



Protect The West Coast NPC
Kommetjie, Cape Town, 7976
Reg no: 2020/886535/08

13 August 2025

Department of Mineral and Petroleum Resources (DMPR)

Director: Mining and Mineral Policy

Ms Stella Mamogale

By Email: Representations@dmre.gov.za

Dear Ms Mamogale

**WRITTEN REPRESENTATIONS BY *PROTECT THE WEST COAST NPC* ON THE
DRAFT MINERAL RESOURCES DEVELOPMENT BILL, 2025.**

1. Section 1 - New and amended definitions;

“community”

The Bill's amended definition of "community" fundamentally undermines constitutional participation rights by creating artificial limitations that contradict how communities actually exist and relate to land and resources. All communities, whether formal or informal, possess constitutional rights to participate in decisions affecting their wellbeing and environment, regardless of their organisational structure or formal land agreements. However, the Bill's restrictive approach recognises communities only if they conform to formal municipal boundaries and structures, thereby excluding many legitimate rights-holders.



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The shift from focusing on "historically disadvantaged persons" to requiring a "coherent, social group" within a metropolitan or district municipality creates multiple critical exclusions that collectively undermine meaningful participation. The geographic restriction omits communities whose land spans multiple municipalities, remote or dispersed rural groups whose members live outside municipal boundaries but share recognised communal rights over traditional grazing areas, coastal commons and seasonal or mobile user groups such as small-scale fishers whose rights are linked to environmental resources rather than fixed locations. The emphasis on "coherent social groups" within municipalities risks a narrow interpretation applying only to residential or sedentary communities, potentially but almost inevitably excluding public interest organisations or NGOs with mandates to protect environmental or cultural heritage rights in affected areas.

Additionally, the removal of the previous definition's proviso—which explicitly required that members directly affected by mining be included in consultations—eliminates an important safeguard that previously ensured sub-groups within larger communities could not be sidelined in favour of leaders or groups unaffected by immediate project impacts. This change, combined with the other definitional restrictions, enables mining right holders to satisfy legal requirements through superficial engagement with municipal-level entities or leadership structures, while systematically excluding those who bear the direct consequences of mining operations.

These combined limitations violate constitutional standards of meaningful engagement and undermine fundamental rights to environmental protection, access to information and participatory decision-making by creating a framework



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that privileges formal administrative structures over the lived realities of affected communities.

“interested and affected persons”

The insertion of the new definition "interested and affected persons" contains significant ambiguities that risk excluding people with legitimate rights from the public participation process. The definition creates a disjunctive test requiring people to show either "direct interest" or that they "may be affected," but provides no guidance on what these terms actually mean. This creates opportunities for narrow interpretation that undermines the whole process when those impacted by activities under the MPRDA span a wide cohort.

The undefined "direct interest" standard again invites a narrow construction limited to immediate property or economic interests, potentially excluding parties with recognised constitutional rights but lacking formal legal title or commercial stakes. Concurrently, the "affected" criterion lacks temporal, geographic, or causal parameters, enabling decision-makers to characterise legitimate impacts as too remote, indirect, or speculative for recognition.

These definitional deficiencies create concrete risks of exclusion for constitutional rights-bearers, including, as but one example, downstream communities experiencing water resource impacts who may be deemed to lack sufficient "direct interest" and informal settlement residents without land tenure who face air quality or health impacts but cannot establish standing under either prong of the test. Such exclusions would contravene meaningful participation as a substantive constitutional guarantee and undermine public participation which is a bulwark to an inclusive and participatory democracy.



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The cumulative effect of this ambiguous definition which operates alongside the Bill's restrictive "community" provisions, creates a participation framework that privileges formal legal relationships over constitutional rights, potentially enabling systematic exclusion of affected parties through narrow statutory interpretation while maintaining superficial compliance with participatory requirements.

“meaningful consultation”

The Bill's definition of "meaningful consultation" presents significant limitations that undermine genuine community participation and constitutional rights.

This approach contradicts the Constitutional Court's *Maledu* (2018) and *Baleni* (2019) judgments, which 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. The Bill's consultation process explicitly does not constitute Free, Prior and Informed Consent, as it merely requires companies to provide information and allow community input without granting communities the fundamental power to reject proposed projects or requiring companies to obtain community permission.

Moreover, the insertion of the phrase "right of use of the land" narrows consultation scope to impacts strictly affecting land use rights, potentially excluding broader interconnected constitutional rights such as the right to health, life, dignity, culture, and an environment not harmful to wellbeing. This restrictive framing risks overlooking significant indirect and cumulative impacts—including water contamination, air pollution, biodiversity loss, and adverse health effects—that extend beyond direct land use but fundamentally affect community wellbeing.



