63 Hout Street, Mercantile Building

Cape Town, 8000, South Africa.

TEL: +27 21 426 1633

ATT: Allan Basajjasubi

EMAIL: jacqueline@naturaljustice.org and allan@naturaljustice.org

ATTN: Ms Stella Mamogale

ADDRESS : BY HAND TO 71 TREVENNA CNR MEINTJIES AND FRANCIS BAARD STREET

PETORIA 001

BY EMAIL: Representations@dmre.gov.za

COMMENTS ON THE DRAFT MINERAL RESOURCES DEVELOPMENT BILL, 2025

INTRODUCTION

1. Natural Justice: Lawyers for Communities and the Environment is a non-profit organization, registered in South Africa in 2007. Our vision is the conservation and sustainable use of biodiversity through the self-determination of indigenous peoples and local communities.
2. Our mission is to facilitate the full and effective participation of Indigenous peoples and local communities in the development and implementation of laws and policies that relate to the conservation and customary uses of biodiversity and the protection of associated cultural heritage. Through the JET Initiative within Natural Justice, we wish to achieve just energy transitions for Indigenous Peoples and communities.
3. Natural Justice works at the local, national, regional, and international levels with a wide range of partners. We strive to ensure that community rights and responsibilities are represented and respected on a broader scale and that gains made in international fora are fully upheld at lower levels.
4. Natural Justice wishes to submit its comments to the Department of Mineral Resources and Energy. We further express our request to make a verbal submission or participate in any meaningful engagements with the Department when an opportunity arises.
5. We submit to the Department of Mineral Resources and Energy, the following comments pertaining to the gazette ***Publication of the Draft Mineral Resources Development Bill, 2025.*** The gazette for public comment was published on the 20th of May 2025.
6. These comments are Natural Justice's contribution to ensure that appropriate and effective legislation is passed to protect the environment and the communities we serve.

7. We further express our request to make a verbal submission or participate in any meaningful engagements with the Department or the Portfolio Committee when an opportunity arises.

8. The Commentary is set out as follows: - general comments, specific comments, and the conclusion.

GENERAL COMMENTS

Recognition and formalization of small-scale and artisanal mining in the regulation of permitting, enforcement and compliance

9. Natural Justice welcomes the recognition and formalization of small-scale and artisanal mining, and the establishment of a permitting system within the proposed Bill amendments. The current draft text formally recognizes the role of responsible artisanal and small-scale miners in mineral exploration and mining – including critical energy transition minerals – and in creating jobs and livelihoods. This is an important initial step towards integrating disadvantaged, vulnerable, or marginalized groups within current mineral value chains. Decent work, encompassing adequate universal social protection, skills development opportunities, rights at work, job creation, and social dialogue, is essential for any Just Transition, including those driven by mineral development. However, we raise with concern that there is no reference to the Artisanal and Small Scale Mining Policy of 2022 or incorporation of most of the proposals in the Policy to make same binding law. Exclusion of who should be prioritised for artisanal and small-scale permits and lack of simplified processes with no financial assistance, leaves these permits only to the elite and excludes Indigenous People and communities from being able to meet the requirements as set out. These unrealistic application processes will result in the further criminalisation of artisanal miners and not achieve goals of being able to prosecute illegal mining syndicates, where individuals have become victims to criminals to attempt to earn a living. There seems to be a lack of understanding of artisanal miners and their role in communities. Section 104 of the Mineral and Petroleum Resources Development Act 28 of 2002 (Preferent prospecting or mining in respect of communities) is purposefully excluded from the introduction of artisanal mining permits. This should not be the case, with section 104 being a criteria for artisanal mining permits, in that communities are able to access these permits preferentially.

10. Currently, the benefits derived from mineral exploitation are often distributed inequitably among people, disproportionately affecting women, children, youth, workers, artisanal and small-scale miners, Indigenous Peoples, and other rights holders. Addressing these challenges is crucial for achieving sustainable and inclusive development. It is therefore encouraging that the Bill attempts to redress this inequity through its recognition of small-scale and artisanal mining but to achieve addressing these inequalities needs to enable communities, Indigenous Peoples and whose who are historically disadvantaged to be able to benefit from the minerals in South Africa in terms of equitable access of natural resources as in Section 25(4) of the Constitution.

