitution, respond to judicial precedents, and address the systemic injustices that continue to impact historically disadvantaged persons.

MACUA's submission is structured clause-by-clause, integrating recommendations from local consultations, provincial forums, and national civil society engagements. We urge the Department to meaningfully consider the recommendations presented herein, as they are the product of participatory democratic processes and reflect the legitimate interests of those most affected by the governance of South Africa's mineral wealth.

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From Missed Milestone to Deepened Injustice - The MPRDA Amendments and the Betrayal of Transformation

The Minister of Mineral Resources and Energy, Gwede Mantashe, has released the long-awaited draft **Mineral and Petroleum Resources Development Amendment Bill (2025)**, describing it as a “milestone” in South Africa’s mining legislative overhaul. *Business Day* (21 May 2025) echoed this sentiment, highlighting the Minerals Council SA’s praise of the Bill as a long-overdue response to industry frustrations over bureaucratic delays and investor uncertainty.

But for the communities who bear the brunt of mining’s footprint, those who live with the dust, displacement, environmental degradation, and broken promises, this is no milestone. It is a **millstone**. The draft Bill fails to deliver justice, equity, or transformation. In fact, it **retreats from them**.

Despite extensive, legally grounded submissions from MACUA, the MPRDA Coalition, CALS, and other civil society partners—including constitutional benchmarks, legislative proposals, and community-authored clauses—core inputs have been ignored. The result is a Bill that not only omits the tenets of post-apartheid justice but **reconfigures the regulatory architecture to entrench exclusion under the guise of reform**.

Disregarding Constitutional Mandates on Land and Consent

Nowhere is this betrayal more evident than in the Bill’s refusal to enshrine **Free, Prior and Informed Consent (FPIC)** for communities residing on communal and customary land. The Constitution, **IPILRA**, and landmark rulings such as *Maledu* and *Baleni* affirm that land rights holders must provide informed consent, not merely be “consulted”, before mining can proceed.

Yet, the Bill entrenches a **weak and discretionary consultation model** that lacks enforceability. Worse, it omits any **recognition of customary governance systems or collective land rights**, ignoring the lived realities of rural, informal, and traditional communities.

This is not a legislative oversight; it is a **deliberate political choice**, one that aligns with the interests of extractive capital rather than those of historically dispossessed communities. It paves the way for forced removals, land dispossession, and state-sanctioned displacement without community control.

Disregarding the SAHRC and Submitting a Deficient SEIAS

The Bill disregards the findings and recommendations of the **South African Human Rights Commission (SAHRC)**, which has repeatedly called for:

- The legal codification of FPIC;
- Legal protections for customary and informal land tenure;
- Proactive disclosure of mining information;

- Transparent and accountable benefit-sharing;
- Independent oversight and grievance mechanisms.

By excluding these recommendations, the Bill undermines the SAHRC's role as a constitutional watchdog and entrenches the **impunity of state and corporate actors**.

Further, the **Socio-Economic Impact Assessment (SEIAS)** underpinning the Bill is deeply flawed. The SEIAS:

- Was not based on meaningful public consultation;
- Ignores the differential impact of mining on women and landless people;
- Fails to assess constitutional consistency with **Sections 9, 24, and 25**;
- Offers no impact analysis of removing community protections.

Using such a **shallow and exclusionary process** as the evidentiary foundation of the law is indefensible.

Silence on Displacement and Spatial Injustice

The Bill provides **no framework for displacement, resettlement, or restitution**. Despite years of documented abuses, including relocations without compensation, dispossession of burial sites, and community fragmentation, the Bill sidesteps the issue entirely.

This silence perpetuates **spatial injustice**, especially in the context of the government's **Critical Minerals Strategy**, which targets new zones for extraction in areas like the Waterberg, Sekhukhune, and Pondoland without safeguards.

MACUA proposed:

- Statutory protections against forced removal;
- Minimum compensation standards;
- Environmental and social planning obligations tied to land tenure.

All were ignored.

A Hollow Gesture on Artisanal and Small-Scale Mining (ASM)

The 2025 Amendment Bill introduces a new **artisanal mining permit** under **Section 27A**, but it is a **deeply flawed and exclusionary instrument** that fails to reflect the realities of informal mining communities or support meaningful transformation.

The permit:

- **Restricts operations to 1.5 hectares**, excluding most existing ASM practices, such as tailings processing, underground re-entry, or community-shared claims;

- **Requires full environmental authorisation**, which is **financially and administratively prohibitive** for subsistence and survivalist miners;
- **Forbids permit transfer and cooperative scaling**, effectively **criminalising collective models** that dominate informal ASM;
- **Frames ASM as a marginal activity**, with no recognition of its role in livelihoods, redress, or economic resilience.

While the Bill appears to empower the Minister to **identify areas for ASM and small-scale mining**, this authority is **purely discretionary** and is **not accompanied by any procedural requirements, designation criteria, or support structures**. There is no legal obligation to map, consult, or designate zones where ASM can operate lawfully and sustainably.

This stands in stark contrast to **earlier drafts and public consultations**, which proposed a dedicated clause for **designated ASM zones**. That clause has been **removed** in the final Bill.

The result is:

- **No structured ASM zoning system;**
- **No simplified permitting framework** tied to zone-level planning;
- **No coordinated environmental management or rehabilitation support;**
- **No developmental support**, such as training, cooperative registration, or access to markets.

This omission:

- **Undermines formalisation efforts** and perpetuates informality;
- **Contradicts international best practice**, which relies on ASM zones as a key mechanism for regulation and empowerment;
- **Ignores repeated community recommendations** and the lived realities of miners.

MACUA's position remains clear: without a structured, pro-poor zoning framework to accompany Section 27A, the permit system is a regulatory **dead end**.

It offers legal exposure without protection, compliance burdens without support, and rhetoric without justice.

Transformation Without Teeth

While the Bill references “inclusive procurement” and “broad-based empowerment,” it **fails to legislate any enforceable transformation obligations**. It:

- Makes **ownership by HDPs optional**;
- Leaves procurement and employment equity to ministerial policy discretion;
- Omits binding targets, compliance penalties, and grievance channels.

In effect, **Mining Charter principles**, which were previously promised to be legislated, are now treated as flexible guidelines. This undermines:

- Constitutional redress obligations;
- Parliamentary commitments post-*Chamber of Mines* judgment;
- Community and worker expectations across the sector.

The Gender Blind Spot Remains

The Bill entirely fails to:

- Address gendered exclusion from benefit-sharing and land access;
- Mandate gender-responsive budgeting in SLPs;
- Protect women-headed households in relocation or planning processes;
- Include gender representation quotas in decision-making bodies.

The Bill's only gender-related requirement is **data collection**. There are no obligations, no planning standards, and no protections, **a structural reinforcement of gender injustice**.

From Environmental Rights to Bureaucratic Rhetoric

Despite stating alignment with **NEMA** and the **National Water Act**, the Bill does not:

- Enable **community-led environmental monitoring**;
- Include **area-based rehabilitation plans** (especially for ASM);
- Require **cumulative impact assessments** for overlapping mining activities;
- Ensure access to environmental information.

Environmental obligations remain administrative, extractive, and elite-controlled, and as a direct consequence, **Communities will continue to carry the burden**, with little recourse.

Policing, Not Participation

Section 91A expands SAPS powers under the MPRDA, **without judicial oversight**, community accountability, or safeguards. This is a direct continuation of **militarised enforcement strategies** like Operation Vala Umgodi.

MACUA calls for:

- **Independent oversight** of enforcement mechanisms;
- **Community-based grievance platforms**;

- Mediation, support, and rights-based enforcement, not raids and repression.

The Bill implements none of these, instead reinforcing a **criminal justice response to structural poverty**.

What the Bill Should Have Done

MACUA proposed a rights-based and developmental mineral law. Specifically, we called for:

- Legalisation of **FPIC and land rights**;
- Enforceable **transformation and gender equity targets**;
- Formal recognition and support for **ASM zones and cooperatives**;
- Legal frameworks for **displacement, restitution, and environmental justice**;
- Proactive disclosure and **transparency** in licensing and SLP performance;
- A rebalanced relationship between communities, the state, and capital.

None of these proposals were adopted.

A Law of Exclusion, Masked as Reform

The 2025 MPRDA Amendment Bill claims to improve governance and promote growth. In reality, it:

- Prioritises investor certainty over justice;
- Reinforces state and corporate discretion;
- Removes hard-won community protections;
- Entrenches gender, spatial, and environmental exclusion.

It is a law that locks communities out of land, governance, and development while offering **symbolic transformation and unchecked enforcement**.

Where We Stand

MACUA remains committed to principled engagement. But we are equally committed to **resisting exclusion**.

As the public comment period proceeds, we are:

- Mobilising branches across all provinces;
- Gathering updated mandates from affected communities;

- Engaging in collective advocacy with aligned civil society groups.

This Bill must be withdrawn, restructured, and rebuilt - with the people at the centre.

We will not be legislated out of our land.

We will not be erased.

We will not be silenced.

PREAMBLE

Proposed Change Gazetted by the DMPP

The 2025 Amendment Bill proposes to replace the current Preamble of the Mineral and Petroleum Resources Development Act (Act 28 of 2002) with the following:

“Recognising that minerals are non-renewable resources;

Acknowledging that South Africa's mineral resources are a common heritage belonging to the nation and that the State is the custodian;

Affirming the State's obligation to protect the environment and promote ecologically sustainable development and social progress;

Reaffirming the State's commitment to equitable access to mineral resources;

Being committed to eradicating all forms of discriminatory practices in the industry.”

Additionally, references to “petroleum” have been removed from the original Preamble.

Why This Change Is Not Acceptable

✗ Dilution of Transformative Intent

The revised Preamble uses abstract language but omits the **constitutional imperatives of redress and restitution**. It excludes:

- Any reference to **historically disadvantaged persons (HDPs)**;
- The need for **corrective justice** for racialised and gendered dispossession;
- Commitment to **redistribution, community empowerment, or benefit-sharing**.

This depoliticises the core purpose of the MPRDA and reduces transformation to **symbolic rhetoric**, severed from legal substance.

✗ No Recognition of Community Rights or FPIC

The revised Preamble entirely fails to acknowledge:

- **Mining-affected communities** as rights holders;
- The principle of **Free, Prior and Informed Consent (FPIC)**;
- **Customary and informal land tenure systems**;
- The role of **traditional governance**, women's land rights, or intergenerational stewardship.

This erasure is deeply problematic given South Africa's legal precedents and the constitutional duty to affirm the dignity and agency of affected communities.

✗ Exclusion Through Narrow Framing

The Preamble lays the groundwork for a broader pattern in the Bill: the use of **vague, undefined terms** that can be interpreted to **exclude rather than include**. It:

- Lacks any **definition of “equitable access”**;
- Avoids framing “the nation” in a way that affirms the **differentiated rights** of previously dispossessed peoples;

- Implies a **uniform national interest** while silencing the **unequal burdens** communities face.

This creates **legal ambiguity**, allowing for discretion that can be used to **avoid obligations** to those most affected.

✗ Disregards SAHRC Recommendations

The Preamble makes no reference to:

- **Community ownership** or participation in governance;
- **Institutional accountability** mechanisms (e.g. ombuds structures, public reporting);
- Any alignment with the recommendations of the **South African Human Rights Commission** on protecting land rights, FPIC, and meaningful participation.

By ignoring this guidance, the Preamble **undermines the constitutional role of oversight institutions** and sidesteps public accountability.

✗ SEIAS Deficiencies Ignored

The **Socio-Economic Impact Assessment (SEIAS)** used to justify the Bill:

- Was developed **without grassroots consultation**;
- Failed to evaluate the impact of removing redress-oriented language;
- Did not consider **intersectional discrimination** (especially gender, informal tenure, and rural poverty);
- Was not used to guide the framing of the Preamble, despite its intended purpose in policy development.

As a result, the Preamble is not grounded in any **transparent or participatory impact assessment**.

✗ Symbolic, Not Substantive

The revised Preamble:

- Makes no reference to enforceable obligations;
- Lacks alignment with **Sections 9, 24, and 25** of the Constitution;
- Offers **no measurable commitments**, timelines, or mechanisms to realise its principles;
- Does not guide the interpretation of the Act in a way that ensures **equity, justice, or inclusive governance**.

It is **legally weak and politically evasive**, a missed opportunity to establish a normative and developmental foundation for the MPRDA.

✓ Proposed New Preamble (By MACUA)

RECOGNISING that South Africa's minerals are non-renewable natural resources and a common heritage of all South Africans, with the State acting as custodian for present and future generations;

AFFIRMING that past injustices, including racialised dispossession and exclusion, require urgent

and proactive transformation to secure substantive equality, dignity, and access to opportunity;

ACKNOWLEDGING that mining-affected communities, particularly those historically disadvantaged, have a right to benefit meaningfully from resource extraction, participate in decision-making, and live in an environment that is not harmful to their health and wellbeing;

COMMITTING to the protection of environmental rights, social justice, equitable access, economic participation, gender equity, and democratic accountability in the governance of South Africa's mineral resources;

BEING RESOLVED to ensure that this Act gives effect to the Constitution, including Sections 9, 24, and 25, and to the principles of Free, Prior and Informed Consent (FPIC), participatory development, and equitable redress.

Summary of Key Improvements

Issue	DMPR Amendment Bill	MACUA Proposal
Redress for past injustice	✗ Absent	✓ Explicitly referenced
Role of HDPs and communities	✗ Not mentioned	✓ Central to purpose
FPIC and participatory justice	✗ Excluded	✓ Clearly stated and defined
Constitutional grounding	✗ Vague	✓ Anchored in Sections 9, 24, 25
Gender and intergenerational equity	✗ Ignored	✓ Explicitly included
Alignment with oversight bodies	✗ None	✓ Reflected in structure and commitments
Legal enforceability	✗ Symbolic	✓ Normative, directional, and actionable

Conclusion

The Preamble in the gazetted 2025 Amendment Bill represents a **retreat from the original transformative objectives** of the MPRDA. It is **abstract, ahistorical, and legally ineffective**, failing to provide a clear foundation for rights-based mineral governance.

By contrast, the MACUA proposal:

- Reflects **constitutional obligations and jurisprudence**;
- Centres the role of **communities and HDPs** in decision-making and ownership;
- Embeds **environmental, gender, and intergenerational justice**;
- Supports **transparency, accountability**, and public participation.