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Consequently, these limitations reduce the meaningfulness of consultation by restricting affected parties' ability to raise concerns about the full spectrum of mining-related harms, as against the often punted but so often not realised benefits thereby weakening public participation and contradicting established constitutional protections.

2. Section 10(2) and Sections 10A - 10G - Erosion of Cooperative Governance through Ministerial Centralisation

Section 10(2) provides that, if a person or community objects to the granting of a prospecting right, mining right, or small-scale or artisanal mining permit, the Minister must refer the objection to the Regional Mining Development and Environmental Committee (RMDEC) to adjudicate on the objection and advise the Minister. The independence of the RMDEC is therefore central to ensuring fairness, impartiality, and public confidence in the mining rights process.

However, the Bill grants the Minister discretion to appoint certain members of the RMDEC. This creates a structural conflict of interest, as the Minister of Mineral Resources and Energy is not only the final decision-maker on mining rights, but also holds a mandate to promote mining development. Combining these promotional and adjudicative functions in a single political office creates a heightened risk of bias, whether actual or perceived, and undermines the integrity of the objection process. Such concentration of authority may fail to meet the constitutional requirement for lawful, reasonable, and procedurally fair administrative action under section 33 of the Bill of Rights and the Promotion of Administrative Justice Act, 2000.

This concern is compounded by the removal of the Regional Manager from the application acceptance process and the transfer of this function to the Minister.



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Regional Managers, with their proximity to mining-affected areas and familiarity with local conditions, have played a critical role in facilitating early engagement with affected communities, ensuring procedural responsiveness, and providing local oversight. Their exclusion centralises decision-making at the national level, increases the risk of administrative bottlenecks, diminishes context-sensitive decision-making, and therefore weakens public participation. The answer here is to capacitate and upskill the regions to make them more effective, not to centralise the decision making process. Such an approach undermines the constitutional approach to the three spheres of government, National, Provincial and Local, and seeks to consolidate power at a National level.

In a sector with a well-documented history of corruption and regulatory capture, centralised political control over both the granting of mining rights and the composition of the RMDEC creates fertile ground for bias, conflicts of interest, and undue influence. If the RMDEC is to operate as a genuine oversight and safeguard mechanism, its composition must be determined through transparent, independent, and participatory appointment processes, with clear safeguards for its institutional independence. Without such reforms, the proposed amendments risk undermining procedural fairness, eroding public trust, and constitutional compliance in the administration of South Africa's mineral resources.

3. Section 16 and Section 22 - Sequencing of Environmental Authorisations in the Application Process;

The Draft Bill proposes a significant procedural change by allowing an environmental authorisation under the National Environmental Management Act, 1998 (NEMA) to be applied for *only after* a mining or prospecting right application has been accepted, rather than simultaneously with the application as is presently required. While this sequencing may seek to reduce administrative



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burdens for applicants by avoiding the cost and effort of environmental assessments for applications that fail at the acceptance stage, it raises serious governance and environmental concerns.

Firstly, deferring the environmental authorisation process risks sidelining environmental considerations during the crucial early stage of decision-making. The simultaneous application process currently embeds environmental scrutiny from the outset, ensuring that potential impacts form part of the initial evaluation of whether the application should proceed at all. Under the proposed amendment, the acceptance of a mining right application will create procedural momentum, introducing political and administrative pressure on environmental and water authorities to approve related licences in order to avoid halting projects already “in the system.” This is particularly concerning given that the Minister, who would oversee this process, is also mandated to promote mining. Thus, entrenching the already obvious conflict of interest.

Secondly, delaying the environmental authorisation stage will delay substantive public participation. Postponing this stage may weaken early community oversight and limit the ability to prevent unsuitable projects from progressing. Why grant a mining right when the environmental authorisation is a non-starter. Pushing that stage later may limit early public scrutiny and give applicants a procedural advantage once their mining right is already “in the system.”

Given South Africa’s history of environmental degradation in this extractive sector and the need for robust environmental governance, any shift in the sequence must be accompanied by explicit safeguards. These would have to include mandatory preliminary environmental screening prior to acceptance, early public notification, and clear assurances that environmental and water licensing



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authorities will retain full independence in decision-making and remain unaffected by the prior acceptance of a mining or prospecting right application.