11. Equitable access of natural resources, including minerals, is in line with a Framework for Just Transition in South Africa[1]. Equitable access to natural resources, including land and water, are

[1] Presidential Climate Commission "A Framework for a Just Transition in South Africa" available at https://www.climatecommission.org.za/just-transition-framework"

inclusive in the definition for a just transition as well as the principles of energy justice: restorative, procedural and distributive justice. As this Bill comes as South Africa pursues a Critical Mineral Strategy, it is imperative that these principles are including with the intention of alleviate poverty and localising benefits from minerals and the renewable energy supply chains.

12. As a practical solution for regulating, improving, and monitoring compliance within small-scale mining operations by artisanal miners, the Department, through the Bill, could consider organizing miners into designated zones, using proposed section 7A of the Bill, where they operate collectively. Drawing on the principle of collectivism—an enduring value in traditional African communities—the state can facilitate a more cohesive and sustainable approach. This would involve identifying mineral-rich areas and allocating them to specific communities, fostering shared responsibility, improved monitoring, and more efficient support.

13. Such community-based mining zones would preserve cultural frameworks and enable targeted interventions and resource management by relevant authorities. This approach presents an attractive option because it can increase the number of people benefiting from mineral reserves. Furthermore, since the miners are from the same community, spillover benefits will be localized, and capital flight will be minimized.[2] This principle of communalism can help address challenges within the ASM sector, such as environmental degradation.[3]

14. To enable this alternative approach, the Bill should consider including ASM sites in land-use planning processes, from the village level up to the national level. This inclusion is likely to improve coordination by making mine site locations known to a wide range of stakeholders, thereby encouraging greater coordination and planning between them."

The addition of 'meaningful' in consultation and the inclusion of definition of the term in the definitions section

15. Whilst the Bill does introduce the term "meaningful consultation" in multiple provisions, particularly in sections dealing with:
    14.1. Community engagement prior to granting of mining rights
    14.2.Consultation obligations with interested and affected parties
    14.3.Social and Labour Plan submissions

16. It marks a deliberate rhetorical shift from past versions of the MPRDA that only required "consultation". However, the term **"meaningful" is used, but not defined** neither in the definitions section nor in any explanatory clause. There are **no procedural thresholds** or **substantive requirements** set out in the draft text to give the term operational meaning (e.g. minimum duration, independent facilitation, culturally appropriate methods, or outcomes-based standards).

---

[2] Aboobaker, A., Naidoo, K., & Ndikumana, L. (2021). South Africa: Capital flight, state capture, and inequality. In On the trail of capital flight from Africa: The takers and the enablers (pp. 149-192). Oxford University Press. https://doi.org/10.1093/oso/9780198852728. 003.0005

[3] Ojakorotu, V. & Olajide, B. (2019). Ubuntu and nature: towards reversing resource curse in Africa. Ubuntu, 8(2), 25–46. https://hdl.handle.net/10520/EJC-19f62aef1b

17. This change in the current draft text, without definitional clarity or binding process requirements, is **symbolic**, not substantive. It provides no guarantee of procedural fairness or substantive engagement with interested and affected parties. If the Bill seeks to align with constitutional norms, it should incorporate **jurisprudential benchmarks** from *Bengwenyama*[4], *Maledu*[5], and *Baleni*.[6]

18. The apparent conflict between the consultation mandate in the existing MPRDA legislative framework, the UPRDA and its accompanying regulations, and the consent requirement in IPILRA creates a tension that undermines regulatory certainty and adversely affects community livelihoods. Whilst the Department appears reluctant to fully embrace community consent as the standard for public consultation within the framework of the MPRDA and the UPRDA, the jurisprudential trend indicates that, should the MPRDA and its regulations (even if amended) continue to disregard this tension, the courts may well compel reform toward a more robust FPIC framework, as evidenced in the *Maledu and Baleni* judgments under the previous MPRDA.