Without such grounding, the MPRDA risks becoming a **technocratic and extractivist framework** that facilitates elite accumulation and deepens exclusion.

The Preamble must be **revised to reflect the lived realities, legal rights, and collective aspirations** of those most affected by mining in South Africa.

ASM DEFINITION

Proposed Change Gazetted by the DMPP

The 2025 MPRDA Amendment Bill introduces a new definition of “artisanal mining” under **Section 1**, which reads:

“‘artisanal mining’ means traditional and customary mining operations using traditional or customary ways and means, which includes the activities of individuals using mostly rudimentary mining methods, manual and rudimentary tools to access mineral ore, usually available on surface, or at shallow depths.”

This definition accompanies the introduction of **Section 27A**, which outlines an “artisanal mining permit” limited to 1.5 hectares, with short durations, strict environmental compliance, non-transferability, and no group-based recognition.

Why This Change Is Not Acceptable

While the formal recognition of ASM is a step forward, the gazetted definition is **technically outdated**, **socially exclusionary**, and **legally regressive**. It fails to support real-world ASM operations and **ignores constitutional principles**, jurisprudence, and community demands.

✗ Overly Focused on Rudimentary Tools and Surface Operations

The definition’s fixation on “manual and rudimentary tools” and “shallow depths” excludes:

- Semi-mechanised operations (e.g., use of crushers, compressors, basic pumps);
- Common practices like **underground shaft re-entry**, tailings processing, and collaborative extraction;
- The evolution of ASM technologies in response to economic pressures.

This narrow framing would **criminalise most existing artisanal miners**, especially in Gauteng, Limpopo, North West, and parts of Mpumalanga.

✗ Ignores Group-Based and Cooperative Models

The definition limits recognition to **individual miners**, failing to account for:

- **Cooperatives and community syndicates**, which dominate informal ASM;
- **Women-led groups** and youth collectives;
- Shared survivalist and customary mining practices grounded in family and clan structures.

This legal exclusion prevents access to permits, finance, and institutional support for the majority of real-world ASM actors.

✗ No Developmental or Livelihood Recognition

The Bill does not define ASM as:

- A **subsistence strategy** for the unemployed and landless;
- A driver of **local economic resilience** and **community beneficiation**;
- A legitimate, transitional step towards **formalisation and empowerment**.

By omitting these, the law **frames ASM as a primitive exception to be controlled**, not a pathway to transformation.

✗ No Legal Recognition or State Facilitation

The definition lacks:

- **Ministerial recognition** as a category eligible for assistance;
- Linkages to **technical, legal, or financial support systems**;
- Pathways to safety upgrades, permit expansion, or cooperative scaling.

This sets ASM up to fail, treated as a **regulatory anomaly** instead of a legitimate stakeholder in mineral development.

✓ Proposed New Definition of “Artisanal Mining” (MACUA)

“‘Artisanal mining’ means informal, traditional, or customary mining operations conducted by individuals, families, cooperatives, or community groups using low-technology or semi-mechanised methods, primarily for livelihood or subsistence purposes, and recognised by the Minister for the purposes of formalisation, support, and regulation under this Act.”

Key Improvements of the MACUA Definition

Element	DMPR Definition	MACUA Proposed Definition
Scope of actors	Individuals only	Includes individuals, families, cooperatives, and communities
Methods	Manual, rudimentary tools	Includes semi-mechanised, evolving techniques
Depth of activity	Surface, shallow only	Includes underground, tailings, and shaft-based activity
Purpose	Not defined	Defined as livelihood, subsistence, developmental
Recognition	Implicit at best	Requires ministerial recognition and eligibility
Support	Not linked	Embedded in support pathways and permit systems
Gender inclusion	Not acknowledged	Explicitly inclusive of women-led and collective models

Conclusion

The gazetted definition of “artisanal mining” is **too narrow to function as a legal or developmental tool**. It misrepresents the nature of ASM, excludes most actors, and offers no pathway out of informality.

In contrast, MACUA’s definition:

- Aligns with the Constitution and key court rulings (*Baleni, Maledu*);
- Reflects on-the-ground realities and cooperative models;
- Supports redress, formalisation, and democratic mineral governance.

ASM must be recognised as a constitutional right to livelihood and land-based economic activity, not as a threat to be policed or suppressed.

Proposed Legislative Framework for ASM Zoning

To address the systemic exclusion, criminalisation, and marginalisation of artisanal and small-scale miners (ASM), MACUA proposes the introduction of a **legislated zoning mechanism** that enables formalisation, environmental planning, cooperative development, and democratic oversight.

This structure should be embedded in the MPRDA as a **mandatory obligation** on the Minister, with clear criteria, procedures, and support mechanisms.

✓ MACUA Proposal: Artisanal and Small-Scale Mining Zones

1. Mandatory Designation of ASM Zones

The Minister must, in consultation with affected communities, traditional authorities, municipalities, and relevant departments, designate areas where artisanal and small-scale mining may lawfully occur.

These zones must be created:

- *In areas with high levels of informal ASM activity;*
- *Where community members have expressed demand for access to minerals;*
 - *In alignment with environmental compatibility and sustainable land use;*
- *With priority given to **historically disadvantaged persons** and **customary land rights holders**.*

2. Zone Establishment Criteria

The designation of an ASM zone must be based on:

- *Presence of mineral resources suitable for small-scale or manual extraction;*
 - *Existing informal mining or traditional usage;*
 - *Community demand, customary tenure, or historical dispossession;*
- *Environmental feasibility for rehabilitation and low-impact methods;*
- *Potential for shared infrastructure or state-supported facilitation.*

3. Permitting and Legal Access within Zones

Each ASM zone must:

- *Include a **simplified, group-based permitting system** for individuals, families, cooperatives, and community syndicates;*
- *Recognise **customary land access** and communal governance structures;*
- *Be linked to permits that are **transferable, scalable**, and compatible with **semi-mechanised** practices;*
- *Waive or simplify environmental authorisation requirements for operators who comply with the **zone-level environmental management plan**.*

4. Environmental Planning and Rehabilitation

- *A **state-led Environmental Management Plan (EMP)** must be developed for each zone, incorporating:*
 - *Cumulative impact assessments;*
 - *Tailored rehabilitation strategies appropriate to the scale and nature of ASM;*
 - *Shared environmental responsibilities among permit holders;*
- *The EMP must be publicly accessible and monitored through participatory mechanisms.*

5. Cooperative Support and Development

The zoning system must include:

- *Assistance for cooperative formation and legal registration;*
- *Access to training, safety equipment, beneficiation infrastructure, and market linkages;*
 - *Inclusion in local development plans and municipal IDPs as recognised economic contributors;*
- *Financial and technical support for transition into fully formalised operations where desired.*

6. Participation, Oversight, and Transparency

Each zone must include:

- **Mandatory consultation** with land rights holders, community members, women's groups, and informal miners;
- A **grievance mechanism** that enables affected parties to report abuse, exclusion, or environmental harm;
 - **Annual reporting to Parliament on:**
 - *The number and condition of ASM zones;*
 - *Socio-economic impacts;*
 - *State support and environmental performance;*
- *Independent monitoring structures with community representation.*

Why This Is Necessary

Without a structured zoning framework:

- The current ASM permit system under Section 27A will fail to reach most informal miners;
- Criminalisation and policing will continue to displace poor communities;
- The constitutional promise of **equitable access to mineral resources** (Section 2(c) of the MPRDA) will remain unfulfilled;
- South Africa will remain out of step with international models of **developmental ASM regulation**.

Conclusion

ASM zones are not a luxury, they are a legal, social, and economic necessity.

They enable the state to:

- Manage risk,
- Promote livelihoods,
- Reduce conflict,
- And build a democratic mineral regime rooted in inclusion and justice.

MACUA calls on the Department to include this zoning framework in the Amendment Bill, not as a symbolic gesture, but as a constitutional obligation to those most excluded from the country's mineral wealth.

Section 27A – Artisanal Mining Permit

Proposed Change Gazetted by the DMPR

The 2025 MPRDA Amendment Bill introduces a new **Section 27A** titled: “**Application for, issuing and duration of Artisanal Mining Permit.**”

Key elements of the DMPR proposal:

- **Eligibility:**
 - Area limited to **1.5 hectares**;
 - Mineral must be **minable within 2 years**.
- **Application:**
 - Requires submission of a **full environmental authorisation**;
 - Lodged online or at a regional office;
 - Accompanied by a **non-refundable application fee**.
- **Consultation:**
 - Minister must instruct applicant to **consult landowners and interested and affected parties**.
- **Issuance:**
 - Minister must issue permit **within 30 days** if conditions are met.
- **Duration and Renewal:**
 - **Valid for 2 years**, renewable once;
 - **Non-transferable**, cannot be used as collateral.
- **Compliance:**
 - Must comply with **environmental authorisation**;
 - Must report compliance and submit for recording.

Why This Change Is Not Acceptable

While the creation of Section 27A marks **formal recognition of artisanal mining (ASM)** in law, the framework as drafted is inaccessible, exclusionary, and structurally detached from the lived realities of most ASM operators.

✗ Overly Restrictive Eligibility

- The **1.5-hectare limit** and **2-year mining window** are arbitrary and:
 - Do not reflect the **scale of livelihood operations** across provinces;
 - Exclude **group-based or cooperative activity**;
 - Prevent adequate planning, security of tenure, or long-term investment.

✗ Over-Regulation Without State Support

- **Requiring full environmental authorisation** and formal compliance procedures—without offering **training, templates, or technical assistance**—is unworkable for subsistence miners.
- The framework **imposes obligations without support**, effectively criminalising informal miners under the guise of formalisation.

✗ Prohibition on Transfer, Finance, or Scaling

- By **banning permit transfer, collateralisation, and cooperative ownership**, the clause:

- **Blocks access to credit** and external partnerships;
- Prevents syndicates and women's groups from scaling or upgrading;
- Undermines economic empowerment and legal security.

✗ No Link to Area-Based Planning or Collective Formalisation

- The clause fails to link permits to **designated areas**, cooperative models, or **any supportive zone-based framework**.
- Without an area-based system (as proposed by MACUA), the permit becomes a legal formality — disconnected from the social, spatial, and economic realities of ASM in South Africa.

✗ No Pathway to Growth or Formalisation

- There is no mechanism to transition from an ASM permit to:
 - A **small-scale mining right** under Section 27;
 - **Beneficiation**, cooperative recognition, or formal value chain integration;
 - National artisanal mining strategies or local development plans.

As drafted, the permit is a **dead-end**, not a gateway to inclusion.

✓ MACUA's Proposed Legislative Framework – Section 27A

Section 27A: Application for, Issuing, and Duration of Artisanal Mining Permit

An **artisanal mining permit** may be issued to an individual, cooperative, or community-based applicant where:

- The activity is primarily for **subsistence, livelihood, or cooperative beneficiation purposes**;
 - The permit area does **not exceed 5 hectares**;
- The activity takes place in an area **designated for ASM or meeting the criteria for community-led mining**.

The Minister, through the regional office, must:

- **Provide technical assistance**, application templates, and simplified compliance forms;
- Develop **health and environmental standards** proportionate to artisanal operations;
- Support **cooperative formation**, market access, beneficiation opportunities, and compliance education.

*The Minister must issue the permit within **30 days** if:*

- The application is complete and properly lodged;
- Landowners and interested and affected parties have been consulted in accordance with prescribed procedures;
- A **general or simplified environmental authorisation** has been issued or deemed issued under applicable legislation.

An artisanal mining permit shall:

- Be **valid for 3 years**, renewable once for an additional 3 years;
- Be **eligible for cooperative financing, support**, and technical upgrading;
- Be **transferable or encumberable**, with Ministerial consent, for legitimate cooperative or development purposes.

The Minister must:

- Maintain a **public, searchable register** of all artisanal permits;
 - **Report annually to Parliament** on:
 - Permit compliance and enforcement actions;
 - State support provided;
 - The socio-economic impact of ASM;
- Ensure **integration of artisanal mining** into the **national strategy for beneficiation, livelihoods, and community development**.

Key Improvements of the Proposed Section

Issue	DMPR Proposal	MACUA Proposal
Permit Duration	2 years + 1 renewal	3 years + 1 renewal
Area Limit	1.5 hectares	5 hectares
Access to Finance	Prohibited	Permitted with safeguards
State Support	Not provided	Mandatory via regional offices
Cooperatives & Groups	Not recognised	Explicitly included
Area-Based Planning	None	Implicitly integrated via eligibility and support
Formalisation Pathway	Absent	Linked to Section 27, beneficiation & upgrading
Administrative Burden	High	Scaled to miner capacity and environmental risk

✓ Conclusion

Section 27A is a potentially transformative legal innovation, but as currently drafted, it is more likely to **entrench exclusion** than enable empowerment.

- It burdens poor miners with full compliance while denying them support.
- It formalises individual miners but criminalises cooperatives.
- It recognises ASM in name, but offers **no real developmental pathway**.

MACUA's proposal reframes the permit system as:

- A tool of **livelihood security**,
- A pathway to **formalisation and beneficiation**, and
- A foundation for **democratic, inclusive mineral governance**.
-

Without meaningful changes to Section 27A, artisanal mining will remain in the margins, licensed in theory, excluded in practice.

COMMUNITY DEFINITION

Proposed Change Gazetted by the DMPR (2025 Amendment Bill)

The 2025 MPRDA Amendment Bill proposes to amend the definition of “community” in Section 1 of the principal Act to read:

“‘community’ means a coherent, social group of persons within a metropolitan municipality or a district municipality as defined in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), with interests or rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom or law;”

This proposed change would replace the existing definition, which is:

“‘community’ means a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law: Provided that, where as a consequence of the provisions of this Act, negotiations or consultations with the community is required, the community shall include the members or part of the community directly affected by mining on land occupied by such members or part of the community.”

✗ Why the Proposed Change Is Not Acceptable

The DMPR’s proposed amendment undermines the constitutional, social, and developmental purpose of the MPRDA. It represents a regressive step for several key reasons:

✗ Erasure of “Historically Disadvantaged Persons”

The original definition acknowledges that redress and restitution are central to post-apartheid mineral governance. By **removing the reference to “historically disadvantaged persons (HDPs),”** the new definition weakens the constitutional mandate for **corrective equity, restitution, and inclusive access** to mineral resources. This change opens the door for the dilution of **transformation obligations** and renders the term “community” susceptible to manipulation by actors with no historical or dispossessed claim.

