



Legislating Against the Constitution: MPRDA Amendments and the Erosion of Rights-Based Mining Governance

Introduction

In **2016**, the South African Human Rights Commission (SAHRC) convened national investigative hearings into the *Underlying Socio-economic Challenges of Mining-Affected Communities*, exposing systemic failures in how mining is governed and whose interests it serves. A subsequent SAHRC hearing examined *Unregulated Artisanal Underground and Surface Mining* (often called “*zamazamas*”), highlighting the plight of informal miners and their communities. These processes culminated in detailed **findings and recommendations**, from **enforcing Social and Labour Plan** commitments and ensuring communities’ **Free, Prior and Informed Consent (FPIC)**, to **formalising artisanal mining** and **strengthening environmental justice**.

Nearly a decade later, the Government has proposed extensive **amendments to the Mineral and Petroleum Resources Development Act (MPRDA)** (gazetted in 2025) under the banner of “modernisation” and “regulatory efficiency.” On paper, this draft MPRDA Amendment Bill aims to streamline licensing and align with current policies, and the Department’s *Socio-Economic Impact Assessment System (SEIAS)* report claims the changes will address community concerns and spur investment.

The Minister of Mineral & Petroleum Resources hailed the Bill as a “*milestone*” for South Africa’s mining industry overhaul. However, mining-affected communities and civil society see a very different picture.

Far from heeding the SAHRC’s recommendations, the 2025 proposals **undermine them**, entrenching an unjust, unequal mining regime that privileges corporate interests while eroding hard-won rights of communities.

This report critically evaluates the 2025 MPRDA Amendment Bill against the SAHRC's findings, with input drawn from community organisations (such as MACUA and WAMUA), research institutes like Society, Work and Politics Institute (SWOP – Wits University), and legal advocacy groups including the Bench Marks Foundation, Centre for Applied Legal Studies (CALS), Centre for Environmental Rights (CER), and Lawyers for Human Rights (LHR).

This report finds that **the draft amendments contradict the SAHRC's directives** on accountability, enforcement, community participation and benefit-sharing, **effectively a policy betrayal that risks reversing post-1994 transformation gains**. Below, we examine these issues thematically, showing in each area how the Bill departs from SAHRC guidance and constitutional obligations, and we provide evidence of the likely impact on marginalised mining communities.

(In the tables and analysis that follow, "SAHRC Recommendation" refers to directives from the SAHRC's hearing reports, and "2025 Amendment Bill" refers to the draft MPRDA Amendment Bill of 2025.)

Accountability, Compliance and Enforcement

One of the SAHRC's clearest conclusions was that **lack of accountability and enforcement in the mining sector had enabled widespread rights violations**. The 2016 hearing report found regulatory oversight to be weak and fragmented, for example, companies' Social and Labour Plan (SLP) commitments were routinely unmet, with **no consequences** for non-compliance.

The SAHRC directed the Department of Mineral Resources (DMR) to **enforce compliance** with SLPs by developing sanctions for companies that fail to deliver on these obligations. It further urged that **minimum financial contributions** to SLP projects be defined and **ring-fenced** to prevent diversion of funds.

The SAHRC also recommended greater transparency, that key documents (SLPs, annual compliance reports, Environmental Management Programs) be made *publicly available*, to enable independent monitoring by communities and oversight bodies. In the SAHRC's vision, improved information access and community oversight would complement state enforcement, given the limited capacity of mining regulators.

Crucially, the Commission highlighted that **leaving communities to rely on litigation or "goodwill" of companies is unjust**; formal **grievance mechanisms** and proactive monitoring are needed.

By contrast, the 2025 MPRDA Amendment Bill fails to create any robust enforcement or oversight framework. It introduces **no new penalties** for SLP non-compliance and no independent accountability structures.

As noted by MACUA, the Bill *“leaves Social and Labour Plans toothless: companies must submit SLPs, but the Bill imposes no penalties for failing to honour them, an open invitation to ignore them entirely.”*

Under the current draft, a mining right could conceivably be granted, operated, and even terminated without the community ever receiving the promised development projects, a scenario the SAHRC explicitly warned against. Indeed, the SAHRC had recommended that **no mine closure should be permitted until SLP projects are fulfilled**, tying closure certificates to social obligations.

The Bill neglects to include this safeguard: it conditions closure on environmental compliance but *“no mention of SLP”* fulfilment is made. This omission means companies can walk away from communities without delivering socio-economic benefits, **directly contravening the SAHRC’s directives**.

Transparency and public oversight are likewise sidelined. There is *nothing* in the draft law requiring proactive disclosure of SLPs or mining rights compliance data. Decision-making around rights allocation remains **opaque**, shielded from community scrutiny.

MACUA observes that the Bill *“maintains a system where decisions on mineral rights remain shielded from public oversight and insulated from community input”*, protecting privileged backdoor access for industry elites. This perpetuates the accountability deficit the SAHRC sought to fix. Notably, **no independent ombudsperson or community appeal mechanism** is established in the Bill, meaning communities’ only recourse against rights infringements would continue to be costly court battles.

This preserves a power imbalance: companies have resources to navigate legal processes, whereas impoverished communities face high barriers to justice. Rather than creating accessible administrative remedies or oversight bodies as an *alternative* to protests and litigation, the amendments default to the status quo of weak state enforcement and heavy reliance on communities to police industry behaviour themselves.

In fact, one of the few new “enforcement” measures the Bill adds is a draconian one: a provision (Section 91A) empowering police officers to enforce compliance in mining areas. This securitisation approach, which MACUA calls **“policing, not participation”**, speaks volumes.

Communities have long asked for *developmental enforcement* (e.g. inspectors ensuring social commitments are met, mediation of disputes) rather than militarised crackdowns. The Bill’s silence on independent monitoring or community-driven oversight, coupled with expanded policing powers, suggests the state’s priority is to protect mine sites and quell unrest, not to hold companies accountable. As a MACUA commentary notes, **“the Bill’s silence on independent oversight, grievance mechanisms, or community ombuds structures” betrays the SAHRC’s vision of participatory accountability**.

In sum, the amendments ignore the SAHRC's calls for **binding compliance mechanisms** and inclusive enforcement and instead reinforce a regime where corporate misconduct carries little risk and affected people have little remedy.