19. Transformative governance in the mineral beneficiation governance mechanisms requires moving beyond tokenistic participation. Failure to revise the MPRDA and now the proposed amendments of the MPRDA, as it governs the process of consultation, risks replicating the legacy of mining-sector disputes, undermining both development goals and the rule of law.

20. Meaningful consultation must aim to:

    19.1. Provide IAPs with full access to all project information, including technical reports, environmental impact assessments, and financial capacity disclosures.

    19.2. Clearly explain the social, environmental, and economic impacts of the project including cumulative and lifecycle effects (e.g. methane emissions, decommissioning liabilities).

    19.3. Obtain written consent from IAP directly affected by resettlement, livelihood disruption or significant environmental harm.

21. Natural Justice commends the Department for its recognition of the necessity of imposing on proponents applying to acquire licences and permits, the obligation to act in "good faith" by providing "reasonable opportunity" for affected persons to raise concerns about proposed activities that are very likely to have significant negative impacts on their rights to health, wellbeing, livelihood development and cultural and spiritual rights. However, given the judicial developments in the Maledu and Baleni cases, the imperative to ensure meaningful consultation has evolved into a more nuanced legal standard. The decisions of the courts, in interpreting the state's obligations concerning activities that significantly impact the rights of interested and affected parties, reflect a broad-based judicial commitment to redressing historical injustices. This is achieved by affirming that any development on customary land must proceed only with the unequivocal consent of indigenous peoples and local communities. Such jurisprudence

[4] **Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others (Bengwenyama-Ye-Maswati Royal Council 2011 (3) BCLR 229 (CC)**
[5] *Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited and Another* [2018] ZACC 41.
[6] *Baleni v Minister of Mineral Resources* 2019 2 SA 453 (GP)

provides a vital legal bulwark against further dispossession and reinforces the alignment of mining and, by extension, upstream petroleum governance, with the transformative objectives of South Africa's Constitution.

22. The Bill (s19 for prospecting and s24 for mining) maintains time-bound notice and consultation processes but does not shift toward consent-based models. There also seems to be a shift in processes with the prospecting right and mining right applications first being submitted and then only after an environmental authorisation needing to be completed. This implies that these are accepted before an enquiry is done with public participation and just a formality to achieving the rights. However, in terms of artisanal mining permit and small scale mining permit, must with the application submit an environmental authorisation. There is no explanation given to what is the format or form of these environmental authorisations. This seems to prioritise large scale mining and not small scale / artisanal mining.

23. "Interested and affected parties" remain vaguely defined. There is no duty within the draft language of the Bill to provide legal, linguistic, or technical support to enable meaningful participation.

24. Although **Sections 10, 19, and 24 of the proposed amendments** provide the framework for community consultation, there is **no provision made for mandates** on publication of licences, environmental authorisations, or rehabilitation funds regulated by DMRE in an meaningfully transparent and accessible format, and in meaningfully and accessible languages that are sensitive to challenges in connectivity, and language proficiency.

25. Furthermore, there are no provisions for regulatory requirements dealing with independent appeals mechanism or complaints ombud that mining affected communities can utilize in addressing objections to decisions by regional managers with respect to section 10 and 54, or the management of grievances raised by mining impacted communities to applicants

26. Natural Justice therefore urges the Department not to fall short of advancing the inclusion of the standard of "meaningful" public participation, as outlined on page 10. Instead, it should build on this foundation by embracing the principle of Free, Prior and Informed Consent (FPIC) as a necessary extension of the obligation to ensure genuinely "meaningful" consultation. Adopting FPIC would safeguard community agency over development processes that affect their land, livelihoods, and cultural heritage. Moreover, this shift would help avoid costly litigation and bring South Africa's mineral beneficiation and regulation frameworks into alignment with international best practices, including the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Flawed definition of "Interested and Affected Persons" (I&APs)