✗ Shift from Land-Based to Administrative Geography

The new definition relies on **municipal boundaries and the vague notion of a “coherent social group.”**

This shift:

- Ignores the **land-based and tenure-based realities** of rural and traditional communities;
- Excludes communities who live in **customary systems outside formal municipal structures**;
- Disregards **occupational and historical ties to land**, in favour of loosely defined social categories.

Such framing undermines the legal clarity provided by the **Interim Protection of Informal Land Rights Act (IPILRA)** and **South African court judgments** such as *Maledu* and *Baleni*, which recognise customary land holders as rights-bearing communities.

✗ Removes Protection for Directly Affected Members

The current definition explicitly includes **members directly affected by mining** when consultation or negotiation is required.

The new version **drops this safeguard**, opening the door to:

- **Elite capture** through leadership structures unaccountable to impacted members;
- The **exclusion of women, youth, or displaced families** living on the land;
- The legalisation of **top-down consultation** with administrative entities, rather than land-based communities.

✗ Undermines Jurisprudence and Customary Law

The proposed definition is **incompatible with established legal precedent**, which holds that land rights are held by identifiable groups with legitimate tenure under **custom or law**, not abstract social formations within municipal boundaries.

It risks substituting **bureaucratic identity** for **land-based legal status**, thus contradicting the protective purpose of Section 25(6) of the Constitution and IPILRA.

✓ MACUA's Proposed Definition of "Community"

"'community' means a group of historically disadvantaged persons who have or exercise rights or interests in a particular area of land, including through occupation, use, or tenure in terms of agreement, custom, or law; and where consultation or negotiation is required under this Act, the term 'community' shall include the members or part of the community directly affected by any mining or related activity on such land, irrespective of municipal or administrative boundaries."

Advantages of the Proposed Definition

Element	Explanation
Historically Disadvantaged Persons	Upholds the constitutional purpose of redress and equitable access.
Land-Based Criteria	Recognises rights derived from occupation, use, and customary tenure.
Inclusion of Directly Affected	Ensures consultation and decision-making include those facing mining impacts.
Administrative Neutrality	Avoids exclusion of rural, traditional, or displaced communities.
Legal Clarity	Aligns with <i>Maledu</i> , <i>Baleni</i> , and IPILRA, strengthening the definition's enforceability.

 Conclusion

The proposed redefinition of “community” by the DMPR **erases transformation, undermines land rights, and invites exclusion**. It replaces a legally grounded, historically informed, and rights-based framework with an **ambiguous, administrative, and depoliticised formulation**.

MACUA’s proposed definition restores the intent of the MPRDA: to protect those dispossessed by apartheid, uphold customary land tenure, and ensure that **mining-affected communities—not municipalities or elite proxies—have voice, rights, and power**.

CONSULTATION DEFINITION

Proposed Change Gazetted by the DMPR

The 2025 MPRDA Amendment Bill proposes to insert the following definition of “meaningful consultation” into **Section 1** of the principal Act:

“‘meaningful consultation’ means that the applicant, has in good faith facilitated participation in such a manner that reasonable opportunity was given to provide comment by the landowner, lawful occupier or interested and affected person in respect of land subject to an application about the impact the prospecting or mining activities would have to his or her right of use of the land by availing all relevant information pertaining to the proposed activities enabling these parties to make a decision regarding the impact of the proposed activities;”

✗ Why This Change Is Not Acceptable

While the inclusion of a definition is a necessary step, the DMPR’s version is **legally inadequate, procedurally vague, and substantively shallow**. It **reduces consultation to a passive, box-ticking exercise**, rather than a constitutionally grounded right to participate in decisions that affect land, livelihoods, and identity.

✗ Reduces Consultation to “Providing Comment”

- The definition treats affected people as **commentators**, not as rights holders with decision-making power.
- It offers **no guarantee** that their views will **influence outcomes**, let alone be integrated into project approvals.
- This contradicts legal precedents such as **Maledu** and **Baleni**, which require **consent**, not just consultation, for customary land.

✗ “Reasonable Opportunity” Is Unclear and Exploitable

- The phrase “reasonable opportunity” is not defined, leaving open:
 - Whether one meeting, one notice, or a single pamphlet is sufficient;
 - Whether the process must be conducted in local languages;
 - Whether it must accommodate **women, youth, or marginalised** members.

This opens the door to **tokenistic and exclusionary engagement**.

✗ Lacks Procedural and Documentation Safeguards

- There is **no requirement to record meetings**, responses, or outcomes;
- No obligation to **demonstrate how community input changed project design**;
- No **transparency, accountability, or verification** of the consultation process.

This strips the term “meaningful” of any enforceable content.

✗ Ignores Customary Law and Collective Rights

- The definition refers to **“his or her” right of use**, implying individual ownership.
- This fails to accommodate **collective, customary, and communal tenure systems**, where land is held and governed by groups.

✗ Falls Short of International Norms and FPIC

- South Africa is bound by the **African Charter on Human and Peoples’ Rights**, which

endorses **Free, Prior and Informed Consent (FPIC)** for indigenous and land-connected communities.

- The definition offers **no reference to FPIC**, even where constitutionally required.

✓ **MACUA's Proposed Alternative Definition**

Proposed Amendment to Section 1 of the Principal Act:

“‘meaningful consultation’ means a transparent, inclusive, and good faith engagement process between the applicant and the landowner, lawful occupier, interested and affected parties, or customary rights holders, in which full, accessible, and timely information regarding the proposed prospecting or mining activities is disclosed in advance; where concerns are actively recorded and addressed; and where the views, positions, and decisions of affected persons are taken into account and reflected in the outcome of the application process, including, where applicable, the obtaining of free, prior and informed consent.”

What This Definition Improves

Feature	DMPR Version	MACUA Proposal
Substantive Influence	Only provides space for "comment"	Requires views to shape and influence outcomes
FPIC Compliance	Absent	Explicitly included where applicable
Accessibility	Not addressed	Requires clear, accessible, local-language communication
Procedural Fairness	Vague, undefined	Requires records, feedback, transparency mechanisms
Customary Systems	Assumes individual ownership only	Recognises collective and customary land governance

Why This Matters for Mining-Affected Communities

- **Prevents abuse of vague legal terms** that lead to superficial engagement.
- **Affirms collective rights** of customary landholders, in line with IPILRA and court rulings.
- **Creates enforceable expectations** for companies and the state to consult in good faith.
- **Aligns domestic law with international human rights standards**, including the African Commission and UNDRIP.

Without this correction, “meaningful consultation” will remain **a legal fiction**, easily circumvented, legally ambiguous, and politically dangerous.

HDP DEFINITION

Proposed Change Gazetted by the DMPR

The Department of Mineral and Petroleum Resources (DMPR), through the 2025 MPRDA Amendment Bill, proposes to **delete the definition of “historically disadvantaged person” (HDP)** from Section 1 of the principal Act.

Deleted Definition (previously in the Act):

“‘Historically disadvantaged person’ means any person, category of persons or community, disadvantaged by unfair discrimination before the Constitution took effect.”

This deletion removes the **only legal anchor** for identifying the intended beneficiaries of South Africa’s post-apartheid transformation framework in the mineral sector.

Why This Change Is Not Acceptable

✗ Undermines the Transformative Purpose of the MPRDA

Section 2 of the MPRDA explicitly states that one of its objectives is to:

“Substantially and meaningfully expand opportunities for historically disadvantaged persons to benefit from the exploitation of South Africa’s mineral resources.”

Removing the definition **hollows out this purpose**, leaving the term "HDP" vague, contestable, and unenforceable. Without clear criteria, the objective becomes symbolic and subject to legal challenge.

✗ Erodes Legal Grounds for Redress and Equity Measures

Core transformation instruments in the mining sector, such as:

- The Mining Charter,
- BEE ownership and equity thresholds,
- Preferential procurement regulations,
- Social and Labour Plans (SLPs), and
- Community shareholding schemes

all **depend on a legally defined HDP category** to identify legitimate beneficiaries.

Deleting the definition invites:

- **Corporate litigation** aimed at avoiding compliance,
- **Regulatory inconsistencies**, and
- **A weakening of state capacity** to enforce transformation obligations.

✗ Ignores Ongoing Structural Inequality

Despite the end of formal apartheid, the **material and spatial legacies of dispossession** remain embedded in:

- Communal and customary land systems,
- Displacement from mining operations,
- Gendered and racialised exclusion from capital and markets.

A narrowly historical definition was already insufficient. **Removing it entirely disregards the lived reality of millions who remain systemically disadvantaged.**

✗ Enables Elite Capture

Without an enforceable definition:

- Transformation benefits can be claimed by politically connected or previously advantaged individuals;
- **Verification mechanisms disappear**, making it harder to prioritise rural communities, women, informal miners, and land rights holders;
- The transformation agenda becomes susceptible to manipulation and dilution.

✓ MACUA's Proposed New Definition for Section 1

To preserve the **constitutional integrity** and **developmental logic** of the MPRDA, MACUA proposes the following revised definition:

“Historically disadvantaged persons’ means—

- (a) individuals or communities who were disadvantaged by unfair discrimination on the basis of race, gender, class, or social status under any law or policy before the Constitution of the Republic of South Africa, 1996, took effect; and
- (b) individuals or communities who, as a result of the continuing effects of past discrimination or systemic exclusion, remain materially or structurally disadvantaged in access to land, mineral resources, economic opportunity, or environmental justice.”

Benefits of the Proposed Definition

Element	Benefit
Historical Redress (Part a)	Maintains legal and moral foundation for post-apartheid transformation.
Ongoing Disadvantage (Part b)	Reflects persistent structural inequality and current socio-economic exclusion.
Community Inclusion	Captures rural, mining-affected, and land-connected communities.
Limits Elite Misuse	Prevents opportunistic claims by already privileged individuals.
Legal Alignment	Upholds constitutional obligations under Sections 9 (equality), 24 (environment), and 25 (land rights).

✓ Conclusion

The deletion of the HDP definition is not a technical adjustment, it is a **deliberate rollback of the constitutional transformation agenda** in the mineral sector. It:

- Undermines enforcement,
- Risks elite capture,
- And weakens the legal foundation for equity and redress.

MACUA strongly recommends the **insertion of a revised, dual-criteria definition** that recognises both **past and ongoing forms of disadvantage**. This definition must guide all transformation-related provisions of the MPRDA, including permitting, ownership, community development, and beneficiation.

Without this legal clarity, the promise of transformation becomes rhetorical, and the reality becomes one of **renewed exclusion**.

INTERESTED & AFFECTED PERSONS DEFINITION

Proposed Change Gazetted by the DMPR (2025 Amendment Bill)

The 2025 Amendment Bill proposes two interrelated changes that significantly impact the legal architecture of **public participation in mining governance**:

1. Insertion of a new definition in Section 1:

“‘interested and affected persons’ means a natural or juristic person or an association of persons with a direct interest in the proposed or existing prospecting or mining operation or who may be affected by the proposed or existing prospecting or mining operation;”

2. Substitution of existing headings:

The current heading:

“Meaningful consultation with interested and affected parties”

...is replaced with:

“Meaningful consultation with interested and affected persons”

Together, these changes seek to redefine who qualifies as a stakeholder in mining applications and decisions, and how the law conceptualises their procedural rights.

Why These Changes Are Not Acceptable

✗ Restricts Participation to “Direct” Interest Only

By requiring a “**direct interest**,” the DMPR’s definition:

- **Excludes groups with indirect, cumulative, or spatially dispersed impacts**, such as:
 - Downstream or adjacent communities,
 - Seasonal land users and customary right holders,
 - NGOs, faith-based organisations, trade unions, or advocacy coalitions.

This undermines the principle of **environmental justice**, which recognises that mining’s effects are not limited to narrow physical footprints or individual actors.

✗ Terminological Shift From “Parties” to “Persons” Narrows Legal Standing

While subtle in appearance, replacing “parties” with “persons” has deep legal implications:

- The term “**parties**” in administrative and environmental law includes:
 - Natural persons,
 - Juristic persons,
 - **Unincorporated associations**,
 - **Organs of state**, and
 - **Collective structures** such as traditional authorities or civil society coalitions.
- The word “**persons**” risks narrower interpretation, potentially:
 - **Excluding non-registered groups**,
 - Undermining collective or customary representation,
 - Weakening legal standing for appeals, objections, or judicial review.

This change could **restrict who is entitled to consultation, who can object, and who can hold mining companies accountable**.

✗ Inconsistent With NEMA and Integrated Environmental Governance

The **National Environmental Management Act (NEMA)** defines “interested and affected parties” as:

“any person, group of persons or organisation interested in or affected by an activity...”

The MPRDA’s narrower “persons with direct interest” contradicts this standard, creating:

- **Regulatory inconsistency**, undermining integrated governance,
- **Confusion in appeals, authorisations, and impact assessments**,
- A **weakened legal basis for community participation** in environmental processes.

✗ **Undermines Constitutional and Administrative Law Protections**

The proposed definition is incompatible with:

- **Section 33 of the Constitution**: right to just administrative action;
- **PAJA**: procedural fairness and participatory decision-making;
- **Section 24**: environmental rights;
- **Case law** (e.g. *Baleni*, *Maledu*): upholding consultation and consent for communities on customary land.

It also narrows **customary and collective participation**, risking violations of **IPILRA** and **international norms**, including the **African Charter** and **UNDRIP**.

✗ **Reduces Transparency and Democratic Oversight**

- Excluding public interest actors and broader affected communities facilitates **elite capture**.
- It reduces legal standing for:
 - Public interest litigation,
 - Civil society challenges,
 - Independent monitoring and accountability mechanisms.

This is especially dangerous in a sector where **secrecy, environmental harm, and state-business collusion** are persistent risks.

✓ **MACUA’s Proposed Definition of “Interested and Affected Parties”**

“‘interested and affected parties’ means any natural or juristic person, group of persons, organisation, or organ of state with an interest in, or who may be directly, indirectly, or cumulatively affected by, a proposed or existing prospecting, mining, or related activity, and includes adjacent and downstream communities, workers or former workers, land users, traditional or customary rights holders, and civil society organisations acting in the public interest.”