Community Consultation versus Free, Prior & Informed Consent (FPIC)

Perhaps the starkest divergence from the SAHRC's recommendations is on the issue of **community consent and participation**. The SAHRC unequivocally found that mining decisions must uphold the principle of **Free, Prior and Informed Consent (FPIC)** for communities, especially those on customary land, and that "meaningful consultation" must be more than a mere tick-box exercise.

In its 2018 hearing report, the Commission explicitly directed that ***"in the consideration of and decision-making relating to the granting of mining rights, the principle and policy of FPIC need to be adhered [to] and reported on."*** It further recommended establishing community engagement forums with **binding standards**, including democratic representation, financial oversight, and transparency, all rooted in FPIC, to ensure that communities have a say and control in decisions affecting them.

These recommendations were bolstered by landmark legal developments: the Constitutional Court's *Maledu* (2018) and *Baleni* (2019) judgments affirmed that under the Interim Protection of Informal Land Rights Act (IPILRA), mining on communal land cannot proceed without the affected community's informed consent. In line with these precedents, SAHRC and civil society have urged that the MPRDA be **amended to enshrine FPIC**, not just consultation, as the standard in mining approvals.

The 2025 Amendment Bill pointedly ignores these calls. Nowhere in the draft law is FPIC mentioned or required. The Bill continues to rely on a **weak "consultation" model**, meaning that companies and the state only need to consult communities, not obtain their actual agreement, before a mining right is granted.

This flies in the face of the Constitutional Court's rulings and the constitutional property clause (Section 25) which protect informal land rights. As MACUA's analysis puts it, ***the Bill "refuses to enshrine Free, Prior and Informed Consent... The Constitution, IPILRA, and jurisprudence establish that land rights holders must provide informed consent, not just be consulted, before mining can proceed. The Bill continues to promote a weak 'consultation' model, sidestepping this constitutional standard."*** The omission of FPIC is not an oversight but a deliberate policy choice, one that aligns squarely with mining industry interests while undermining the rights of indigenous and rural communities. It effectively empowers the state to **override local opposition** (as long as a perfunctory consultation process was followed), thereby *exacerbating the very marginalisation* the SAHRC sought to remedy.

The **table below** contrasts the SAHRC's position on community consent with the Bill's provisions:

Issue	SAHRC Recommendation (2016/2018 Hearings)	2025 Amendment Bill Proposal
Community Consent (FPIC)	<i>Adhere to Free, Prior & Informed Consent in granting mining rights.</i> The SAHRC directed that FPIC be respected and reported on for communities, especially on customary land. It cited the need to align with Constitutional Court rulings (e.g. <i>Baleni, Maledu</i>) requiring consent for mining on communal land.	No FPIC requirement. The Bill retains a “consultation” model – companies must consult but need not obtain consent. FPIC is omitted , even for communal land, defying the Baleni/Maledu precedents. Communities remain objects of consultation, not rights-bearing participants in decisions.
Meaningful Participation	Strengthen consultation processes beyond tokenism. SAHRC urged creation of community engagement forums with binding guidelines (inclusive representation, elections, transparency) to enable ongoing community participation in mine decisions. Consent through custom: When consent is required (e.g. under IPILRA), it should be given according to the community's own customary processes.	“Tick-box” consultation continues. The Bill does not establish any new community forums or participatory bodies. Consultation obligations remain procedural and narrow. There is no legal assurance that community voices can influence outcomes – effectively <i>maintaining consultation as a formality</i> . Customary decision-making processes are not recognised in

Issue	SAHRC Recommendation (2016/2018 Hearings)	2025 Amendment Bill Proposal
		the Act, meaning the spirit of FPIC is absent .
Access to Information	<i>Guarantee transparency to enable informed consent.</i> SAHRC found that lack of information impeded meaningful participation. It recommended proactive disclosure of all mining-related info (SLPs, environmental impacts, etc.) in accessible formats and languages. This empowers communities to engage from a position of knowledge.	No new transparency measures. The Bill does not mandate public release of SLPs, environmental reports or ministerial decisions. Key information may still be withheld under “confidentiality.” Communities thus remain in the dark about plans and impacts, undermining their ability to give informed input or withhold consent.

As the table shows, the draft law not only fails to adopt FPIC, it doubles down on a top-down approach. The consequences are severe. Without a consent requirement, **displacement of communities** can proceed against their wishes. Indeed, the Bill is conspicuously silent on issues of **relocation and resettlement** of communities, which MACUA and others had flagged as needing a dedicated framework.

The MPRDA Coalition of Civil society organisations had proposed legal provisions to govern mine-related displacements (to ensure fair compensation, planning, and alternatives). The Bill ignores this, containing “*silence on displacement and spatial justice*” even as new mining projects (e.g. under a touted Critical Minerals strategy) threaten to uproot rural villages. For communities, this means that the *apartheid-era pattern of forced removals* in the name of mining could continue under a democratic government. The **constitutional promise of land reform and tenure security is thus undermined**; a point not lost on civil society stakeholders who call the omission of FPIC and resettlement protections a direct betrayal of Section 25 of the Constitution.

The exclusion of FPIC has drawn sharp rebuke from community activists. Community workshops conducted by MACUA have collated community inputs which stresses that by failing to protect community land rights through consent, *“the state continues to act as a broker for mining interests, not a custodian of justice.”* In other words, the Bill aligns with the preferences of mining companies (who see consent as an obstacle), at the expense of communities’ fundamental rights to decide over their land and livelihoods. **This is precisely the “development without people” paradigm the SAHRC denounced**, where decisions are made about communities, but not by them. Unless amended to include FPIC, the new MPRDA will continue to license **inequitable development**, fuelling conflict and mistrust. Communities and civil society have vowed to resist this model: as the **FPIC is “a constitutional requirement, not a radical demand,”** and must be the basis of a just mining regime.

Social and Labour Plans: From Binding Commitments to “Toothless”

Obligations

Social and Labour Plans (SLPs) are meant to be the primary tool through which **mining-led development benefits local communities and mineworkers**, especially those directly affected by extractive operations. In principle, SLPs are supposed to deliver **targeted investments** in education, health, housing, infrastructure, alternative livelihoods, and skills development.

These are not voluntary initiatives: they are **legal obligations** imposed under the Mineral and Petroleum Resources Development Act (MPRDA), designed to align mining operations with the state's vision of **equitable socio-economic transformation**.