27. Considering the wording adopted by the Bill to define "interested and affected parties" as natural or juristic persons with a "direct" interest in the proposed or existing prospecting or mining operation is problematic. This framing of who an interested and affected party is appears to indicate the Bill's intention to **narrow** the scope of I&APs by **linking participation rights** more

closely to **being directly affected** (e.g., landowners, lawful occupiers, adjacent landholders, or persons with legally recognized interest). This framing of "interested and affected parties" risks turning public participation proposed in the Bill into a **property-based entitlement** instead of a **democratic safeguard.**

28. Although South Africa's environmental law (NEMA) gives effect to broader public participation involvement as envisaged in section 2 principles—including the involvement of NGOs and concerned citizens within processes of public participation in authorisation processes—this cannot be restricted in application to listed activities governed by NEMA regulations only. The Mineral and Petroleum Resources Development Act (MPRDA) must make provision for consultation process that supports and reinforces the principles envisaged in NEMA, especially since it deals not only with vital social and economic issues, but also affects environmental rights. Relying on different mechanisms to regulate for public input creates confusion and inconsistency as is proposed in the Bill at page 9, making it harder to ensure accountability and fair treatment for affected communities. A democratic resource governance framework must recognize *de facto* interest and *de jure* vulnerability, not just legal formality."

29. To address the gaps in public participation within the current proposed regulatory framework, a more inclusive approach is urgently needed, one that broadens the definition of Interested and Affected Parties (I&APs) and strengthens the participation process itself. Specifically, the definition of I&APs should be expanded to encompass not only individuals and groups whose rights may be directly or indirectly affected, but also NGOs, and human rights defenders, or generally concerned citizens with a demonstrable commitment to environmental justice, human rights, or sustainable development.

30. Additionally, individuals and communities who rely on natural resources for their livelihoods (regardless of whether they hold formal land rights) must be recognized as legitimate stakeholders in any application process that could impact them.

31. To reinforce this inclusive standard, a participatory clause should be inserted into the definitions section, clearly stating: "Public participation must be open to all individuals and groups who have a reasonable interest in the outcome of the application, including those acting in the public interest." This would affirm the principle that consultation must not be limited to formal landowners or institutional actors alone but should reflect the lived realities and diverse interests of affected populations.

32. Furthermore, this approach should not rely solely on the environmental provisions found in NEMA. Instead, there must be consistency across legislative frameworks by harmonizing definitions and processes, recognizing that environmental law governed under NEMA, while important, cannot be expected to compensate for procedural shortcomings in other statutes, such as the MPRDA or UPRDA. This harmonization is essential to reduce jurisdictional ambiguity, promote regulatory coherence, and ensure that public participation serves as a robust safeguard against selective compliance.

33. Together, these measures would foster greater transparency, empower communities, and align South Africa's legal instruments with international best practices therefore ensuring that governance in the extractive sector reflects both constitutional commitments and the principles of inclusive development.

Recognition of land rights

34. Natural Justice commends the draft text's recognition of the nuanced profiles of lands rights held by individuals and communities. This recognition reflects the complex relationship between formal land ownership between formal land ownership titles and South Africa's informal land titling regime, indicative of the country's complex history of land ownership and dispossession. This complexity is clear in the Bill's attempt to extend the scope of "land owner" to include communities entitled to hold rights in land, whether registered or unregistered. According to newly included definition of "land owner", this category of landowners is considered entitled to protection under any law. This suggests that the new definition has integrated the legal protection extended by IPILRA to communities holding unregistered rights to communally held land. This, in turn, inadvertently recognizes the potential for the law to implement the principle of FPIC, at least in the context of communities holding informal land rights to communally held land. Why is this an important development?