Key Advantages of the Proposed Definition

Feature	Justification
Direct & Indirect Impacts	Captures full spectrum of environmental, social, and spatial effects.
Public Interest Organisations	Ensures NGOs, faith groups, and advocacy coalitions can participate.
Customary & Communal Users	Aligns with <i>Baleni</i> , <i>Maledu</i> , and IPILRA protections.
Labour-Sending Communities	Recognises historical and ongoing structural links to mining activity.
Downstream & Cumulative Effects	Reflects reality of air, water, and land impacts extending beyond mine boundaries.

✓ Summary and Recommendation

MACUA strongly recommends:

- **Rejecting** the substitution of “**parties**” with “**persons**” in all relevant clauses, headings, and procedural references;
- **Replacing** the narrow definition of “interested and affected persons” with a constitutionally and environmentally aligned definition of “**interested and affected parties**,” as proposed above;
- **Harmonising** MPRDA language with **NEMA** and **PAJA**, to uphold a consistent, inclusive framework for public participation in the mineral sector.

Without a robust and inclusive definition, meaningful participation becomes a privilege for the few, not a right for the many.

The MPRDA must reflect not only the technical logic of mining regulation, but the **democratic promise of constitutional governance**.

BENEFICIATION

Proposed Change Gazetted by the DMPR

The 2025 MPRDA Amendment Bill proposes to substitute the current Section 26(2) with the following:

“(2) The Minister must:

(a) Consult with other Ministers in Government on a holistic approach to support local beneficiation;

(b) Take into consideration the national developmental imperatives, such as macro-economic stability, energy security, industrialisation, food security and infrastructure development; and

(c) Considering the advice of the council as contemplated in section 56B, publish in the prescribed manner conditions required to ensure security of supply for local beneficiation.”

Why This Change Is Not Acceptable

While this new clause gestures toward aligning mineral policy with national development goals, it raises critical **legal, procedural, and equity-related concerns**:

✗ No Legal Definition of “Security of Supply”

- The phrase “security of supply” is central to the clause but **completely undefined**.
- Without a definition, it risks being interpreted **narrowly** to:
 - Prioritise industrial users and corporate interests,
 - Justify restrictions on mineral exports without public scrutiny,
 - Bypass equity, sustainability, or democratic access.

This vagueness creates space for **elite capture and opaque prioritisation**, ignoring the needs of mining-affected communities and historically disadvantaged South Africans (HDSAs).

✗ Excludes Communities, Labour, and Civil Society

- The clause mandates consultation with “other Ministers” and the Section 56B council, but:
 - **No mention is made of affected communities, workers, or civil society.**
 - This replicates a **top-down, technocratic model** of policy-making.
 - Ignores the constitutional right to participate in decisions affecting rights, land, and livelihoods.

This exclusion contradicts the participatory ethos of both the Constitution and the MPRDA’s stated objectives.

✗ No Explicit Link to Transformation or Redistribution

- The clause does not tie local beneficiation to:
 - **HDSA ownership or access,**
 - **Community beneficiation,** or
 - **Redress for historical exclusion from downstream value chains.**

Without such a link, beneficiation risks becoming a vehicle for reindustrialisation without transformation—a model that benefits established industry while **bypassing rural, land-connected, and disadvantaged communities**.

✗ No Accountability or Transparency Mechanisms

- The Minister is empowered to “publish conditions” but:
 - **No obligation** is created for public consultation,
 - **No transparency standard** is set for how decisions are made,
 - **No reporting obligation** exists to Parliament or affected parties.

This weakens oversight, undermines trust, and centralises discretionary power without meaningful checks.

✓ MACUA’s Proposed Reforms

Proposed Legal Definition for “Security of Supply” (Insert into Section 1)

“‘security of supply’ means the reliable, equitable, and sustainable availability of designated minerals or mineral products for local beneficiation, taking into account transformation, community development, environmental protection, and intergenerational equity, in line with national development objectives.”

Proposed Replacement for Section 26(2)

“(2) The Minister must:

(a) Consult with other Ministers in Government, organised labour, affected communities, civil society organisations, and industry stakeholders on a holistic and inclusive approach to support local beneficiation;

(b) Take into account national developmental imperatives, including macro-economic stability, energy and water security, industrialisation, land reform, food sovereignty, and infrastructure development; and

(c) After consultation with interested and affected parties and on the advice of the council, publish in the prescribed manner legally binding conditions required to ensure security of supply for local beneficiation, including clear criteria to prioritise access to minerals by historically disadvantaged persons, cooperatives, and mining-affected communities.”

Summary of Improvements

Issue	DMPR Proposal	MACUA Proposal
Definition of Supply	Not defined	Defined with equity, transformation, and sustainability clauses
Stakeholder Inclusion	Ministers and council only	Adds communities, labour, civil society
Link to Transformation	Absent	Explicit reference to HDSAs and community access

Issue	DMPR Proposal	MACUA Proposal
Transparency & Oversight	Ministerial discretion only	Requires consultation and justification
Legal Certainty	Vague and discretionary	Anchored in public interest and equity standards

✓ Conclusion

The gazetted amendment to Section 26(2) reflects a **missed opportunity** to align beneficiation policy with:

- The constitutional commitment to redress and equity,
- The lived realities of mining-affected communities,
- And the economic inclusion of historically excluded populations.

MACUA calls for a revised clause that **defines “security of supply”** in equity terms, **requires participatory consultation**, and **guarantees beneficiation access** for rural communities, cooperatives, and HDSAs, not just industry players and bureaucratic elites.

A just and transformative beneficiation framework must **start from the ground up, not the boardroom down**.

GENERAL APPLICATIONS

Proposed Change Gazetted by the DMPR

The 2025 MPRDA Amendment Bill proposes to insert the following clause, typically following a subsection on mining or prospecting right applications:

“Applications received in terms of subsection (1) must be processed in accordance with the provisions of the Act, including the terms and conditions upon which applications may be accepted, rejected, granted or refused.”

At face value, this language appears to affirm lawful processing of applications. However, it raises serious concerns due to its vagueness, lack of procedural guarantees, and absence of accountability mechanisms.

Why This Change Is Not Acceptable

✗ No Clear Criteria or Legal Cross-Referencing

- The term **“terms and conditions”** is **undefined**, leaving broad discretion to DMRE officials.
- No cross-reference is provided to regulations, objective standards, or community protections.
- This opens the door to **inconsistent application**, favouritism, and arbitrary decisions.

✗ No Requirement for Written Reasons

- The clause does **not require the DMRE or Minister to provide written reasons** for decisions to grant or deny applications.
- This undermines transparency, disables community oversight, and makes it harder to challenge flawed or corrupt decisions.

✗ No Procedural Rights for Communities or I&APs

- The clause is silent on:
 - How **communities will be notified or consulted**,
 - Whether **interested and affected parties (I&APs)** can access the application,
 - Whether **appeals, objections, or comments** can be submitted prior to a decision.

✗ No Timelines or Performance Standards

- The amendment offers **no deadlines**, despite widespread complaints about delays, opacity, and backlogs in application processing.
- This perpetuates **administrative uncertainty** and reinforces barriers to access.

✗ Enables Quiet Discretion and Political Interference

- Without mandatory public disclosure or notification, rights can be quietly granted in **contested, ecologically sensitive, or community-occupied areas**.
- This facilitates elite capture and weakens checks against corruption or abuse of power.

✓ MACUA’s Proposed Clause and Definition

Proposed Replacement Clause

“Applications received in terms of subsection (1) must be processed in accordance with the

provisions of this Act and its regulations, and shall be subject to prescribed evaluation criteria, compliance standards, and timelines. The decision to accept, reject, grant, or refuse an application must:

- *Be supported by written reasons;*
- *Be published in the public digital registry within seven (7) days of the decision;*
- *Be communicated to all relevant interested and affected parties, including the community directly affected; and*
- *Be subject to a right of review or appeal by any party with a legal or customary interest in the land or activity.”*

If a New Definition Is Needed Proposed Addition to Section 1

“‘processing of applications’ means the administrative procedure undertaken by the Department to assess, evaluate, and decide upon applications for rights, permits, or authorisations under this Act, which shall include compliance with published criteria, procedural fairness, public disclosure, written reasons, and stakeholder notification and participation.”

Comparison Table

Feature	DMPR’s Version	MACUA’s Proposal
Clear evaluation criteria	✗ Not provided	✓ Required and defined by regulation
Written reasons for decision	✗ Not mandatory	✓ Mandatory for all application outcomes
Public registry	✗ Omitted	✓ Decisions must be published within 7 days
Community notification	✗ Absent	✓ Affected communities must be informed and consulted
Timelines for processing	✗ Absent	✓ Required to ensure administrative accountability
Appeal/review mechanisms	✗ Not included	✓ Ensures procedural fairness and access to justice

✓ Conclusion

The DMPR’s proposed clause on processing applications **fails to meet the basic standards of administrative justice, transparency, and public accountability**. It does not define criteria, protect communities, or prevent abuse of power.

MACUA’s alternative clause provides a rights-based, transparent, and legally enforceable framework that:

- Prevents arbitrary approvals,
- Enables community and public oversight,
- Creates a reliable public record, and
- Builds trust in the licensing process.

In a context of widespread **corruption, delayed processing, and exclusion**, clear rules on how applications are handled are not optional, they are essential for a just and democratic mineral regime.

SECTION 43 LIABILITY & CLOSURE

Proposed Change Gazetted by the DMPR

The 2025 MPRDA Amendment Bill introduces several changes to **Section 43**, which governs environmental liability, rehabilitation, and mine closure obligations. These amendments expand liability to include **holders of small-scale mining permits** and, for the first time, **artisanal mining permits (AMPs)**.

Key Changes Include:

- All permit holders remain environmentally liable **until a closure certificate is issued**.
- Even after closure, holders are liable for **latent or residual impacts** (Subsection 1A).
- Financial provision **may be retained** post-closure to address future impacts (Subsection 6).
- **Confirmation from the Chief Inspector of Mines and the Department of Water and Sanitation** is required before a closure certificate is issued (Subsection 5).
- Closure plans are now required for **all types of permits**, including AMPs (Subsections 7 and 11).
- A new **Subsection 14** provides an exemption **only for holders who legally abandon a right before commencing invasive activities**.

Why These Changes Are Not Acceptable, Particularly for ASM

✗ One-Size-Fits-All Liability Regime

- The same environmental closure regime is now applied to:
 - Large-scale corporate mines,
 - Small-scale operations,
 - And **survivalist artisanal miners** with footprints of 1.5 hectares or less.
- Artisanal miners:
 - Use manual or low-impact tools,
 - Operate informally or under-resourced,
 - Are often structurally excluded from financial and legal systems.
- Requiring them to submit formal closure plans, obtain inter-departmental clearance, and carry long-term environmental liability is **impractical and punitive**.

✗ No Scaled or Tiered Approach

- The Bill does **not distinguish between levels of environmental impact**, despite acknowledging different permitting categories under Section 27A.
- This violates principles of **proportionality, fairness, and administrative justice**, particularly for historically disadvantaged persons (HDPs).

✗ No Collective or State-Supported Mechanisms for ASM Zones

- There is **no reference** to zone-based rehabilitation planning or collective compliance frameworks for ASM.
- The state plays **no defined role** in supporting environmental closure in informal mining areas—even where multiple AMPs operate simultaneously.
- The absence of pooled funding, simplified standards, or zone-level rehabilitation frameworks will:
 - Deter legalisation,
 - Increase non-compliance,
 - And further marginalise poor mining communities.

✓ MACUA's Proposed Legislative Amendments to Section 43

To create a more just, workable, and community-appropriate closure framework for ASM, MACUA proposes the following additions:

Insertion of Subsection (1B): Exemption from Individual Liability

“(1B) Notwithstanding subsections (1) and (1A), the holder of an artisanal mining permit operating within a designated artisanal mining area shall not be held individually liable for post-closure rehabilitation, provided that the permit holder—
(a) complies with the environmental standards and closure requirements set out in the zone-level plan approved for the designated area; and
(b) contributes, in the prescribed manner, to a collective environmental rehabilitation fund established for the zone.”

Insertion of Subsection (6A): Pooled Financial Provision

“(6A) The Minister must not require holders of artisanal mining permits to provide individual financial guarantees under section 24P of the National Environmental Management Act, 1998 (Act No. 107 of 1998), but must instead manage a pooled fund to cover rehabilitation within designated artisanal mining zones.”

Amendment to Subsection (7): Simplified Closure Procedures

“(7) The holder of an artisanal mining permit must adhere to closure procedures outlined in the relevant zone-level environmental management plan. The Minister must ensure that these plans are developed in consultation with permit holders and provide state-supported technical guidance and implementation support.”

Summary of Key Differences

Issue	DMPR Amendment	MACUA Proposal
Application to AMPs	Yes – same as large mines	Yes – but within collective, zone-level framework
Long-term liability	Extends indefinitely	Not imposed individually on AMPs in designated zones
Financial provision	Individual guarantees required	Pooled rehabilitation fund administered by the Minister
Closure procedures	Uniform and complex	Simplified, state-supported, zone-based system
State support	Not mentioned	Mandated in plan development and implementation

 Conclusion

The environmental liability framework under Section 43, as currently amended, **undermines the developmental intent** of Section 27A and risks driving artisanal miners deeper into **informality and criminalisation**.

A fair and functional approach to ASM must:

- Recognise the **low-risk, high-need** nature of artisanal mining,
- Provide for **collective responsibility and pooled support**,
- And mandate **state facilitation** to ensure compliance and sustainability.

MACUA’s proposed amendments strike a balance between environmental justice and economic inclusion. They reflect the real conditions on the ground and ensure that **the burden of closure does not fall disproportionately on the poorest actors in the mining sector**.

Mining Charter Implementation Clauses ; Analysis and Legislative Reform Proposal

Proposed Change Gazetted by the DMPR

The 2025 MPRDA Amendment Bill introduces limited transformation references, particularly under Section 100(3), which mandates the Minister to determine:

- **“Housing and living conditions standards,”** and
- **“Broad-based socio-economic empowerment elements,”** including aspects of Black Economic Empowerment (BEE), procurement, and community development.