But SLPs also reflect a **regulatory trade-off** embedded in South Africa’s post-apartheid mining policy regime. In exchange for **low royalty rates, generous capital depreciation allowances, tax holidays, and other incentives**, mining companies are required to “offset” the social harms of extraction by implementing SLPs. As such, SLPs function as the **primary socio-economic quid pro quo**: instead of higher direct taxes or resource rents, the state entrusts corporations with delivering local development benefits directly.

However, as documented in the South African Human Rights Commission (SAHRC)’s 2018 National Hearing Report on mining-affected communities, this system has been found to be **deeply flawed** in both design and implementation.

The SAHRC concluded that SLPs *“do not adequately address the negative impacts of mining”* and suffer from *systemic issues in design and compliance* that limit their effectiveness for socio-economic transformation.

Common problems identified included lack of community involvement in SLP design, vague commitments by companies, poor alignment with community needs, and, most

critically, **non-implementation** of promised projects. The SAHRC heard numerous examples of SLP projects that existed only on paper or were abandoned half-finished, with **no penalties** imposed on the defaulting companies. Accordingly, the Commission made several urgent recommendations:

- **Mandate meaningful community participation** in developing SLPs. Communities and local authorities should jointly determine development priorities so that SLP projects respond to actual needs. (At the time, the MPRDA only required companies to consult municipalities on SLPs, not communities, a gap the SAHRC flagged for reform.)
- **Impose binding standards for SLP content and budgeting.** The DMR was directed to set clear, **binding requirements** for what SLPs must contain, including alignment with environmental and closure plans, and to define a **minimum financial contribution** that companies must spend on SLP projects. Funds should be ring-fenced to prevent companies from skimping on community development.
- **Enforce SLP commitments with sanctions.** The SAHRC emphasised the “immediate need” for DMR to enforce compliance and develop **sanctions for companies that fail to comply** with SLP commitments. Without legal consequences, fines, suspension of rights, or denial of closure certificates, companies had little incentive to actually deliver promised projects.
- **Public accountability and monitoring.** As noted, the Commission urged that SLPs, and annual implementation reports be made public. It also supported the idea of local SLP oversight forums or committees (involving community representatives, perhaps as part of the engagement forums mentioned under FPIC) to monitor progress and flag failures.

In summary, the SAHRC called for an SLP regime that is **transparent, participatory, well-resourced, and enforceable**, so that these plans can fulfil their original purpose as vehicles of community upliftment rather than public-relations promises.

The need for this overhaul is starkly illustrated by data. A 2023/24 social audit by MACUA and WAMUA across 11 mining-affected communities (titled “*Looted Promises*”) found that on average only **23%** of SLP projects were fully or partially completed, and a mere **21–24%** of the budgeted SLP funds translated into tangible community benefits. In one audited community, **none** of the promised SLP projects materialised. Equally alarming, over 97% of community members surveyed had *no knowledge* of the SLP projects supposedly planned “for their benefit”. These findings confirm what the SAHRC heard anecdotally: SLPs have become “*symbols not of upliftment, but of betrayal*”, a charade in which companies claim social responsibility while communities see little to nothing on the ground. Given this reality, tinkering at the margins of the SLP system would not be enough; bold legal reforms were needed to make SLPs matter.

The 2025 Amendment Bill’s treatment of SLPs is, at best, a superficial tweak, and at worst, a further weakening of community protections. The Bill does acknowledge the issue of poor SLP implementation in its SEIAS report, noting “poor community consultation” in identifying SLP projects and the lack of a review mechanism under current law. In response, the draft Bill proposes that SLPs must be **reviewed every five years** (during the life of a mining right) and suggests that better alignment of SLPs with community needs will be pursued. However, this falls far short of the SAHRC’s recommendations. There is no provision guaranteeing that **communities will have decision-making power** or even a formal role in SLP development, consultation remains largely at the discretion of the company and Minister.

The SEIAS optimistically claims that procedural fixes will improve SLP alignment yet pointedly concludes these changes will incur “no implementation cost”, implying no significant new resources or capacity for oversight are being introduced. MACUA notes that this reflects a “*cursory and superficial*” diagnosis of SLP failures, treating it as a minor issue of coordination rather than a deep-seated problem of corporate accountability.

Most importantly, the Bill fails to add any **enforcement teeth** to SLP obligations. As highlighted earlier, it imposes *no penalties* for non-compliance, effectively continuing the era of impunity. A mining company that neglects its SLP promises still faces little risk under the new law.

This legislative choice blatantly disregards the SAHRC’s directive to create sanctions for SLP defaulters. It also preserves what MACUA has called “**regulatory ambiguity**”, a grey zone where SLPs are technically required but practically unenforced, allowing mining firms to treat them as voluntary pledges. Many companies have exploited this ambiguity for years, as evidenced by the social audit data; the Bill now effectively codifies that weak status quo going forward.

The following table juxtaposes SAHRC recommendations on SLPs with the Amendment Bill’s approach:

Issue	SAHRC Recommendations (SLP Framework)	2025 Amendment Bill (SLP Provisions)
Community Involvement in SLPs	<i>Make SLP planning participatory.</i> SLPs should be designed with input from host communities and local government to reflect genuine community needs. SAHRC found the absence of community consultation contributed to misaligned projects and distrust.	Marginal improvement only. The Bill recognises “poor community consultation” in SLPs as a problem, but does not mandate a new role for communities in approving or prioritizing SLP projects. Consultation requirements

Issue	SAHRC Recommendations (SLP Framework)	2025 Amendment Bill (SLP Provisions)
		remain vague, leaving it possible for companies to satisfy them with minimal engagement. There is no guarantee of community veto or co-decision on SLP content.
Binding SLP Content & Budget	<i>Set clear, enforceable SLP obligations.</i> DMR must stipulate minimum content (targets, types of projects) and a minimum budget for SLPs, with funds ring-fenced. Also align SLPs with environmental plans and post-closure needs. These steps ensure SLPs are substantial commitments rather than vague promises.	No binding standards or budgets. The Bill adds wording about “prescribed social and labour plan” elements, but no specific targets or funding floors are written into law. Everything remains at Minister’s discretion via regulations. As a result, SLP commitments can vary and potentially be diluted. There is also <i>no provision ring-fencing SLP funds</i> – a company could under-spend on community projects without clear violation, since no minimum is set.
Enforcement & Sanctions	<i>Enforce SLP compliance with real consequences.</i> SAHRC urged DMR to develop sanctions (fines, suspension, etc.) for non-compliance. Also, link mine closure to SLP delivery: a mine that hasn’t fulfilled SLP projects should not get a closure certificate. This makes SLP promises essentially legal obligations that must be met.	SLPs remain largely unenforceable. The Bill does not introduce any penalties for failing to implement SLPs. Companies still face no explicit legal consequence if they ignore their SLP. The closure provision still does not mention SLP completion as a condition. In practice, SLPs continue to be treated as administrative formalities; a mining right may