35. The previous iteration of the Mineral and Petroleum Resources Development Act (MPRDA) failed to align with the Interim Protection of Informal Land Rights Act (IPILRA), which explicitly safeguards customary and informal land rights.[78] IPILRA mandates that no person may be deprived of such rights without their consent, including rights to ancestral lands, communal grazing areas, and sacred sites.[910]

36. *Constitutional and High Court rulings have affirmed this protection. In Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Ltd and Another (2018)[1112], the Constitutional* Court

[7] Maledu at para 106 where the court stated "By parity of reasoning, the MPRDA must be read, insofar as possible, in consonance with IPILRA. In the context of this case, this means that the award of a mining right does not without more nullify occupational rights under IPILRA". "There is no conflict between these two statutes; each statute must be read in a manner that permits each to serve their underlying purpose

[8] Baleni case at para 40 where the court stated "Both these acts, however, have in common that they were enacted to redress our history of economic and territorial dispossession and marginalisation in the form of colonisation and apartheid. Both acts seek to restore land and resources to Black people who were the victims of historical discrimination: they must therefore, in my view, be read together.

[9] Section 2(1) of IPILRA explicitly states:

"*Subject to the provisions of the Expropriation Act ... no person may be deprived of any informal right to land without his or her consent*

[10] Sacred sites are not explicitly mentioned in IPILRA, but courts have interpreted "informal rights" broadly to include cultural and spiritual connections to land. See www.corruptionwatch.org.za/wpcontent/uploads/2024/10/CW-Maledu-IPILRA-MPDRA-2024.pdf

[11] The Constitutional Court held that the mining companies had not complied with the negotiation and consultation requirements under the Interim Protection of Informal Land Rights Act (IPILRA) and the Mineral and Petroleum Resources Development Act (MPRDA) before commencing mining activities on land occupied by the community. Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Ltd and Another (2018) at para 98-102

[12] The applicants' lawful occupation rested on their informal land rights as protected by the Interim Protection of Informal Land Rights Act. This right still existed notwithstanding the award of the mining right to the respondents. The right was also not consensually terminated by the resolution regarding the surface lease agreement taken at the kgotha kgothe (an open community meeting that all adult community members are

held that communities with customary land rights are entitled to Free, Prior, and Informed Consent (FPIC) before any development or extractive activity occurs. Similarly, in Baleni and Others v Minister of Mineral Resources and Others (2019)[1314], the High Court accepted the applicants' argument that, under section 2(1) of IPILRA read with section 23(2A) of the MPRDA, informal land rights cannot be extinguished without the express and informed consent of their holders.[15]

37. Both courts affirmed that customary and informal land rights are not inferior to formally registered rights and must be respected in all regulatory and administrative processes.[16]

38. Whilst Natural Justice commends the attempt of the draft text to further align itself to judicial developments, Natural Justice recommends that the Bill can further support the alignment of legal clarity and certainty between IPLIRA, the Constitution and legal jurisprudence by recognizing the integration of Free, Prior, and Informed Consent (FPIC) as a mandatory requirement for protections afforded to "land owner's in regards to any state or private action affecting land occupied under informal or customary rights. This would ensure that communities are not merely consulted but empowered to choose whether they support or choose to support alternative development projects impacting their land, in line with international best practice.

39. The above recommendation will ensure that interpretation of the prevailing regulations does not cause a lack of clarity or confusion thereby ensuring legal certainty and the rule of law.

Lack of or weak community protection mechanisms within the development of benefit sharing arrangements (SLPs)

40. While the Bill introduces some textual improvements regarding community engagement, environmental impact management, and oversight of application processes, particularly through the redeployment of the Regional Mining Development and Environmental Committee (RMDEC) in line with NEMA, it fails to make explicit provisions for community participation in the design and development of Social and Labour Plans (SLPs). This omission significantly undermines meaningful community involvement in mining approval processes.

41. Although the Bill reinforces public consultation procedures as envisioned by NEMA, these principles are not embedded within the framework for SLP development. As a result, communities remain excluded from shaping the very plans that are intended to deliver social and economic benefits in the context of mining operations. This disconnect weakens the legitimacy and effectiveness of the SLP process and risks perpetuating extractive practices that marginalize affected communities.