However, these references remain **vague and non-binding**, failing to provide:

- Clear **definitions, targets, or minimum thresholds**,
- **Legal consequences** for non-compliance, or
- Alignment with the core elements of the **Mining Charter**, such as:
 - **Community equity ownership**,
 - **Gender and youth inclusion**,
 - **Local procurement obligations**, and
 - **Transparent monitoring and reporting systems**.

Section 100(4) further empowers the Minister to **amend or repeal standards unilaterally**, creating instability and weakening the enforceability of transformation commitments.

Why This Approach Falls Short

A Retreat from the Charter’s Core Objectives

The original Mining Charter was designed to:

- Promote **ownership and participation** by historically disadvantaged persons (HDPs) and mining-affected communities,
- Advance **broad-based empowerment** through employment, skills development, and local enterprise support,
- Redress the **economic inequalities** inherited from apartheid and sustained by extractive industry practices.

While the Bill gestures toward some of these objectives, it stops short of embedding them in law. **Without binding provisions, timelines, or enforcement**, the vision of transformation risks

being reduced to symbolic rhetoric.

✗ **Exclusion of Community Ownership and Participation**

The current draft:

- Omits any requirement for **community shareholding or benefit mechanisms**,
- Makes no reference to **free, prior and informed consent (FPIC)** or participatory governance,
- Allows companies to bypass community obligations with no legal repercussions.

This exclusion undermines the principles of **equitable benefit-sharing**, and contradicts the constitutional mandate for redress and participation under Sections 9, 24, and 25 of the Constitution.

✗ **No Legal Pathway to Real Transformation**

By failing to codify thresholds or compliance mechanisms, the Bill:

- Leaves transformation to **discretionary policy** (which can be changed or weakened),
- Makes it **difficult to enforce commitments** in court,
- And risks opening the door to litigation by industry to **avoid empowerment obligations**.

This directly contradicts Sections 2(c) and (d) of the MPRDA, which require the promotion of equitable access and socioeconomic development.

✓ **Legislative Reform Proposal: Enacting the Charter's Substance in Law**

To ensure transformation is real, not rhetorical, MACUA proposes a new clause; **Section 100A**, which enshrines the Charter's key objectives into enforceable law.

Proposed Clause: Section 100A: Transformation Obligations in Mining

100A. Transformation Obligations in Mining

(1) When granting, renewing, or amending any mining right, prospecting right, or permit under this Act, the Minister must impose legally binding conditions that include:

- ***Ownership and equity participation by historically disadvantaged persons and communities;***

- *Inclusive procurement and enterprise development with targets for local, women-owned, and youth-owned businesses;*
- *Employment equity, skills development, and representational parity for women and youth;*
- *Community development obligations linked to transparent and participatory Social and Labour Plans (SLPs);*
- *Housing, health, and living condition standards aligned with prescribed norms.*

(2) The Minister must, by regulation, set minimum thresholds, reporting obligations, and review timelines for each transformation element.

(3) Failure to meet transformation obligations shall constitute grounds for:

- *Suspension, non-renewal, or cancellation of rights or permits;*
- *Withholding of environmental authorisations, licences, or operational clearances;*
- *Administrative penalties or remedial directions as prescribed.*

Summary of Key Differences

Issue	DMPR Amendment	MACUA Proposal
Legal status of transformation	Referenced as discretionary	Codified as binding licence conditions
Community ownership	Not mentioned	Explicitly included
Gender and youth equity	Omitted	Included with measurable targets
Ministerial discretion	Broad and unchecked	Bound by public regulation and review
Enforcement mechanisms	Weak or absent	Linked to licensing, renewals, and penalties

✓ Conclusion

The DMPR's proposed amendment offers a **symbolic reference to transformation** without providing the **legal tools, definitions, or enforcement mechanisms** necessary to achieve it. MACUA's legislative reform proposal directly embeds the **substance of the Mining Charter** into law, ensuring transformation is not optional, but **obligatory**, measurable, and enforceable.

Without these changes, the 2025 Amendment Bill will continue to favour elite accumulation while leaving mining-affected communities, women, and youth **locked out of South Africa's mineral wealth**.

True transformation demands more than policy—it demands **law with teeth**.

MINING RIGHT RENEWAL

Proposed Change Gazetted by the DMPR

The Department of Mineral and Petroleum Resources (DMPR) proposes the following key amendments to Section 23 of the MPRDA:

New Subsection (5):

A mining right in respect of which an application for renewal has been lodged shall, despite its stated expiry date, remain in force until such time as such application has been granted or refused.

Whilst the mining right remains in force in terms of paragraph (a), the holder of the mining right is entitled to continue to conduct mining operations in terms of the existing mining work programme.

Where an application in terms of paragraph (a) is granted, the renewal takes effect, and the renewal period for which application was made commences on the date of execution.

New Subsection (6):

The Minister must refuse to renew a mining right if the applicant fails to comply with subsection (1), (2) or (3).

Why This Change Is Not Acceptable

✗ Unlimited Interim Operation Without Safeguards

The proposed Section 23(5) allows mining operations to continue **indefinitely** as long as a renewal application is lodged, **regardless of compliance or pending investigations**.

There are:

- **No limits** on the interim period;
- **No automatic suspension** mechanisms for rights under review for serious violations;
- **No requirement to demonstrate ongoing compliance** before continuing operations.

This creates a **loophole for abuse**, where companies can extend operations indefinitely without addressing transformation, environmental, or labour obligations.

✗ No Community Notification or Participation

There is:

- No obligation to notify **affected communities or interested and affected parties (I&APs)** of renewal or interim operations;
- No opportunity for **public input, monitoring, or objection** during the interim renewal phase.

This undermines the rights to **just administrative action** (Section 33 of the Constitution) and the participatory principles of the MPRDA.

✗ Subsection (6) Lacks Procedural Integrity

While it is welcome that the Minister “must refuse” renewal for non-compliance, the provision lacks:

- Clear **compliance benchmarks** or verification protocols;
- Mechanisms for **independent audits** or **community verification**;
- Requirements for **transparency** in decision-making.

It risks becoming a formal clause without **substantive enforcement**.

✓ MACUA’s Legislative Proposal: A Rights-Based Renewal Regime

New Term for Inclusion in Section 1

“Pending renewal period” means the temporary period during which a mining right remains in force after expiry, strictly for the purpose of processing a timeously lodged renewal application, subject to continued compliance with legal, environmental, labour and transformation obligations, and with public notification to affected communities.

Revised Section 23(5):

(5)(a) A mining right in respect of which a timeously submitted renewal application has been lodged shall remain in force for a maximum of 12 months from its expiry date, or until the application is granted or refused—whichever occurs first.

(b) Continuation of operations during this period shall be conditional on verified compliance with:

- *The approved mining work programme;*
- *The environmental management and rehabilitation plan;*
 - *The social and labour plan;*
- *Obligations under Sections 25C and 100A.*

(c) The applicant must:

- *Notify affected communities and I&APs of the renewal application and ongoing operations;*
- *Publish the application and supporting documentation on a public platform;*
 - *Make documents available in accessible formats and local languages.*

(d) The Minister may suspend operations during the pending renewal period where:

- *There is documented evidence of non-compliance submitted by communities, regulators, or oversight bodies;*
- *An investigation into material breaches is ongoing.*

Revised Section 23(6):

The Minister must refuse to renew a mining right where the applicant has failed to comply with the requirements of subsections (1), (2), or (3), including:

- *Non-implementation of the social and labour plan;*
- *Failure to consult affected communities or I&APs in accordance with the Act;*

- *Breaches of environmental, health, or transformation obligations;*
- *Refusal or failure to address complaints lodged by affected parties.*

The decision must be:

- *Accompanied by written reasons, and*
- *Published in the public digital mining register within 7 days.*

Summary of Key Differences

Issue	DMPR Proposal	MACUA Proposal
Interim mining period	Unlimited until decision	Limited to 12 months, conditional on verified compliance
Community notification	Not required	Mandatory public notice and document access
Compliance verification	Not detailed	Required, with rights to suspension for non-compliance
Grounds for refusal (subsection 6)	Broad but undefined	Clearly specified with objective criteria
Transparency	Omitted	Written reasons & digital publication mandated
Participatory oversight	Absent	Communities and I&APs may trigger suspension reviews

Conclusion

The DMPR's current formulation of Section 23 weakens community oversight, enables **ongoing operations without compliance**, and risks institutionalising **impunity** for non-performing mining companies.

Without enforceable safeguards, communities will bear the brunt of environmental harm, social disruption, and broken development promises.

MACUA's reform proposal:

- Balances administrative continuity with **legal compliance**,
- Ensures **community participation** and **public transparency**, and
- Anchors **renewals** in measurable **transformation, environmental justice, and equity outcomes**.

If the state is committed to a just mineral regime, then mining rights **must not be renewed by default**, they must be **earned through accountability**.

SECTION 56 MINISTERIAL COUNCIL

Proposed Change Gazetted by the DMPR

The 2025 MPRDA Amendment Bill introduces new provisions: **Sections 56A, 56B, and 56C**, that empower the Minister to establish a Ministerial Advisory Council to provide strategic advice on the development and regulation of the mining sector.

Key Features of the Proposed Council:

Section 56A – Establishment of the Council

- The **Minister “may” establish** a Ministerial Advisory Council.
- The **Minister appoints all members**, without required consultation.
- Composition includes:
 - A Chairperson
 - Chief Inspector of Mines
 - 3 officials from state departments
 - 1 Regional Manager
 - 3 representatives from organised business
 - 3 representatives from organised labour
 - At least 2 additional persons with relevant skills or experience

Section 56B – Functions of the Council

- Advise the Minister on:
 - Sustainable development of mineral resources
 - Growth and transformation of the industry
 - Conditions for local beneficiation (per Section 26)
 - Any other matter referred by the Minister

Section 56C – Subcommittees

- The Council may create subcommittees.
- The Council defines composition and internal rules.
- The Council retains overall responsibility for delegated functions.

Why This Structure Is Not Acceptable

✗ Excludes Mining-Affected Communities and Civil Society

- **No representation** is provided for:
 - Mining-affected communities
 - Artisanal and small-scale miners
 - Women, youth, or rural land rights holders
 - Civil society organisations or legal experts in social justice
- This violates the **participatory purpose of the MPRDA** (Section 2(d)) and **contradicts constitutional values** of democratic governance and inclusive development.

✗ Ministerial Discretion Undermines Accountability

- The Council's establishment is **optional** (“may” establish).
- All members are **appointed by the Minister**, with no public process or parliamentary involvement.
- The Minister has **sole discretion** over what issues the Council addresses.

This centralises power and removes any opportunity for **independent advice or oversight**.

✗ Industry and Government Overrepresented

- The proposed structure includes **6 members** from state and business sectors—double the number of “independent” experts.
- Without civil society or community representation, the Council risks becoming an echo chamber for **elite consensus**, reinforcing technocratic and extractive approaches.

✓ MACUA’s Proposed Alternative: A Democratic and Inclusive Council

Revised Section 56A – Establishment and Composition

56A. (1) The Minister must establish a council to be known as the Ministerial Advisory Council on Minerals, Communities, and Transformation, within six months of the commencement of this Act.

(2) The Minister must appoint members of the Council through a transparent public nomination process, and in consultation with Parliament, ensuring equitable and balanced representation from all sectors.

(3) The Council shall consist of at least the following members:

- **A Chairperson appointed by the Minister;**
 - **The Chief Inspector of Mines;**
- **Two representatives from relevant government departments;**
 - **One Regional Manager from the DMRE;**
 - **Two representatives of organised business;**
 - **Two representatives of organised labour;**
- **Three representatives of mining-affected communities, nominated through open, provincial consultation;**
 - **One representative of artisanal or small-scale miners;**
- **Two civil society or legal experts with expertise in environmental justice, land rights, or transformation;**
 - **Any additional persons with relevant skills, experience, or lived experience.**

Revised Section 56B – Functions of the Council

56B. The Council shall advise the Minister on—

- **Sustainable development of mineral resources;**
- **Implementation of transformation and equity obligations under the MPRDA;**
 - **Conditions required for inclusive local beneficiation;**
- **Monitoring and evaluation of social and labour plans (SLPs), community development, and environmental justice measures;**
 - **Institutional reforms to support participatory governance;**
- **Any additional matter referred by the Minister or requested by community structures or Parliament.**

Revised Section 56C – Subcommittees and Public Reporting

- **Subcommittees may be created to focus on specific themes such as artisanal mining, gender equity, beneficiation, or spatial planning.**
 - **The Council must:**
 - **Hold at least four public meetings per year;**
 - **Publish an annual report on its recommendations and the Minister’s responses;**
 - **Consult with provincial and local forums of mining-affected people before finalising key recommendations.**

Summary of Key Differences

Issue	DMPR Proposal	MACUA Proposal
Establishment	Discretionary (“may”)	Mandatory (“must”)
Appointment process	Minister-only	Parliamentary consultation + public nominations
Community representation	None	At least 3 community reps + 1 ASM rep
Civil society inclusion	None	2 legal or environmental justice experts
Industry weighting	Overrepresented	Balanced across sectors
Public accountability	Absent	Public reporting, consultation, and transparency built in
Scope of functions	Limited to referrals	Includes oversight of SLPs, transformation, and justice mechanisms

Conclusion

As it stands, the **Ministerial Advisory Council** is not a tool of transformation, it is a **closed forum of technocrats and business interests**, operating at the discretion of the Minister and lacking democratic legitimacy.

It reproduces exclusion and centralisation rather than correcting it.

MACUA’s alternative proposes a **legally mandated, inclusive, and transparent structure**, with real power to advise, monitor, and hold the state accountable to the Constitution, the MPRDA’s objectives, and the lived realities of mining-affected people.

Transformation demands more than corporate consultation, it demands **community power, public oversight**, and a **genuine voice for those most impacted**.

APPLICATIONS FOR PROSPECTING RIGHTS

Relevant Section of the MPRDA: Section 16 : Application for Prospecting Right

Under the Mineral and Petroleum Resources Development Act (MPRDA), Section 16 sets out the process for applying for a prospecting right. It governs:

- Who may apply,
- The form and content of applications,
- Conditions for acceptance or rejection,
- Initial consultation requirements with interested and affected parties (I&APs),
- Environmental compliance requirements (now governed by NEMA).

Current Gap

There is **no legal requirement** for a Social and Labour Plan (SLP) or any other social accountability mechanism at the prospecting stage. This results in:

- No meaningful commitments to affected communities,
- Lack of transparency around planned activities,
- No mechanisms to address displacement, land-use disruption, or adverse social impacts, despite these often occurring during prospecting.