Issue	SAHRC Recommendations (SLP Framework)	2025 Amendment Bill (SLP Provisions)
		be granted or closed regardless of SLP performance.
Transparency & Monitoring	<i>Publish SLPs and involve communities in monitoring.</i> SAHRC recommended proactive disclosure of SLP documents and progress reports. It also hinted at local oversight committees including community members to track SLP implementation. These measures let communities hold companies and regulators accountable.	Opaque and top-down. The Bill does not require SLPs or reports to be made public (aside from any general PAIA rights). It centralizes approval with the Minister and keeps monitoring within the bureaucracy. There is no role for independent or community monitors to oversee SLP execution. This lack of transparency means communities often find out about broken promises only after the fact, with little recourse.

It is evident that the proposed amendments *pay lip service* to fixing SLPs (“review every 5 years”, etc.) but ignore the core problems of **non-enforcement and exclusion of communities**. The government’s own SEIAS report, tellingly, views SLP reform as a cost-neutral administrative tweak, whereas genuine reform would entail dedicating more resources to oversight and insisting on costly compliance by industry. The reluctance to impose costs or strict duties on mining companies speaks to a broader bias in the Bill: avoiding any measure that might upset investors or the industry. As a result, communities remain saddled with *unenforceable promises*.

Civil society voices, including the Bench Marks Foundation (which has monitored corporate social responsibility in mining for years), have decried this outcome. Bench Marks and other NGOs have documented how **SLP failures feed community discontent**, often leading to protests and even violence¹. Yet, the Bill’s drafters seem deaf to these warnings. The Centre for Applied Legal Studies notes that communities are still left to “navigate the courts or rely

¹ <https://www.engineeringnews.co.za/article/perceptions-mines-are-not-doing-enough-for-nearby-communities-fuelling-protests-2018-07-20>

on the goodwill of mining companies” to get SLP commitments honoured, a situation that perpetuates injustice². In the words of one MACUA report, the state’s dismissive approach treats SLP dysfunction as *“a minor technical glitch rather than a site of ongoing socio-economic injustice”*. This stands in stark contradiction to the SAHRC’s framing of SLP delivery as a matter of **rights and redress** for mining-affected communities. By keeping SLP obligations **toothless**, the 2025 amendments risk deepening the frustration and marginalisation in these communities, who continue to live beside mines that extract wealth from their lands while delivering little development in return.

Transformation Obligations and Ownership: “Broad-Based” Empowerment or Elite Consolidation?

The post-apartheid mining regime, as originally envisioned by the MPRDA (2002) and subsequent Mining Charters, aimed to advance **transformation**: to give Historically Disadvantaged Persons (HDPs, including Black South Africans, women, and mining-affected communities) a significant stake in the industry and its benefits. This included measures like Black Economic Empowerment (BEE) ownership targets, employment equity, inclusive procurement, and community development requirements.

The SAHRC hearings were not focused on the minutiae of BEE targets, but they consistently emphasised *redressing historical inequities* as a fundamental principle. For instance, the Commission found that SLPs should drive **socio-economic transformation** in mining communities, and that meaningful participation and consent were part of restoring dignity and agency to historically excluded groups.

In effect, the SAHRC reinforced that the **spirit of the Constitution’s Section 9 (right to equality) and Section 25(7) (land restitution)** must animate mining law: those who were excluded under apartheid’s mining economy should be empowered in the new dispensation.

However, **the path of transformation hit legal and political turbulence**. In 2018, a court judgment (brought by the then Chamber of Mines) held that the Mining Charter’s targets were not binding law but rather policy, meaning companies could legally evade certain BEE obligations once they had been granted their mining rights³.

This prompted calls, even from Parliament, to **codify Charter provisions into the MPRDA** so that transformation goals would have force of law⁴. Community networks and allied lawyers

² <https://www.wits.ac.za/news/sources/cals-news/2020/game-changing-judgment-for-xolobeni-community-on-mining-rights-applications.html>

³ <https://www.saflii.org/za/cases/ZAGPPHC/2021/623.html>

⁴ <https://pmg.org.za/committee-meeting/33737/>

(including CALS and LHR) submitted detailed proposals to the Department to make *transformation obligations binding and measurable* in the new amendments.

These proposals included setting statutory minimums for local ownership by HDPs (such as community shareholding in new mining projects), gender equity requirements, and stiff penalties for non-compliance, all to ensure that “broad-based empowerment” is not just optional window-dressing.

The **draft 2025 Bill’s approach to transformation is a profound disappointment** to those hopes. It introduces a new Section 100(3) which appears to embed transformation elements into mining rights, but in reality, it **codifies discretion instead of obligation**.

The clause says **the Minister “must” impose conditions on mining rights related to the housing and living conditions standard and broad-based socio-economic empowerment elements** (ownership, procurement, etc.).

On paper, this nods to the Charter. Yet, the Bill pointedly **omits any specific targets, percentages or timeframes** for these elements. It leaves everything to the Minister’s future regulations or licence terms, which can be as lenient or strict as the Minister desires, or as industry pressures demand.

Furthermore, the Bill includes a Section 100(4) empowering the Minister to **amend or repeal** transformation standards unilaterally. In effect, nothing in the law guarantees a minimum level of Black ownership, community shareholding, or other empowerment outcomes. **There are no hard-coded thresholds** (e.g. 30% BEE ownership or 5% community share) in the Act, a glaring omission given South Africa’s commitment to substantive equality.

In other words, transformation objectives remain **“nice to have”** but not compulsory. Mining companies can meet, exceed, or ignore Charter-like goals at their discretion, with little fear of legal penalty.

This outcome is the very *opposite* of what the SAHRC’s transformative vision, and indeed the Freedom Charter’s proclamation that “the people shall share in the country’s wealth”, would demand.