---

eligible to attend) of 28 June 2008.

[13] In Baleni v. Minister of Mineral Resources (2019), the High Court ruled that the MPRDA's consultation processes violated IPILRA's consent requirement, see paragraphs 40, 76, 79, 83 and 84.

[14] The Court in Maledu did not explicitly frame this as a requirement of FPIC in the strict international law sense, but the ruling strongly supports the necessity of prior meaningful consultation and consent.

[15] Baleni and Others Minister of Mineral Resources and Others [2019] 2 All SA 523 (GP) at para 63.

[16] Baleni case para 43; Maledu case para 5.

42. SLPs, although often submitted with the application for a right/permit, are often finalized post-approval, and the mining affected communities' voices at that stage is irrelevant unless formal mechanisms compel integration. The Bill in its current form does not make provision for any formal or verifiable process of:

    36.1. Consultation with communities in the formulation of the SLP.

    36.2. Validation or co-signing of the SLP by affected persons or community representatives, and not merely traditional councils or leaders purporting to represent communities.

    36.3. It contains no framework for review, revision, or real-time accountability.

    36.4. Public review or input period for the SLP before or after approval.

43. The Bill's failure to therefore define binding participation procedures in the SLP process reflects a state retreat from its constitutional duty to democratize resource governance. As was investigated during the National Hearing convened by the South African Human Rights Council in 2016, regarding the socio-economic challenges of mining affected communities[17], a number of concerns were repeatedly raised and continue to be raised relating to the effectiveness of the SLP system, including a plethora of issues surrounding the design as well as compliance with SLP commitments.[18][19][20]

44. SLPs should always be formulated on the basis of socioeconomic challenges faced by communities in specific contexts, rather than through a top down, a contextual process that fails to respond to local needs.

45. It is for this reason that the Bill must consider providing explicitly within its proposed amendments, clear and binding safeguards for mining affected communities to ensure formal or verifiable mechanisms to enforce the development, implementation and compliance of SLPs. These binding safeguards must be aligned to EIAs and EMPs and include environmental information on the potential impacts of mining and post closure quality of land. This could be buttressed with clear and binding penalties for rights holders who fail to comply with SLP commitments/standards established within the proposed amendments.

---

[17] South African Human Rights Commission (2016) National Hearing on the Underlying Socio-economic challenges of mining affected communities in South Africa. 2016. South African Human Rights Commission, Cape Town
https://www.sahrc.org.za/home/21/files/SAHRC%20Mining%20communities%20report%20FINAL.pdf

[18] A lack of adequate consultation and meaningful participation, including in relation to the absence of a requirement for consultation where an SLP is amended, and the question as to whether replacement SLP projects have equivalent value to original projects. See page 53 of the SAHR 2016 report

[19] A lack of sufficient alignment with other relevant documents and processes, especially municipal IDPs. In addition, SLPs are often not aligned to social impact assessments (SIAs), EIAs and EMPs.

[20] The content, scope and layout of SLPs are not standardised across the industry. Although the DMR has produced SLP Guidelines aimed at assisting companies, these guidelines are not binding, resulting in the divergent quality and content between different companies. In addition

46. Lastly, in its findings in 2016, the South African Human Rights Commission in its National Hearing, found that there is currently no regulation around the financial contribution to be made towards SLP projects other than the requirement outlined in the Mining Charter that such contributions must be proportionate to the size of the investment.[21] No guidance is provided on the meaning or determination of proportionality, although general practice appears to accept a benchmark of around 1% of a company's annual turnover. However, without objective criteria or guidance for determination, this is left largely to the discretion of individual mining companies.[22]

47. In considering the objectives of the regulatory framework to drive transformation and contribute to the socio-economic welfare and development of communities, the requirement for SLPs cannot continue to be limited to the mere production of a document as at present. Sadly, the Bill also fails to account for intersectional vulnerabilities (e.g., gender, youth, disability) within community beneficiation planning.