✓ Proposed Amendment: Inclusion of SLP-lite and Social Management Plan (SMP)

Proposed Amendment to Section 16

Insert new subsections after Section 16(3):

“(3A) An applicant for a prospecting right must, in addition to environmental authorisation as required under applicable legislation, submit:

(a) A Social and Labour Plan-lite (SLP-lite), proportionate to the scale and duration of the prospecting operation, which must include:

- ***Commitments to local employment, job-shadowing or training where feasible;***
- ***Engagement with local communities on procurement opportunities and enterprise development;***
 - ***Disclosure of anticipated social, land use, and cultural impacts.***

(b) A Social Management Plan (SMP) that sets out how the applicant will:

- ***Monitor, prevent, and mitigate adverse social impacts on lawful occupiers and surrounding communities;***
- ***Ensure continuous and accessible engagement with interested and affected persons;***
 - ***Provide accessible grievance resolution mechanisms for the duration of the prospecting activity.***

(3B) The Minister must not grant a prospecting right unless satisfied that the proposed SLP-lite and SMP:

- ***Meet the standards of equitable access, sustainable development, and environmental***

justice; and

- *Have been developed through consultation with affected persons, traditional authorities (where applicable), and local government.”*

Why This Amendment Is Necessary

! Prospecting Impacts Are Real and Immediate

Though prospecting is often perceived as less invasive than mining, it still involves:

- Clearing of land,
- Blasting or drilling,
- Temporary road construction,
- Restricted access to land used for grazing, farming, or cultural purposes.

These effects occur well **before** a mining right is granted—but communities currently **have no formal protection** during this early phase.

! No Existing Social Obligations

Prospecting rights are currently exempt from SLP requirements, meaning:

- No obligation to hire or train locally;
- No development or infrastructure contribution;
- No consultation beyond environmental requirements;
- No access to recourse for affected communities.

! Exacerbates Distrust and Conflict

Without a proactive legal framework, communities often:

- Are unaware of prospecting until disruption begins,
- Feel disrespected and dispossessed,
- Resort to legal or physical resistance, resulting in delay, conflict, and reputational damage to both government and companies.

! Incompatible with FPIC and International Norms

The absence of a social impact regime at the prospecting stage violates:

- The **principle of Free, Prior and Informed Consent (FPIC)**,
- International best practices,
- The spirit of South African case law (Baleni, Maledu),
- The Constitution (Sections 24, 25, 33).

Benefits of Including SLP-lite and SMP at the Prospecting Stage

Benefit	Description
Early engagement and transparency	Establishes communication and accountability before impacts escalate
Conflict prevention	Creates space to manage concerns and grievances proactively
Equity and inclusion	Allows communities to benefit—even in short-term or lower-impact operations
Scalability	Flexible requirements based on scale, location, and community risk
Legal consistency	Aligns with constitutional rights and integrated environmental-social governance

MACUA's Position

Prospecting is not impact-free. Communities deserve protection **before** the mine arrives. We call on the DMPP to adopt MACUA's proposed amendments to Section 16 and require **SLP-lite** and **Social Management Plans (SMPs)** as a minimum standard for all prospecting right applications.

Transformation and justice must begin **at the first step**, not after the damage is done.

MINING RIGHT APPLICATION & RENEWAL

Proposed Change Gazetted by the DMPR

The 2025 MPRDA Amendment Bill proposes to amend Section 23(1)(e) by replacing:

"(e) the applicant has [provided for] complied with the requirements of the prescribed social and labour plan, which must be reviewed every five years for the duration of the mining right;"

This change means a mining right can only be granted if the applicant **demonstrates compliance** with the SLP, not merely that they have submitted one.

Why This Change Is Inadequate in Its Current Form

While the shift from “provided for” to “complied with” appears progressive, the amendment is **procedurally vague** and **lacks enforcement power**. Without further reforms, it risks becoming a symbolic change with little practical impact.

✗ No Definition or Measurable Standard for “Compliance”

- The Bill does not define what constitutes compliance.
- Partial or selective implementation could be deemed “compliance”.
- No guidance is provided on **who verifies** compliance—DMRE officials, an independent body, or affected communities.

✗ No Enforcement or Penalty Framework

- The amendment does not link non-compliance to licence suspension, refusal of renewal, or fines.
- It ignores the documented history of SLP failures where companies faced **no consequences**.

✗ Weak and Vague 5-Year Review

- No requirement for **independent auditing** or **community consultation** during reviews.
- No clarity on whether a poor review can lead to the mining right being amended, suspended, or revoked.

✗ Lack of Transparency

- The amendment does not require SLPs or review outcomes to be made publicly available.
- Without public access, communities cannot track or challenge failures.

MACUA’s Strengthened Legislative Proposal

Revised Section 23(1)(e):

"(e) the applicant has complied with the requirements of the prescribed social and labour plan, as verified through documentary evidence, independent auditing, and confirmation

from affected communities; such plan must be made publicly available via the national mining rights registry and on-site notice boards.

The plan shall be reviewed every five years in consultation with affected communities, organised labour, and local government, with the review outcomes published and subject to ministerial reassessment of the mining right. Where material non-compliance is found, the Minister must suspend or revoke the right, or impose enforceable remedial conditions.”

Proposed Definition (New Section 1 Insertion):

“Complied with the requirements of the prescribed social and labour plan’ means that the applicant or right holder has fully implemented the commitments in their approved social and labour plan—covering human resource development, local economic development, community benefit measures, housing, health, and employment equity—and has submitted verifiable proof thereof to the Department, made such proof available to the public, and engaged affected communities in reviewing performance.”

Key Strengths of MACUA’s Proposal

Issue	DMPR Draft	MACUA Proposal
Definition of compliance	Not provided	Clear, measurable, verifiable
Verification	Unclear	Independent audit + community confirmation
Public access	Omitted	Mandatory publication of SLP & reviews
Community participation	Omitted	Required at review stage
Enforcement	Absent	Suspension/revocation for non-compliance
Accountability	Weak	Linked to transparent monitoring and legal consequences

Conclusion

The DMPR’s proposed wording for Section 23(1)(e) is **a good principle with weak execution**.

MACUA’s proposed changes:

- Give “compliance” a clear legal meaning,
- Ensure independent and community verification,
- Make SLP information publicly accessible,
- Tie SLP failures to enforceable consequences.

Without these reforms, the SLP system will continue to fail mining-affected communities, as it has for the past two decades.

Proposed Amendment to Section 10(c) – Regional Mining Development and Environmental Committee (RMDEC)

Purpose of the Amendment

The purpose of this amendment is to strengthen the institutional role, composition, and transparency of the **Regional Mining Development and Environmental Committee (RMDEC)** under Section 10 of the MPRDA, ensuring that all objections to mining, prospecting, or related applications are subject to **robust, inclusive, and procedurally fair scrutiny** before any rights are granted.

Motivation

While RMDEC exists under current law, its powers, composition, and procedures are under-defined. The 2025 Amendment Bill retains RMDEC in the process but fails to:

- Mandate the inclusion of **community, labour, and civil society representatives**;
- Require **publication** of RMDEC recommendations and reasons;
- Compel the Minister to **justify deviations** from RMDEC advice in writing;
- Ensure that proceedings are **accessible, recorded, and time-bound**.

This gap undermines:

- The constitutional right to **just administrative action** (Section 33);
- **Public participation** in decisions affecting land, environment, and livelihoods (Section 195(1)(e));
- The principle of **procedural fairness** confirmed in *Doctors for Life* and *Balenj*;
- South Africa's constitutional and legislative commitments to environmental democracy, consistent with the internationally recognised Aarhus principles of access to information, public participation in decision-making, and access to justice in environmental matters

Substantive Changes Introduced

- **Expanded RMDEC composition** to include community, labour, and civil society nominees chosen through open processes;
- Clear statutory powers to:
 - Consider applications and objections,
 - Require additional information,
 - Make recommendations to the Minister;
- **Mandatory written reasons** if the Minister deviates from RMDEC recommendations;
- **Public record-keeping** and publication of proceedings and outcomes;
- **30-day decision deadline** to avoid delays while maintaining fair process.

Expected Outcomes

- Greater credibility and legitimacy of the objection process;
- Representative participation in mining decision-making;

- Reduced risk of elite capture or procedural manipulation;
- Improved social and environmental accountability in rights granting;
- Strengthened compliance with constitutional and international obligations.

Proposed Amendment: Strengthening Section 10 – RMDEC

Amendment to Section 10 of the Principal Act:

1. *Substitute paragraph (c) with:*

“(c) if a person objects to the granting of a reconnaissance permission, prospecting right, mining right or mining permit, or if the Regional Manager deems it necessary, he or she must refer the application, together with all objections and representations received, to the Regional Mining Development and Environmental Committee established in terms of this section for consideration and written recommendation to the Minister.”

2. *Insert after subsection (2):*

(3) *Composition of RMDEC*

The Committee must be composed of:

- *Two representatives from the Department of Mineral Resources and Energy;*
- *One representative from the Department responsible for environmental affairs;*
 - *One representative from the Department responsible for water affairs;*
- ***Two representatives nominated by affected communities*** *through an open, regionally convened meeting;*
- ***One representative nominated by a registered labour organisation*** *active in the mining sector in the region;*
- ***One representative nominated by a civil society organisation*** *active in mining-affected areas.*

(4) *Functions and Powers*

The Committee must:

- *Consider the application, supporting documentation, and all objections and representations received;*
- *Assess environmental, social, and economic impacts of the proposed activity on the affected area;*
- *Verify whether meaningful consultation, in line with this Act and other applicable laws, has been conducted;*
 - *Request further information from the applicant or objectors where necessary;*
- *Submit a written recommendation to the Regional Manager and the Minister **within 30 days** of referral.*

(5) *Ministerial Accountability*

The Minister must:

- *Provide **written reasons** if a recommendation is not followed;*
- *Publish the reasons, along with the RMDEC recommendation, on the public digital registry.*

(6) *Transparency*

- *All proceedings, submissions, and recommendations of the Committee must be recorded;*

- *Records must be made publicly available via the digital registry and local municipal notice boards within **7 days** of the decision.*

Rationale for Inclusion

This amendment:

- Makes RMDEC **representative** of all key constituencies, not just government and industry;
- Embeds **public access** and **accountability** mechanisms;
- Introduces **statutory timelines** to ensure efficiency;
- Prevents **arbitrary ministerial overrides** without public justification;
- Creates a **paper trail** for judicial review and community monitoring.

SECTION 21(1)(f)

Proposed Change Gazetted by the DMPR

The 2025 Amendment Bill revises Section 23(1)(f) of the principal Act to read:

“(f) the granting of such right will substantially and meaningfully expand opportunities for historically disadvantaged persons, including women, to benefit from the exploitation of the nation's mineral resources;”

While this language is carried over from the original MPRDA, it has not been substantively strengthened. It remains vague, lacks measurable standards, and ignores current transformation gaps in the sector.

Why This Change Is Not Acceptable

✗ Vague and Unenforceable

- Terms such as “*substantially*” and “*meaningfully*” are undefined, leaving room for minimal or purely symbolic compliance.
- No measurable thresholds or performance indicators are included to assess whether the requirement has been met.

✗ Fails to Address Current Inequalities

- Ignores the reality that benefits are still concentrated among a small elite, often politically connected, rather than broadly distributed to historically disadvantaged persons (HDPs) and communities.
- No measures to prevent “fronting” or repeated benefit by the same individuals or companies.

✗ No Link to SLPs or Ownership Structures

- Does not require proof of actual benefit mechanisms such as local equity stakes, community trusts, or verified procurement opportunities.
- Not integrated into Social and Labour Plans (SLPs) or transformation reporting obligations.

✗ Weakened by the Removal of the HDP Definition

- Elsewhere in the Bill, the definition of HDP is deleted. Without restoring and expanding it, this clause becomes legally hollow and susceptible to manipulation.

Proposed New Clause for Section 23(1)(f)

“(f) the granting of such right will substantially, measurably, and demonstrably expand opportunities for historically disadvantaged persons, as defined in this Act — including women, artisanal and small-scale miners, and mining-affected communities — to participate in, own, and benefit equitably from the development, operation, and proceeds of the mining activity. This shall include, but not be limited to, local equity ownership structures, community

trusts, fair employment, procurement opportunities, skills transfer, and community development mechanisms, with anti-fronting safeguards and verifiable compliance reporting.”

Proposed New Definition of “Historically Disadvantaged Persons” (for Section 1)

“‘Historically disadvantaged persons’ means —

(a) individuals or communities disadvantaged by unfair discrimination on the basis of race, gender, class, or social status under any law or policy before the Constitution of the Republic of South Africa, 1996, took effect; and

(b) individuals or communities who, as a result of the continuing effects of past discrimination or systemic exclusion, remain materially or structurally disadvantaged in access to land, mineral resources, economic opportunity, or environmental justice.”

Key Benefits of the Proposal

Feature	Improvement
“Demonstrably”	Requires verifiable evidence of benefit, not just claims
Expanded beneficiaries	Includes ASM, women, and whole communities
Equity mechanisms	Links benefit to tangible mechanisms — ownership, procurement, and jobs
Anti-fronting safeguards	Closes a common loophole for transformation evasion
Consistency	Aligns with constitutional redress principles and reinstates a strong HDP definition

Conclusion

The DMPP’s retention of outdated, undefined language in Section 23(1)(f), combined with the removal of the HDP definition, dilutes the transformation mandate of the MPRDA.

A clear, measurable, and enforceable formulation, coupled with a robust HDP definition, is essential to operationalise genuine redress, prevent elite capture, and ensure communities are true beneficiaries of South Africa’s mineral wealth.

Section 91A – Police Powers in Mining Offences

Proposed Change Gazetted by the DMPP

The 2025 MPRDA Amendment Bill introduces a new Section 91A, *Powers of South African Police Service members*, which:

- Grants SAPS members the same powers as “authorised persons” under Section 91, including powers under the Criminal Procedure Act, 1977;
- Prohibits routine inspections (Section 92) or compliance notices (Section 93) unless assigned in writing by the Minister of Mineral Resources with the concurrence of the Minister of Police.