The SAHRC didn’t enumerate BEE quotas, but its entire approach was about **obligating duty-bearers** (the state and companies) to uplift the previously disadvantaged. The Bill instead cements a retreat from those obligations.

The Minerals Council (representing the big mining houses) publicly complained that the Bill might introduce uncertainty, but community activists see that as pure theatre. In reality, the Bill was *“written in [the industry’s] image,”* giving them exactly what they lobbied for. By keeping transformation measures non-binding, the legislation essentially **endorses the status quo of elite ownership**.

Notably, **the Bill also removes references to “Historically Disadvantaged Persons”** in some key provisions. For example, earlier drafts (like the 2013 Amendment Bill, never enacted) contemplated set-asides or preferences for HDPs in new mining rights. The 2025 Bill contains no such provisions; **HDPs are invisible in the operative sections**, aside from the generic mention of BEE elements. This has been described as the *“systematic erasure”* of the very category meant to drive redress. By depoliticizing the language, the law no longer explicitly centres those who suffered discrimination. The **concept of community ownership**, too, is nowhere to be found; there is no requirement that communities get equity stakes or shareholding in mines on their land. Instead, the Bill sticks to a *“charity model”* of benefit, where companies might build a school or clinic as part of SLPs (if they wish), but communities are not recognised as rightful **co-owners of mineral wealth**. This is a regression from even the moderate gains of the past: some prior mining deals did include community equity trusts⁵, but going forward the law would not compel that practice at all.

The implications of this **transformation rollback** are dire in a country with world-leading inequality. By the industry’s own data, mining profits have soared (from R5 billion in 1980 to R270 billion in 2023) while employment has dropped by 40%.⁶

Wealth is concentrated among largely white-owned corporates and global shareholders, while unemployment in the mining belts of Mpumalanga, Limpopo, Eastern Cape, KZN ranges between 50–70%⁷. The SAHRC recognized this pattern as unsustainable, urging that mining’s fruits be shared more broadly. Yet the Bill caters to the beneficiaries of the old model, not its victims.

In the words of the community coalition addressing the Minerals Council, *“you speak of investment fears... But the draft Bill is not a threat to your interests; it is their formalisation... a blueprint for elite consolidation, aligning closely with the legal victories your Council secured in court.”*

This sentiment reflects how many civil society observers (Bench Marks Foundation, ActionAid, SWOP researchers, etc.) view the Sector: as **entrenching economic apartheid** in new legal garb. It is telling that the Minerals Council’s primary objection to the Bill is *“legal uncertainty”*, when in fact the Bill guarantees them that the transformational aspects will

⁵ <https://trialogueknowledgehub.co.za/community-trust-benchmarking-report/> ; <https://www.corruptionwatch.org.za/wp-content/uploads/2021/08/3727-CW-LEGAL-OVERVIEW-MINING-EQUITY-DOC-SPRD-R.pdf> ; <https://www.harmony.co.za/corporate-social-investments/>

⁶ <https://miningandengreview.com/minerals-council-south-africa-integrated-annual-review-2023/> + <https://www.lrs.org.za/wp-content/uploads/2024/01/LRS-Mining-Sector-Report-2023.pdf> + <https://www.mining.com/web/south-african-mining-profits-slump-by-almost-half-report-says/> + <https://www.bricsafricachannel.com/topics/collaboration-eases-mining-constraints-in-2024-but-challenges-remain-minerals-council-south-africa-at-day-1-of-mining-indaba>

⁷ <https://www.sciencedirect.com/science/article/abs/pii/S2214790X21001374?via%3Dihub> + <https://www.businesslive.co.za/bd/national/2022-06-02-in-kzn-and-eastern-cape-there-are-more-unemployed-than-working-people-data-show/> + https://macua.org.za/wp-content/uploads/2025/05/Looted_Promises-4.pdf

remain toothless. Even the token “*symbolic references to BEE*” in exploration rights that the Bill makes were too much for them, revealing an entrenched resistance to any real power shift.

From a rights perspective, this failure to impose tangible obligations means the state is abdicating its **constitutional duty to protect and fulfil socio-economic rights**. Section 7 of the Constitution requires the state to “respect, protect, promote and fulfil” fundamental rights, including equality and the rights to dignity and livelihood. By choosing not to require mining companies (who profit from a public resource) to meet concrete empowerment and development targets, the state is privileging corporate freedom over transformational justice.

In sum, the MPRDA amendments betray the transformational mandate of the MPRDA’s own preamble (which speaks of redressing past discrimination). Instead of a “**use-it-or-lose-it with empowerment**” principle, we now risk a “*use it and loot it*” regime where mining rights can be held without any real redistribution of benefits.

Artisanal and Small-Scale Mining: Token Gesture or Genuine Inclusion?

The plight of **artisanal and small-scale miners (ASM)**, often termed “*illegal miners*” or “*zamazamas*”, was a major focus of the SAHRC’s 2015–2018 inquiry. These are mostly impoverished individuals and groups mining gold, diamonds, coal or sand on a small scale, often in disused shafts or on derelict sites, outside the legal permitting system.

The SAHRC found that ASM is a reality driven by poverty and the vacuum left in communities after large mines close. Yet, **South Africa lacked any appropriate legal framework to recognise or support artisanal miners**. Instead, the state’s response had been primarily **criminalisation**, treating ASM as a crime, conducted by “illegal foreigners” or syndicates, to be repressed by police operations (*e.g.* the notorious operation “Vala Umgodi”).

The SAHRC’s hearing on unregulated artisanal mining exposed fundamental limitations in the state’s current approach. While the Commission did not issue a singular finding in these terms, its report collectively reveals that prevailing policy frameworks have failed to address the root socio-economic drivers of unregulated mining, such as unemployment, the legacy of migrant labour, and inadequate responses to mine closures. At the same time, enforcement strategies have largely been ineffective in curbing the harmful consequences of such activities, including fatal underground accidents, violent territorial disputes between mining groups, and severe environmental degradation. These findings are drawn from the Commission’s synthesis of testimony and evidence across multiple hearings and reinforce

the conclusion that the state's piecemeal and punitive responses have not remedied the deep structural injustices confronting mining-affected communities.)⁸.