4. *Section 23(2A)*

The removal of the explicit reference to “including conditions requiring the participation of the community” materially weakens the statutory protection of participatory rights for communities affected by mining and prospecting activities. These are the persons mostly affected, socially, environmentally and economically. While the amended provision still obliges the Minister to impose conditions to promote community rights and interests, the absence of a clear requirement for participation risks reducing meaningful engagement to a discretionary or incidental consideration sets a dangerous precedent and will erode participation and dilute protections. In practice, it could enable decision-making that prioritises other perceived interests over direct community involvement, thereby limiting affected communities’ ability to influence the conditions under which activities take place on their land.

5. *Section 43(5);*

Under the original section 43(5) of the MPRDA, a closure certificate could not be issued unless *each* relevant government department charged with administering any law related to environmental matters confirmed in writing that key obligations—such as health and safety, pollution management, extraneous water treatment, and compliance with environmental authorisation—had been addressed. This inter-departmental approval process provided comprehensive cross-sectoral oversight by drawing on the specialised expertise of departments



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responsible for water resources, biodiversity, air quality, heritage protection and other critical environmental factors.

The proposed amendment narrows this requirement to written confirmation from only the Chief Inspector of Mines and the Department of Water and Sanitation. While these two authorities play vital roles, they do not encompass the full range of environmental and social concerns implicated in mine closure. This change significantly reduces the scope of technical review and removes vital institutional checks and balances that previously guarded against narrow or siloed decision-making. This represents a direct contradiction to section 41(h) of the Constitution, which enshrines co-operative governance by obliging all spheres of government to coordinate actions and consult on matters of common interest.

The original provision embodied the principle that complex environmental issues require coordinated action across multiple government departments, ensuring that closure decisions reflect a holistic consideration of cumulative impacts. The amendment instead concentrates authority in fewer hands thus increasing the risk that certain environmental and community impacts may be overlooked. This not only undermines the fundamental principle of co-operative governance but also risks diminishing the public trust in the legitimacy, transparency, and thoroughness of the closure process. There is no rational or justifiable reason to compromise on this vital aspect of ensuring that all of the required obligations have been met in closing a mine.

6. *Section 91A;*

The introduction of section 91A grants a “member” of the South African Police Service with the same powers as an authorised person under section 91 of the MPRDA, as well as powers under the Criminal Procedure Act, 1977, but



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excluding the authority to conduct inspections under section 92 or to issue and enforce compliance notices under section 93 of the MPRDA.

However, section 91A(2) allows the Minister, with the concurrence of the Minister of Police, to grant such a police member all the powers in sections 92 and 93 of the MPRDA, provided this is done through written notice to that member.

While section 91A is framed as an enforcement mechanism, this provision risks prioritising the protection of mining operations over accountability to affected communities. For years, communities have called for developmental enforcement measures—such as regular inspections to ensure social and environmental obligations are met and mediation processes to resolve disputes—rather than militarised interventions. The Bill’s silence on independent monitoring or community-led oversight, combined with expanded policing powers, reinforces a state-centric, security-driven approach to compliance. This creates a real risk that enforcement will focus on suppressing dissent and unrest in mining areas, rather than addressing legitimate grievances or ensuring companies meet their legal and social commitments.

7. General Comments on provisions relating to Social Labour Plans (SLPs)

The Bill fails to meaningfully strengthen the legal status, enforceability, or community governance of SLPs. While it acknowledges poor consultation and proposes a five-year review during the life of a mining right; these changes are marginal and do not address the core weaknesses of the current system. No penalties are introduced for non-compliance which allows companies to ignore SLP obligations without consequence. SLP completion is still not presented as a condition for mine closure. Participation by the affected communities remains superficial, with vague consultation requirements that can be satisfied through



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minimal engagement and without any binding role for communities to approve, set priorities, or make decisions about the content of SLPs.

Transparency and monitoring are likewise inadequate—there is no requirement for proactive publication of SLPs or for independent and community-based monitoring. Therefore leaving oversight in the hands of the very authorities that communities must hold accountable. SLPs will continue to function as mere administrative formalities rather than enforceable commitments capable of delivering tangible benefits to mining-affected communities without the implementation of mandatory disclosure requirements, enforceable penalties, independent oversight mechanisms, and genuine community consent processes.

This reluctance to impose meaningful costs or strict duties on mining companies reflects a broader bias throughout the Bill: prioritising investor and industry interests over community rights and environmental protection. Consequently, mining-affected communities remain burdened with unenforceable promises while bearing the social and environmental costs of mining operations without recourse or remedy.