48. Natural Justice therefore supports considerations and implementation of the findings of the SAHRC as it pertains to its recommendations regarding SLPs, made in 2016, within the current proposed amendments. These include:

    41.1. **Amend the Bill to include mandatory participatory procedures for SLP development**, with a definition of "meaningful participation" tied to Free, Prior, and Informed Consent (FPIC) standards.

    41.2. **Insert an SLP Validation Clause** requiring signed acknowledgment by community-elected structures or independent third-party verification.

    41.3. **Embed SLP implementation accountability within the Bill**, not just in post-licensing compliance mechanisms This could include the provision of ring-fencing funding by the applicants for licenses as it pertains to SLP obligations in order to ensure compliance and enforcement of EIA and EMP obligations. This could be further supported by provisions which govern the transparency through the annual reporting, joint implementation committees with equal representation.

49. If the Bill were to remain silent on the concerns raised above, it would continue to fail to address the governance gap on the institutionalization of genuine equitable benefit sharing mechanisms. It would further continue to not address the unequal burden that mining affected communities are saddled with through environmental degradation and health and wellness being compromised without any genuine share in the economic value derived from land and natural resources that they depend on. Natural Justice therefore encourages the reconsideration of mechanisms to address the above-mentioned concerns.

Alignment of Critical mineral strategy and MPRDA Bill to Just Transition principles[23][24]

[21] Page 57 of note 15
[22] See note 19 at page 57.
[23] UN Secretary General Guterres's call renewable energy, critical minerals and the just transition. See UN Secretary-General Guterres calls for urgent transition to clean energy | SAnews

50. New green energy systems should contribute to powering new social and economic systems that realise rights within planetary boundaries. To this end, we believe the international human rights framework can play a key role in shaping the production, transmission, distribution and consumption of energy across its value chain ensuring democratic governance and ownership, gender justice, the equal redistribution of benefits, meaningful and effective participation in energy decision-making and the provision of energy solutions.

51. The shift to renewable energy and the demand for critical minerals essential for the energy transition will have complex human rights impacts on workers across the supply chain. At every stage of the transition, starting from mineral extraction to manufacturing and eventual disposal, can have serious consequences, including poor working conditions, occupational health and safety risks, environmental degradation that affects both workers and their communities, and widespread job precarity.

52. The role of minerals in the just transition is recognised in the South African Renewable Energy Masterplan which speaks to contributing to the National Development Plan through achieving a low-carbon, resource efficient and pro-employment pathway. These interventions are necessary to address inequality and poverty which are widespread in South Africa. The linkage of transition mineral mining and renewable energy to achieve a just energy transition should be recognised in the Bill with the principles of just transition being applied to the mining sector which requires a transition to a human-rights based, environmentally respecting, economically uplifting, and justice based model. Business as usual in the mining sector will only perpetuate poverty, human rights abuses and environmental degradation.

53. Human rights standards must guide every stage of the critical transition minerals' life cycle from extraction, and refining to manufacturing, use, and end-of-life processing.[25] In this context, States, as well as businesses, must identify and assess potential human rights risks across the entire critical mineral value chain and implement measures to prevent and mitigate those risks.

54. Due to structural gender inequality, women and gender-nonconforming people are disproportionately impacted by transition mineral industries. For instance, they tend to have limited or no access to land tenure rights, which marginalises them from participating in negotiations related to compensation and resettlement and makes them the most affected by land grabbing and land dispossession associated with mining activities. The Bill should therefore adopt a gender-responsive approach to assessing, and mitigating rights violations committed in the transition mineral value chain, in this case the extraction of critical minerals.

55. Given the above, the current draft of the Bill purports to operationalize the regulation of mining for critical minerals in order to "meet development imperatives and bring optimal benefit for the Republic,"[26] including addressing national priorities such as macro-economic stability, energy

---

[24]UN Panel on Critical Energy Transition Minerals Report. 2024. Resourcing the Energy Transition: Principles to Guide Critical Energy Transition Minerals Towards Equity and Justice, see The UN Secretary-General's Panel on Critical Energy Transition Minerals | United Nations

[25] https://www.ohchr.org/en/statements/2024/09/all-action-critical-energy-transition-minerals-must-respect-human-rights-un

[26] Page 46 and 47 of the Draft Bill.

security, industrialization, food security, and infrastructure development.[27] This ambition is commendable and appears to reflect an effort to institutionalize the critical minerals and metals strategy within the existing regulatory mining framework.