Accordingly, the SAHRC made several key findings and **recommendations on artisanal mining**⁹:

- South Africa should adopt an **inclusive, consistent policy and legal framework** for ASM that focuses on *facilitating and managing* artisanal mining rather than merely criminalising it. This aligns with international best practice in many African and Latin American countries where ASM is legitimised through special permits, cooperatives, and support programs.
- The government should create **accessible permitting processes** for artisanal miners. For example, a new category of mining permit or license with simpler requirements (covering small areas and low-tech operations) could be introduced to bring artisanal miners into the legal fold. The Commission noted the existing mining permit (covering up to 5 hectares) was still too onerous and not tailored to ASM, partly because it required full environmental authorisations and did not require an SLP (thus lacking developmental support). A different, *bespoke* artisanal mining permit was recommended.
- Address **institutional support and safety**: The SAHRC highlighted needs such as health and safety training for informal miners, monitoring of toxic substances (like mercury used in gold extraction), and integrating artisanal miners into environmental rehabilitation efforts (so that, for instance, they could safely mine residue or old pillars in collaboration with companies rather than in hazardous clandestine ways). The hearing pointed to potential **partnerships between large mining companies and artisanal miners** – for example, allowing cooperatives of artisanal miners to work on abandoned sections of a mine with technical support from the company.
- Tackle socio-economic drivers: The Commission stressed that any solution must involve **holistic support** for communities; alternative livelihoods, skills training, and poverty alleviation, so that people are not driven to desperate and dangerous mining methods. Law enforcement alone would not solve what is fundamentally an economic and social challenge.

⁸ This analysis draws on multiple sections of the South African Human Rights Commission's *Investigative Hearing Report on Unregulated Artisanal Underground and Surface Mining Activities in South Africa* (2015), which identifies the socio-economic conditions driving artisanal mining (pp. 6–7, 12–13), the risks posed to community health, safety, and the environment (pp. 6, 25), and the regulatory gaps in mine closure, rehabilitation, and enforcement. While the Commission did not explicitly articulate these findings in a single conclusion, the themes are consistently reinforced throughout the report.

⁹ See SAHRC, *Unregulated Artisanal Underground and Surface Mining Activities in South Africa: Investigative Hearing Report* (2015), pp. 11–13, 19–21, 24–28, 46–48.

In essence, the SAHRC advocated moving ASM from the shadows to the mainstream, through **legalisation, regulation, and empowerment** of artisanal miners, in partnership with communities and responsible agencies. This would also strip away the power of criminal syndicates by giving artisanal miners legal avenues and protection, rather than forcing them to operate illicitly under crime bosses' control. Notably, by the time of the 2025 amendments, community organisations like MACUA had already drafted and submitted concrete proposals to the Department for ASM provisions in the law, and even delivered them to the Minister. These included creating special artisanal mining zones, simplifying license procedures, and ensuring that **those with skills and interest can generate wealth in safe, regulated ways** rather than being treated as criminals¹⁰.

The 2025 Amendment Bill does contain new provisions on artisanal and small-scale mining but these, on closer scrutiny, are woefully inadequate. On the surface, the Bill introduces an “artisanal mining permit” (in a new Section 27A) and related clauses for designated ASM areas. This appears to be a nod to formalising the ASM sector.

However, the **conditions attached to the artisanal permit are highly restrictive**¹¹. As analysed by MACUA, to obtain an artisanal permit one would still need to secure a full environmental authorisation and meet various compliance documentation requirements. These hurdles are far beyond the reach of most genuine artisanal miners, who typically lack the capital and expertise to navigate complex regulatory processes. Moreover, the Bill **does not exempt artisanal miners from burdensome rules**; it essentially shrinks the size of operations allowed but doesn't simplify the process proportionally. The permit also cannot be transferred or used in partnerships that would enable scaling up or accessing credit.

In MACUA's words, the model *“amounts to a legal trap. Artisanal miners are now required to secure an environmental authorisation, submit compliance documentation, and cannot use their permits to access credit, partner in cooperatives, or even scale their operations. This model criminalises the informal poor and formalises failure.”* In short, only on paper do these permits exist; in practice they may be nearly impossible for real informal miners to utilize, keeping most of them *de facto* illegal.

Furthermore, the Bill gives the Minister power to declare **ASM zones** (Section 56B) but crucially makes this **entirely discretionary** and includes no requirement for *participatory planning* in identifying such zones. There are also no special provisions for **environmental rehabilitation** in these zones or any streamlined licensing beyond the artisanal permit itself.

The result, is that the Bill *“reproduces the very regulatory exclusion that [communities] sought to reform”*. Without a mandated obligation to open zones or assist miners, the Minister might simply never exercise this power or do so in a very limited way. And even if zones are declared, the lack of support (technical or financial) means legal ASM may not

¹⁰ <https://www.earthnews365.co.za/thousands-to-march-to-minerals-and-petroleum-department/#:~:text=Thousands%20to%20March%20to%20Minerals,failed%20to%20adequately%20disclose%20critical>

¹¹ See MACUA's submission to the DMPR on the Proposed Amendments.

flourish. The **status quo of illegality and conflict** could thus persist, undermining the hopes raised by SAHRC's investigation that ASM could be transformed into a lawful livelihood.

To illustrate, consider the **recent tragedy at Stilfontein** in 2023/2024, where dozens of informal miners were trapped underground. MACUA has consistently pleaded for urgent **inclusive solutions**; *"lasting solutions which do not criminalise poor and marginalised communities"*, and for fast-tracking amendments to the MPRDA to regulate ASM with community inclusion and benefit. MACUA submits that the state must become a *custodian of the weak, not of the rich*, and allow skilled local people to mine safely and legally to support their families.

The government's response in the Bill falls far short of this call. By requiring artisanal miners to jump through nearly the same hoops as big companies (just on a smaller patch of land), the law practically ensures many will remain *"illegal"*.

Meanwhile, the Bill **expands police powers** (as noted with Section 91A) to crack down on unlawful mining, suggesting the default response remains securitised. This combination – half-hearted legal pathways plus robust policing, could lead to **more confrontations and human rights abuses**, the very scenario the SAHRC sought to avert by recommending a developmental approach.

In effect, the **marginalisation of ASM communities is set to continue**. The amendments do the minimum to say, "we have an ASM framework," but not the substantive changes to **integrate artisanal miners into the formal economy**.