Why This Change Is Problematic (and How It Could Work with Safeguards)

✗ Risk of Criminalising Poverty and Informal Livelihoods

- Without a linked developmental support framework, expanded SAPS powers will disproportionately target artisanal, small-scale, and informal miners who are excluded from legal mining due to systemic barriers.
- Past enforcement actions (e.g. Operation Vala Umgodi) have already resulted in rights violations, harassment, and destruction of livelihoods.

✗ Discretion Without Oversight

- Ministerial assignment of SAPS powers is discretionary, with no criteria, public participation, or parliamentary oversight.
- This opens the door to arbitrary enforcement and politicised targeting.

✗ Weakens the Developmental Mandate of the MPRDA

- The MPRDA’s purpose is to promote equitable access, transformation, and sustainable development.
- A policing-first approach without prior remedial steps undermines this mandate and shifts the Act toward securitisation rather than participatory governance.

✗ No Customary or Community Protections

- The clause lacks safeguards for land rights holders under IPILRA, customary governance structures, and mining-affected communities.
- There is no requirement for community notification, consent, or representation in enforcement oversight.

✗ Missed Opportunity for Rights-Based Enforcement

- SAPS could add value in addressing corporate non-compliance (e.g. SLP failures, environmental crimes, illegal dumping) if powers were limited, targeted, and supervised.

MACUA's Proposed Revised Clause for Section 91A**91A – Developmental Enforcement and SAPS Role in Mineral Regulation**

1. A member of the South African Police Service may investigate criminal offences under this Act **only**:
 - (a) in cooperation with an authorised official of the Department; and
 - (b) in response to a formal, documented complaint from an affected community, authorised official, or statutory oversight body.
2. No SAPS member may exercise inspection or compliance powers under Sections 92 and 93 unless:
 - (a) authorised under a **published interdepartmental cooperation agreement** between the Department and the SAPS;
 - (b) the affected community has been notified in advance; and
 - (c) actions are undertaken under the supervision of a designated departmental official.
3. All SAPS enforcement actions under this Act must comply with:
 - (a) Section 33 of the Constitution (just administrative action);
 - (b) IPILRA protections for land rights holders; and
 - (c) specific safeguards for artisanal, small-scale, and customary miners operating in good faith.
4. The Minister must, within six months of the commencement of this section, establish a **Joint Enforcement Oversight Forum** comprising:
 - Representatives of the Department;
 - SAPS;
 - The South African Human Rights Commission;
 - Recognised mining-affected community organisations; and
 - Civil society organisations with expertise in environmental justice and land rights.

This Forum must monitor and review all SAPS interventions under the MPRDA and publish an annual report to Parliament.

Key Advantages Over DMPR Draft

Issue	DMPR Proposal	MACUA Proposal
Scope of SAPS powers	Broad, discretionary	Narrow, conditional, rights-based
Oversight mechanisms	None	Joint oversight forum with public reporting
Protection for ASM	Absent	Explicit safeguards and developmental approach
Trigger for police action	Ministerial discretion	Complaint-based, community-driven
Risk of abuse	High	Reduced via transparency, supervision, and constitutional compliance

Conclusion

The DMPP's Section 91A expands police powers without balancing them with accountability, rights protections, or community oversight.

MACUA's alternative approach reframes enforcement as *developmental*, ensures SAPS only acts when necessary and proportionate, and places community participation at the heart of the process, preventing the securitisation of mining governance while still addressing genuine violations.

Section 28(2)(c) – Annual Reporting Requirements

Proposed Change Gazetted by the DMPP

The 2025 MPRDA Amendment Bill substitutes Section 28(2)(c) of the principal Act to read:

28(2)(c):

“the prescribed annual report detailing accurate information and data in respect of mineral reserves and resources within the mining areas.”

This rewording narrows the focus of the annual report to purely **technical geological data**, removing references to transformation or community obligations.

Why This Change Is Not Acceptable

✗ Erodes Accountability for Transformation and Redress

- Omits annual reporting on **Social and Labour Plan (SLP)** implementation, despite SLPs being a statutory condition for mining rights under Section 23(1)(e).
- Removes public metrics for evaluating local economic development, ownership, procurement, or housing commitments.

✗ Breaks Alignment with the Mining Charter and Section 100 Obligations

- The original reporting regime linked company disclosures to **Charter transformation targets**.
- Without this link, transformation reporting becomes voluntary and unenforceable.

✗ Ignores Community Transparency and Access to Information

- No requirement to **publish reports** or share them with affected communities, making it impossible for stakeholders to verify compliance.
- Communities lose a key tool for monitoring whether mining is delivering promised benefits.

✗ Contradicts the Five-Year SLP Review

- Section 23(1)(e) now requires SLP review every five years, but without annual tracking, there's no baseline data to measure progress or trigger corrective action.

MACUA's Proposed Legislative Wording for Section 28(2)(c)

28(2)(c):

“an annual report, submitted to the Minister and published in the prescribed public register, containing—

(i) accurate information and data in respect of mineral reserves and resources within the mining area;

(ii) verified reporting on the implementation of the approved social and labour plan,

including—

(aa) progress on community development projects, with timelines and budgets;

(bb) employment equity achievements, disaggregated by race, gender, and youth;

(cc) local procurement and enterprise development figures;

(dd) housing and living conditions improvements;

(iii) a summary of community engagement activities undertaken, including grievances received and how they were resolved;

(iv) verification statements signed by a recognised community oversight forum or community-elected representatives; and

(v) such additional transformation, environmental, and socio-economic indicators as may be prescribed by regulation.”

Key Benefits of This Proposal

Issue	DMPR Proposal	MACUA Proposal
Scope of reporting	Limited to reserves/resources	Adds SLP, transformation, and socio-economic data
Community oversight	Absent	Mandatory verification by community representatives
Transparency	No publication duty	Mandatory public register + open access
Alignment with SLP review	None	Creates annual baseline for 5-year review
Enforcement	Weak	Provides measurable metrics for compliance action

Conclusion

By restricting Section 28(2)(c) to geological data, the DMPR strips away one of the Act’s main public accountability tools.

MACUA’s revision restores the **integrated compliance chain**, from licence conditions to annual reporting to periodic review, and ensures that communities have both the data and the legal standing to demand delivery on commitments.

Section 43(5) & (5A) – Closure Certificate and SLP Accountability

Proposed Change Gazetted by the DMPR

The 2025 MPRDA Amendment Bill updates Section 43, which governs mine closure and the issuing of closure certificates. The amended sections read:

Section 43(5):

“No closure certificate may be issued unless the Chief Inspector of Mines and the Department of Water and Sanitation have confirmed in writing that the provisions pertaining to health and safety and management of pollution to water resources, the pumping and treatment of extraneous water and compliance to the conditions of the environmental authorisation have been addressed.”

Section 43(5A):

“Confirmation from the Chief Inspector of Mines and the Department of Water and Sanitation as contemplated in subsection (5) must be received within 60 days...”

Observation: The DMPR’s amendment continues to treat mine closure as a purely technical environmental exercise, with **no requirement to verify Social and Labour Plan (SLP) implementation**, community development delivery, or mine-community transition planning before a company can legally exit.

Why This Change Is Not Acceptable

✗ Social and Labour Plan Commitments Excluded

- Closure certification could be granted even if a mining company has failed to deliver on SLP obligations — including housing, local procurement, education, or infrastructure projects.
- This omission allows companies to exit without honouring the commitments that justified their mining rights in the first place.

✗ Breaks Legal and Policy Coherence

- Section 23 requires proof of SLP compliance to grant a mining right.
- Without linking closure certification to SLP fulfilment, the law rewards companies that delay delivery until the end-of-life stage, where leverage is weakest.

✗ No Role for Affected Communities

- The DMPR proposal makes closure verification entirely regulator-driven.
- There is no duty to consult, secure approval from, or even notify affected communities during the closure process, ignoring constitutional participatory rights and recent jurisprudence on community involvement.

✗ Encourages “Exit Without Justice”

- Communities often face severe socio-economic decline post-closure.
- Without a closure-linked review of social and economic transition plans, the process leaves behind stranded infrastructure, unemployment, and unfulfilled promises.

MACUA’s Proposed Legislative Wording for Section 43(5) and (5A)**43(5)**

“No closure certificate may be issued unless —

- (a) the Chief Inspector of Mines and the Department of Water and Sanitation have confirmed in writing that the provisions pertaining to health and safety, management of pollution to water resources, and the pumping and treatment of extraneous water have been addressed;*
- (b) the Minister has confirmed, following verification with affected communities, that all commitments under the approved social and labour plan, any community development obligations arising from this Act, and agreed mine-community transition measures have been fully implemented or lawfully handed over to a public or community-controlled entity; and*
- (c) a public consultation process has been conducted in affected communities to verify the completion of all social, labour, environmental, and infrastructure undertakings included in the approved closure plan.”*

43(5A)

“Confirmation from the Chief Inspector of Mines, the Department of Water and Sanitation, and the designated community verification forum must be received within 60 days of the submission of a closure application, together with all supporting documentation, before the Minister may issue a closure certificate.”

Key Benefits of the Proposal

Issue	DMPR Proposal	MACUA Proposal
SLP compliance at closure	✗ Not required	✓ Mandatory precondition
Community involvement	✗ Excluded	✓ Required verification and consultation
Scope of closure accountability	Limited to environmental compliance	Includes socio-economic and transition planning
Legal consistency	Breaks link with Section 23 & 100	Aligns with licensing and transformation provisions
Risk mitigation	Companies can exit without delivering commitments	Prevents exit until delivery is verified

Conclusion

The DMPR's version of Section 43(5) and (5A) enforces environmental obligations but leaves transformation and community protection out of the closure equation. This creates a **double standard**: strict on pollution, silent on poverty.

MACUA's proposal restores balance by making closure a **holistic accountability checkpoint**, one that enforces environmental, social, and economic commitments equally, and puts affected communities at the centre of verifying whether a mine is truly ready to close.

Section 41(1)(d) – Financial Provision for SLP and Community Development

Proposed Change Gazetted by the DMPR

The 2025 MPRDA Amendment Bill amends Section 41, which governs **financial provision by right holders**.

The updated clause reads:

Section 41(1)(d):

“the holder of a prospecting right, mining right, retention permit, small-scale mining permit or artisanal mining permit must make financial provision for—

...

the costs associated with implementing the social and labour plan or any community development obligations arising from this Act.”

This is a **new inclusion**. SLP and community development costs are now part of mandatory financial provisioning.

Why This Change Is Not Acceptable

✗ Ambiguity in “Costs Associated With”

- The Bill does not define whether “costs” cover **100% of SLP obligations**, inflation adjustments, escalation, or contingency for delays.
- Without a prescribed formula or verification process, companies can **grossly under-budget** or **front-load low estimates** that later undermine delivery.

✗ No Ringfencing or Safeguards Against Misuse

- The amendment does not require these funds to be kept in a **protected trust, escrow, or community development account**.
- This creates the risk of funds being diverted, delayed, or made conditional on corporate discretion.

✗ Zero Oversight or Transparency

- The Bill does not require **independent auditing**, annual public reporting, or direct community access to the accounts.
- Without oversight, affected communities have **no guarantee** that the budgeted funds exist, are sufficient, or are being used for their intended purpose.

✗ Weak Link to Other Sections

- No reference to Section 23 (granting of mining rights), Section 28 (annual reporting), or Section 100(3) (transformation standards).
- This breaks the compliance chain — meaning a mine could underfund its SLP while still being granted rights or renewed without consequence.

MACUA’s Proposed Legislative Wording for Section 41(1)(d)

Section 41(1)(d) should read:

“the full cost of implementing the approved social and labour plan and any community development obligations arising from this Act, which shall—

- (i) be calculated in accordance with prescribed national guidelines that include timelines, inflation adjustments, escalation provisions, and contingency amounts;*
- (ii) be deposited into a dedicated, ringfenced trust or escrow account established solely for the benefit of affected communities and managed in accordance with the Public Finance Management Act or other prescribed governance standards;*
- (iii) be subject to annual independent audit and verification by the Department and at least two representatives nominated by affected communities;*
- (iv) be publicly disclosed in the holder's annual SLP compliance report under section 28 and published in the national mining compliance registry; and*
- (v) remain available and protected until all SLP and community development obligations are fully discharged and verified by affected communities."*

Summary of Benefits

Issue	DMPR Proposal	MACUA Proposal
Definition of "costs"	Ambiguous	Prescribed formula with inflation + contingency
Protection of funds	None	Ringfenced trust/escrow
Audit and compliance	Absent	Annual independent audit + community oversight
Transparency	None	Public disclosure in registry and SLP reports
Alignment with transformation law	Weak	Fully linked to Sections 23, 28, and 100(3)

Conclusion

The DMPR's current formulation is **symbolically progressive but structurally hollow**; it recognises SLP costs but does not guarantee they will be available, adequate, or used as intended.

MACUA's version **closes all the loopholes** by:

- Setting clear costing rules,
- Protecting funds in a legal trust,
- Mandating independent auditing, and
- Giving affected communities a direct verification role.

This turns Section 41(1)(d) into a **binding financial backbone for transformation** rather than another paper promise.

Section 23(2A) – Ministerial Discretion on Community Land

Proposed Change Gazetted by the DMPR

The 2025 Draft Mineral and Petroleum Resources Development Amendment Bill introduces a new subsection under Section 23:

Section 23(2A):

“If the application relates to the land occupied by a community, the Minister [may] must impose such conditions as are necessary to promote the rights and interests of the community including conditions requiring the participation of the community.”

The Bill changes “may” to “must”, making it mandatory for the Minister to impose conditions when a mining application relates to community land.

However:

- The bracketed phrase “*including conditions requiring the participation of the community*” is deleted.
- No criteria or mechanisms are provided to define what “conditions” must include.

Why This Change Is Not Acceptable

✗ No Reference to FPIC or Customary Land Rights

- The amendment fails to align with Constitutional Court rulings in *Maledu* and *Baleni*, which require **Free, Prior and Informed Consent (FPIC)** for communities under customary or informal tenure.
- Removing the phrase on “participation” actively weakens the principle of inclusion.

✗ No Link to Binding Socio-Economic Obligations

- The proposed text does not require integration of conditions into Social and Labour Plans (SLPs), benefit-sharing agreements, land use arrangements, or compensation frameworks.
- This risks conditions being symbolic rather than enforceable.