ActionAid South Africa, in a report prepared by Wits University have observed that ASM in South Africa tends to involve locals or migrant ex-mineworkers eking out a living; failing to legalize their work not only criminalises poverty but forfeits an opportunity to harness this activity for local development (for example, through local mineral processing or jewellery-making enterprises)¹².

The Bill's approach, unfortunately, appears to prioritise maintaining control (through making permits difficult to get, and zones that may never be declared in practice) over truly *empowering* informal miners to become micro-entrepreneurs. This runs contrary to the SAHRC's recommendation for a **"holistic, collaborative approach by all role players"** to bring illegal miners into the formal sector and ensure their work is safe and regulated.

By excluding artisanal miners from meaningful economic inclusion, the amendments perpetuate a two-tier mining economy: one for the well-resourced, and one where the poor remain in illegality and danger. It is another facet of how the Bill, rather than democratising access to mineral wealth, **consolidates it in the hands of those who are already in positions of power and access**.

¹² Understanding the Participation and Role of Women in Artisanal and Small-Scale Mining in South Africa" Page 20

Erosion of Environmental and Land Rights Safeguards

The SAHRC's hearings also dealt with the **environmental and health impacts** of mining on communities; an area where rights under Section 24 of the Constitution are at stake. Communities testified about polluted water, toxic dust, and degraded land. The Commission's findings urged stronger oversight of environmental obligations (for instance, calling for greater transparency in water use licenses and mine closure funds) and noted that **fragmented regulation** under the "One Environmental System" was causing delays and accountability gaps¹³.

In the context of mining-affected communities, environmental rights and land rights intersect: if a mine poisons the local environment or renders land unusable post-closure, communities are deprived of both health and livelihood. Thus, the SAHRC emphasised that mining governance must align with **Section 24 of the Constitution which guarantees an environment not harmful to well-being, and sustainable development**.

The 2025 amendments do include some technical alignment with environmental legislation (NEMA and the National Water Act), purportedly to streamline approvals. However, this alignment is mostly **"bureaucratic rather than substantive"**.

The Bill does not enhance opportunities for communities to participate in environmental decision-making; nor does it create new mechanisms for **community-based environmental monitoring** or cumulative impact assessment. For example, MACUA had proposed integrated social and environmental impact assessments, to assess mining impacts holistically on both people and nature. The Bill is silent on this. It also fails to address the chronic problem of **mine closures and abandoned mines**, which often leave a trail of pollution.

The SAHRC found that coordination in concurrent rehabilitation (progressive rehabilitation during a mine's life) was needed, yet the Bill does not mandate any community involvement in closure planning or post-mining land use.

One glaring omission is the lack of a framework for **mine-affected land rights and resettlement**, as mentioned earlier.

This is both a land rights and an environmental justice issue: communities removed for mining often lose not just their homes but their ancestral land, cultural sites, and agricultural livelihoods.

¹³SAHRC Report National Hearing on the Underlying Socio-Economic Challenges of Mining-Affected Communities in South Africa Pg64

The Constitution and courts are increasingly clear that such impacts demand **heightened protection** (via consent and compensation), but the Bill offers no dedicated section on resettlement or fair compensation standards.

It suggests that the state is not using the law to actively safeguard community land rights, but leaving them to be bargained (or ignored) in deals between mining companies and traditional authorities or small groups of representatives, often leading to divisive and inadequate outcomes.

Moreover, the Bill's emphasis on a new *"Critical Minerals Strategy"*; pushing for rapid extraction of minerals like platinum, lithium, etc., for the global green economy, **raises the stakes** for environmental and social protections. Without robust safeguards, a "green rush" could replicate the destructiveness of past resource rushes. As MACUA warns, *"this 'green rush' is being built on the same, but intensified legal exclusions that defined the old mining regime... it is green colonialism in a new bottle."* In other words, the exploitation of new minerals under investor-friendly rules, absent community consent or benefit, is simply a continuation of colonial patterns using the pretext of clean energy.

MACUA has cautioned that a just transition cannot occur if environmental justice and community rights are sidelined in pursuit of critical minerals. Yet, by not embedding concepts like **climate justice, community participation in environmental governance, or intergenerational equity** in the amendments, the Bill fails to rise to the challenge of truly sustainable and equitable mining. Community activists explicitly call for *"climate justice and intergenerational equity"* to be part of the mining regime; ensuring that mining today does not sacrifice the environment of tomorrow. That call remains unanswered in the draft law.

In sum, while the Bill makes procedural nods to environmental integration, it does **not strengthen the hand of communities** in environmental or land-related decisions. It continues to treat these as technocratic matters best left to government officials and companies, whereas the SAHRC's perspective (and evolving legal doctrine) is that affected people must be central in these decisions¹⁴.

The outcome is likely to be continued community disenfranchisement regarding their land and environment, which contravenes both the Constitution and the SAHRC's vision of *"participatory democracy"* in resource governance. This erosion of rights is encapsulated by the observation that the draft law *"replaces land justice with market logic, participation with discretion, and rights with contracts."* It signals that the state prioritises contractual deals and investments over the substantive rights of people to their land and a healthy

¹⁴ SAHRC Report National Hearing on the Underlying Socio-Economic Challenges of Mining-Affected Communities in South Africa, p. 89 - 93.

environment, a profound step backwards in the context of South Africa's democratic promises.

Conclusion: A Policy Betrayal and a Call to Action

The evidence and analysis above lead to an unsettling conclusion: **the 2025 MPRDA Amendment Bill fundamentally betrays the recommendations of the SAHRC and the constitutional principles those recommendations sought to advance.** Instead of using this legislative overhaul to **align mining governance with human rights**, the government has produced a draft that, in many respects, deepens the imbalance of power between mining corporations and the communities impacted by them.

Key SAHRC directives: ensuring community consent, enforcing social obligations, guaranteeing transparency, formalising artisanal mining, embedding transformation, have been disregarded or undercut. In their place, the amendments entrench a model of mining development that is *top-down, discretionary, and corporate-centric*.

This divergence is not an abstract policy difference; it has real and *immediate consequences* for South Africa's most vulnerable citizens. Mining-affected communities will continue to face **exclusion from decision-making**, seeing their fate decided in boardrooms and government offices where their voice is negligible. They will continue to suffer the **externalised costs** of mining: environmental devastation, health problems, social disruption, without assured compensation or benefit.

Without enforceable SLPs or community ownership stakes, local development will remain a matter of charity or chance, not justice. Artisanal miners will remain in the shadows, criminalised rather than supported as legitimate economic actors. And the broad vision of **transformation: of an inclusive economy that addresses past injustices, is abandoned in favour of "investment certainty" for the already privileged.** As one activist aptly put it, we are witnessing "*a coordinated retreat from transformation, cloaked in the language of investment, modernisation, and pragmatism,*" resulting in "*equal-opportunity looting*" by a multiracial elite while the poor remain excluded.

From a legal-policy standpoint, this represents a profound **misalignment with South Africa's constitutional obligations.** Section 7(2) of the Constitution compels the state to "**protect, promote and fulfil**" the rights in the Bill of Rights. Yet the Bill, as it stands, would enable violations of the rights to property (through disregarding informal land rights), to environment (through lack of community environmental safeguards), to equality (through a failure to materially advance equitable access to resources), to just administrative action (through opaque and discretionary decision processes), and even to life and dignity (when one considers the deadly conditions of unregulated ASM or the social harms of mining-induced displacement).

The SAHRC's recommendations were not merely policy preferences; they were attempts to *give effect* to constitutional rights and values in the mining sector. Ignoring them is thus not only a policy choice but a potential constitutional travesty. As the SAHRC Act allows, the Commission may yet make **adverse findings** or **take further steps** should these amendments proceed without correction, given the clear disconnect with human rights principles.

It is heartening that a broad coalition of community organisations, NGOs, and even some progressive unions have mobilised against these regressive proposals. Their critique, echoed throughout this report, is that the Bill **“further entrenches an unjust and unequal mining regime, contradicting constitutional imperatives and the SAHRC’s guidance.”** They point out that true stability and sustainability in the mining sector can never be achieved on the backs of disenfranchised communities. The draft Bill *“is not a policy debate, it is a moral rupture. It replaces land justice with market logic... It signals that the post-1994 social contract is not being honoured but auctioned.”* This moral clarity should serve as a rallying call for all stakeholders committed to social justice.

For the South African Human Rights Commission (SAHRC) and constitutionalist voices in civil society, the task is now urgent and twofold. First, to use platforms like the current and forthcoming hearings to expose, with clarity and evidence, the deep contradictions between the state's binding constitutional obligations and the content of the MPRDA Amendment Bill.

Second, to demand specific legal reforms that realign the mining regime with both the SAHRC's own recommendations and the long-standing demands of affected communities.

These reforms are not speculative; they include concrete proposals such as:

- embedding Free, Prior and Informed Consent (FPIC) for decisions affecting communal land;
- strengthening the enforceability of Social and Labour Plans (SLPs) through statutory sanctions;
- mandating community equity schemes or benefit-sharing models;
- simplifying permitting frameworks for Artisanal and Small-Scale Mining (ASM); and
- establishing independent oversight and compliance bodies insulated from political interference.

None of these are utopian. Many have been piloted in South Africa in specific cases or are standard practice in other mining jurisdictions across Africa, Latin America, and Southeast Asia. Their exclusion from the 2025 Bill, despite repeated calls, reflects not legal or technical difficulty, but a political choice to insulate capital from accountability. Adopting these measures would transform the Bill from a mask for continuity into a genuine instrument of transformation.

In this light, the contest over the MPRDA 2025 amendments is far more than a policy skirmish. It is a defining struggle over the *soul* of South Africa's mining regime. Will it

continue to function as a *“fortress of elite accumulation, immune from scrutiny and accountability”*, as described by critics, or will it be reconstructed as a democratic, redistributive institution that embodies the constitutional vision of justice, dignity, and equality?

This is also, unequivocally, a **constitutional crisis**, one that places the future of the SAHRC itself under scrutiny. The Commission has, through its 2016 and 2018 reports, laid down a principled, evidence-based roadmap for rights-respecting mineral governance. But these findings have been sidelined. Regressive state action continues with impunity. The uncomfortable truth is that unless the SAHRC now takes a firmer, more assertive stance, it risks irrelevance.

The choice before the Commission is existential: **will it serve as a meaningful institutional guardian of constitutional democracy, or will it be reduced to a ceremonial actor, speaking the language of rights, but ignored by power and abandoned by the people it was meant to protect?** Its credibility, independence, and authority are on the line.

The Commission’s upcoming hearings, including the one at hand, must do more than restate past positions. They must confront the state’s departure from prior commitments, and issue detailed, actionable recommendations. These recommendations must call not merely for technical amendments, but for a rethink of the political economy the Bill seeks to entrench, an economy that privileges extractive capital over communities, and private profits over public accountability.

South African history makes clear: when moral persuasion fails, the struggle for justice escalates, through protest, litigation, and ultimately, through global forums. The smarter and more just course is to listen now. Lawmakers must heed the voices rising from mining belts and communal lands, and institutions like the SAHRC must assert the full force of their constitutional mandate before public faith is irreparably lost.

South Africa’s long-promised transformation in the mining sector cannot be realised through rights dilution and deferral. It demands boldness, a willingness to legislate for the many, not the few. In this spirit, we echo the MPRDA Coalition’s call to **“reject the false narrative that transformation equals instability”**. In truth, it is inequality, exclusion, and policy betrayal that breed unrest.

The SAHRC’s own recommendations remain a credible blueprint for a just mining regime. There is still time, though fast dwindling, to integrate these principles into the 2025 amendments. To ignore them would be to cement the legacy of betrayal. To act on them would mark a constitutional course correction, and a decisive step toward a minerals economy that truly belongs to all who live in South Africa.

Sources Consulted: South African Human Rights Commission (National Hearing Report on Mining-Affected Communities, 2018; Artisanal Mining Hearing Report, 2015), Department of Mineral Resources and Energy (Draft MPRDA Amendment Bill, 2025; SEIAS Final Impact Assessment, 2025), Mining Affected Communities United in Action (MACUA) Policy Discussion Document on MPRDA Amendments, 30 May 2025, MACUA & WAMUA “Looted Promises” Social Audit Report 2023/24, MPRDA Coalition Open Letter to the Minerals Council, 09 June 2025, and various submissions and statements by Bench Marks Foundation, Centre for Applied Legal Studies, Centre for Environmental Rights, Lawyers for Human Rights, and others.