✗ Ministerial Discretion Without Standards

- While “must” implies obligation, the absence of defined minimum content means conditions can still be vague, tokenistic, or inadequate.

✗ No Sanctions for Breach

- The clause does not provide that non-compliance with these conditions is a ground for refusal, suspension, or cancellation of the right.

MACUA’s Proposed New Clause – Section 23(2A)

23(2A): *Where the application relates to land occupied or used by a community, as defined under customary law, informal tenure, or the Interim Protection of Informal Land Rights Act, 1996 (IPILRA):*

(a) The Minister must, prior to granting the mining right, impose legally binding conditions that—

- 1. Require Free, Prior and Informed Consent (FPIC) from the community, obtained in accordance with IPILRA and Constitutional Court precedent, as a precondition to the grant;***
- 2. Guarantee community participation in all decision-making processes affecting the land, livelihoods, environment, and cultural heritage;***
- 3. Provide for equitable benefit-sharing, including:***
 - Direct equity or revenue participation,***
 - Compensation for loss of land use,***
 - Co-developed community development plans, and***
 - Protection of cultural and subsistence activities;***
- 4. Integrate all obligations into the Social and Labour Plan (SLP) for the mining right, with community co-approval before final submission; and***
- 5. Include a binding dispute-resolution and grievance mechanism accessible to the community.***

(b) Non-compliance with any such condition shall constitute grounds for refusal, suspension, or revocation of the mining right under this Act.

Key Benefits of This Formulation

Issue	DMPR Proposal	MACUA Proposal
Legal duty	“Must impose conditions” (no detail)	Must impose specific, enforceable conditions with FPIC
FPIC inclusion	Absent	Explicit FPIC requirement in line with <i>Maledu</i> and <i>Baleni</i>
Community participation	Deleted from text	Restored and strengthened as a legal obligation
Link to SLP	Absent	Integrated into SLP obligations
Sanctions for breach	Not provided	Grounds for refusal, suspension, or revocation

Conclusion

The DMPR’s proposed Section 23(2A) reads as a procedural gesture rather than a substantive protection. Without FPIC, binding socio-economic obligations, and sanctions for breach, it risks entrenching the very patterns of dispossession the MPRDA was meant to undo.

MACUA’s proposed wording ensures:

- **Legal alignment with constitutional and court-mandated protections,**
- **Integration of economic justice mechanisms into licensing, and**
- **Community agency over decisions that affect their land and future.**

Section 100(3) – Transformation and SLP Obligations at the Point of Licensing

Proposed Change Gazetted by the DMPR

The 2025 Draft Mineral and Petroleum Resources Development Amendment Bill proposes a new subsection under Section 23:

Section 23(2A)

“If the application relates to the land occupied by a community, the Minister [may] must impose such conditions as are necessary to promote the rights and interests of the community [including conditions requiring the participation of the community].”

While the change from “may” to “must” creates a legal duty for the Minister to impose conditions, the deletion of the phrase “including conditions requiring the participation of the community” and the absence of detailed requirements undermines the effectiveness of this amendment.

Why This Change Is Not Acceptable

✗ FPIC and Land Rights Protections Are Missing

- There is **no reference** to *Free, Prior and Informed Consent* (FPIC), despite binding Constitutional Court rulings (*Maledu, Baleni*) and IPILRA protections.
- By removing the reference to “participation,” the Bill weakens the obligation to include communities in decision-making.

✗ Conditions Are Undefined and Discretionary

- “Such conditions as are necessary” is vague, leaving scope for minimal or tokenistic measures.
- Without statutory criteria, the Minister can impose weak conditions that do not guarantee tangible community benefits.

✗ No Link to SLP or Benefit-Sharing

- The proposed conditions are not tied to Social and Labour Plans (SLPs), benefit-sharing arrangements, compensation, or development plans co-created with the community.

✗ No Enforcement Mechanism

- The amendment does not make non-compliance with conditions a ground for suspension, refusal, or cancellation of a mining right.

MACUA’s Proposed Replacement for Section 23(2A)

23(2A) Where the application relates to land occupied or used by a community, including land held under customary law, informal tenure, or protected by the Interim Protection of Informal Land Rights Act, 1996 (IPILRA):

(a) The Minister must, prior to granting the mining right, impose legally binding conditions that:

- 1. Require Free, Prior and Informed Consent (FPIC) from the community before any right is granted, obtained in accordance with IPILRA, relevant Constitutional Court rulings, and international standards;***
- 2. Guarantee meaningful participation of the community in all decision-making processes affecting their land, livelihoods, culture, and environment;***
- 3. Provide for equitable benefit-sharing, which may include:***
 - Direct community equity in the mining operation,***
 - Revenue-sharing or royalty arrangements,***
 - Compensation for land loss and use,***
 - Infrastructure and service delivery commitments;***
- 4. Integrate all community-related conditions into the approved Social and Labour Plan (SLP), which must be co-developed and co-approved by the community; and***
- 5. Establish an accessible dispute resolution and grievance mechanism for community use.***

(b) Non-compliance with these conditions shall constitute lawful grounds for:

- Refusal of the application,***
- Suspension of operations, or***
- Cancellation of the mining right.***

Key Improvements Over the DMPR Proposal

Issue	DMPR Proposal	MACUA Proposal
Legal duty	Must impose conditions (no detail)	Must impose specific, enforceable FPIC & benefit-sharing conditions
FPIC	Absent	Mandatory under law and precedent
Community participation	Deleted from text	Restored and made binding
SLP integration	Absent	Required
Enforcement	Not specified	Clear sanctions for breach

Conclusion

The DMPR's current wording gives the appearance of protection but leaves too much discretion and too few guarantees.

MACUA's formulation makes community rights **non-negotiable**, ties them to enforceable SLP obligations, and ensures that mining rights on community land cannot be granted without **consent, participation, and tangible benefits**.

Comprehensive SLP Clause Matrix – DMPR Amendments vs MACUA Reformulation

Clause	Proposed Change Gazette d by the DMPR	Why This Is Not Acceptabl e	MACUA Proposed Reformulatio n	Summary Benefit s
Section 23(1)(e) – Mining right application	Requires the applicant to “comply with the requirements of the prescribed SLP, which must be reviewed every five years.”	No definition of “compliance”; no independent verification; no community role in review; no public disclosure; no sanctions for non-compliance.	Define “compliance” in Section 1 to mean verifiable implementation of SLP commitments with evidence; require annual public reporting; 5-year review must be conducted in consultation with affected communities; outcomes must be published and linked to reassessment or renewal of the right.	Clarifies compliance, adds measurable standards, embeds transparency and community oversight, and ties review to licensing.
Section 23(2A) – Conditions on community land	Minister must impose conditions to promote community rights where land is occupied by a community. The phrase on “participation” has been removed and no criteria defined.	No explicit FPIC requirement; vague “conditions” without minimum content; no integration into SLPs; no sanctions for breach.	Make FPIC mandatory in line with <i>Maledu, Baleni</i> , and IPILRA; require binding provisions on consultation, land-use agreements, equitable benefit-sharing, and compensation; integrate these into the SLP; make non-compliance grounds for refusal, suspension, or cancellation.	Aligns with constitutional and customary land rights; restores participatory protections; ensures conditions are enforceable and linked to benefits.
Section 100(3) – Transformation obligations	Minister must impose SLP-related transformation obligations (procurement, employment equity) when granting rights.	No legal thresholds; no binding targets; Minister can amend or repeal without consultation; no verification.	Prescribe measurable transformation targets in regulations, covering ownership (including community equity), procurement, employment equity, youth and gender quotas; require independent audits and community verification before renewal.	Protects transformation from policy rollback; makes targets durable, measurable, and enforceable.
Section 28(2)(c) – Annual reporting	Requires annual report with “accurate information and data” about mineral reserves and	Omits SLP performance, transformation, environmental compliance, or	Expand reporting to include detailed SLP implementation progress, transformation benchmarks,	Creates full-spectrum accountability; allows communities to monitor

Clause	Proposed Change Gazette d by the DMPR	Why This Is Not Acceptable	MACUA Proposed Reformulation	Summary Benefits
	resources.	community impact; no public access.	environmental performance, and community engagement outcomes; require verification by community representatives; make reports public.	commitments; aligns with transformation and environmental justice goals.
Section 41(1)(d) – Financial provision	Includes “costs associated with” SLP and community development in financial provision.	“Costs associated with” is undefined; no ringfencing; no audit; no public oversight.	Require full-cost budgeting based on prescribed guidelines (inflation-adjusted); deposit into ringfenced trust or escrow; subject to annual independent audits with community representation; link to Section 28 reporting.	Secures funds for SLP delivery; prevents diversion; builds trust through transparency.
Section 43(5) & (5A) – Closure certificate	Closure requires health and water compliance confirmation, but no link to SLP completion.	Allows closure without fulfilling SLP/community development; no role for affected communities in verification.	Make SLP and community development delivery a precondition for closure; require verification with affected communities; conduct public consultation before issuing certificate.	Prevents companies from exiting without delivering on social and economic obligations; aligns closure with transformation goals.
Schedule II – Transitional provisions	No transitional mechanism for reviewing or upgrading legacy SLPs.	Legacy mining rights with outdated or flawed SLPs remain unreviewed.	Require all existing rights to undergo a transitional SLP compliance review within 12 months; update plans to meet current standards with community consultation.	Extends justice to historically marginalised mining areas; ensures old rights meet current legal and transformation standards.

Additional Notes

- The Bill’s repeated use of “prescribed social and labour plan” language does not define **what compliance means** or how it will be measured.
- The absence of **independent monitoring, public disclosure, and enforceable sanctions** leaves transformation promises at risk of being symbolic.

- Ministerial discretion remains centralised without adequate checks, undermining transparency.

MACUA's Overarching Reform Principles

1. **Definition of Compliance:** Must be clear, measurable, and independently verified.
2. **Community Participation:** Required in all stages: design, implementation, review, renewal, and closure.
3. **Public Disclosure:** All SLPs, review reports, and compliance data must be publicly available.
4. **Legal Enforceability:** Rights must be suspended or refused renewal if SLPs are not implemented.
5. **Independent Oversight:** Role for Parliament, SAHRC, or a statutory mining ombud to ensure justice and prevent manipulation.

Clause: Schedule II (Transitional Provisions)

Gazetted Proposed Change by DMPR:

The Amendment Bill updates Schedule II to streamline the registration and conversion of old order rights but introduces no provisions to **review, upgrade, or enforce Social and Labour Plan (SLP) obligations** for rights granted or converted under previous regimes.

Why This Change Is Not Acceptable:

✗ No Mechanism for Legacy Accountability: Existing rights with flawed, incomplete, or non-existent SLPs remain beyond scrutiny, despite decades of documented underperformance.

✗ Perpetuates Historical Inequality: Communities living with long-standing mining operations under old rights are excluded from the transformation agenda, even where SLPs were never meaningfully implemented.

✗ Missed Rectification Opportunity: The Bill ignores the chance to bring legacy rights into alignment with modern standards, including FPIC, benefit-sharing, and enforceable development targets.

MACUA Proposed Legislative Clause:

"Any prospecting right, mining right, or permit granted under the principal Act prior to the commencement of this Amendment must, within 12 months of the effective date, undergo a transitional compliance review of its approved Social and Labour Plan, conducted in consultation with affected communities.

Where non-compliance, gaps, or outdated provisions are identified, the right holder must submit an SLP upgrading and compliance remediation plan for ministerial approval.

The approved plan shall be binding and enforceable under this Act, with failure to comply constituting grounds for suspension or non-renewal of the right."

Justification:

✓ Extends Justice: Ensures that legacy mining operations are held to the same standards as new rights.

✓ Creates Uniform Standards: Brings all SLPs under a common compliance and enforcement framework.

✓ Reduces Conflict Risk: Addresses long-standing grievances that have fuelled disputes and litigation.

Section 49 – Strategic Minerals

Gazetted Proposed Change by DMPR:

The Bill amends Section 49 to allow the Minister, after consulting relevant Ministers, to designate certain minerals as “strategic” in the national interest, thereby restricting or prohibiting the granting of:

- Reconnaissance permissions
- Prospecting rights
- Mining rights
- Small-scale or artisanal mining permits

The Minister may also limit access to designated land or specific minerals deemed strategic and invite applications through gazette notices.

Why This Change Is Not Acceptable:

✗ No Definition of “Strategic Minerals”: Without objective, published criteria, designation risks being arbitrary or politically motivated.

✗ Loss of Public Consultation: The requirement to invite representations from stakeholders is removed, cutting out affected communities and civil society.

✗ Threat to ASM and Community Rights: The provision allows blanket prohibition on ASM and SSM access, undermining transformation and livelihood security.

✗ No Safeguards or Appeal Mechanism: There is no requirement for socio-economic or land rights impact assessments, nor any route for communities to challenge designations.

MACUA Proposed Legislative Reform:

New Definition for Section 1:

“Strategic minerals’ means mineral commodities designated by the Minister through a transparent, consultative process, based on published criteria including their criticality for national energy security, industrial development, climate transition objectives, or essential infrastructure, and which require regulated access to ensure equitable, sustainable, and transformative utilisation.”

Proposed Procedural Safeguards (Insert Section 49(1A)):

“Before restricting or prohibiting access to any mineral or land under this section, the Minister must:

- (a) Publish the proposed designation in the Gazette and invite written representations from interested and affected parties;***
- (b) Conduct a socio-economic and land rights impact assessment, including consultation with affected communities, artisanal and small-scale miners, and civil society;***
- (c) Publish reasons, mitigation measures, and transitional arrangements to ensure ASM and community operators are not unfairly excluded;***
- (d) Provide an accessible mechanism for review or appeal of the designation.”***

Key Benefits of the Proposal:

Issue	DMPR Proposal	MACUA Proposal
Definition	None	Criteria-based, transparent
Consultation	Removed	Mandatory, inclusive
ASM Protections	Absent	Guaranteed alternative access/transition
Legal Certainty	Ambiguous	Clear process with appeal rights

Conclusion:

As drafted, Section 49 risks being used as a gatekeeping tool for high-value minerals, to the detriment of communities and ASM operators.

MACUA's reformulation:

- Locks in a clear, consultative, and rights-based designation process;
- Protects livelihoods and transformation objectives;
- Ensures "strategic minerals" policy serves **public interest and equity**, not elite accumulation.