56. Despite the Bill's stated commitment to regulating the extraction of critical minerals, several concerns remain. Firstly, the integration of mineral extraction activities within the broader environmental management framework is insufficiently detailed. The Bill does not clearly articulate how it aligns with existing environmental safeguards, particularly in relation to compensation and resettlement for communities affected by mining operations. Furthermore, it remains unclear whether the Bill provides adequate mechanisms for oversight and accountability in the permitting and monitoring of critical mineral extraction.

57. In addition, the Critical Minerals Strategy, which is intended to guide the implementation of these proposed amendments within the MPRDA framework, fails to define how these environmental governance and management imperatives are to be addressed in the current MPRDA framework. The current draft text of the proposed amendments to section 26 leaves a significant gap in the legislative governance of environmental impacts associated with critical minerals development, raising questions about the sustainability and legitimacy of the proposed regulatory approach.

58. The Bill also remains silent on the necessity of mechanisms for inter-agency coordination between the Department of Mineral Resources and Energy (DMRE), the Department of Forestry, Fisheries and the Environment (DFFE), and relevant provincial and municipal regulators in relation to environmental management, oversight, and accountability. This omission points to a deeper issue of institutional fragmentation embedded within the current draft. Despite stated intentions to streamline environmental authorisations and compliance mechanisms, the Bill fails to establish a coherent framework for harmonizing the roles and responsibilities of different regulatory bodies. As a result, the risk of regulatory overlap, gaps in enforcement of environmental management principles, and weakened accountability regarding compliance remains unaddressed.

59. The proposed amendments to section 26, which aim to support the implementation of the Critical Minerals Strategy, fall short in establishing a clear link between mining authorisations and long-term environmental accountability. While the amendments outline key developmental imperatives, they do not require that mining or prospecting approvals for critical minerals be explicitly tied to robust environmental safeguards.

60. In particular, the amendments fail to institutionalize provisions that pre-empt key post closure responsibilities for prospecting or mining activities pertaining to critical minerals. These key post closure responsibilities include land rehabilitation, water use regulation, biodiversity protection, and emissions management. The absence of such requirements undermines the sustainability of the proposed framework and raises serious concerns about the long-term environmental impacts of critical minerals development.

61. Given the above, Natural Justice suggests that as part of the integration of the critical minerals strategy within the existing draft framework, which seeks to give effect to imperatives of national

[27] Amendments to section 26 of the Principal Act

development, local beneficiation of mineral resources as outlined in the objectives of the Bill, the following recommendations are proposed:

56.1. The insertion of a statutory environmental co-ordination clause which requires the Minister to consult and co-ordinate with the Minister of DFFE when processing mining rights, especially in ecologically sensitive or water stressed areas.

56.2. The insertion of a statutory requirement that the granting and continuation of prospecting and mining rights is contingent upon ongoing environmental compliance, verified through independent audits and linked to public disclosure mechanisms.

56.3. The insertion of stand-alone access to information provisions for interested and affected parties such as communities and civil society, that grant access to information regarding performance data of prospecting and mining operations in order to ensure transparency and accountability.

Alignment of the MPRDA Bill with Climate Change Obligations as per the Climate Change Act

62. Historically, South Africa's mining industry has played a central role in driving lucrative mineral exports, contributing significantly to GDP growth and employment. This economic importance has, in turn, incentivized the state to adopt regulatory approaches that favour the sector's expansion and profitability.

63. However, according to the Minerals Council of South Africa, the sector's continued contribution to national development goals is increasingly threatened by the physical impacts of climate change, including floods, droughts, extreme weather events, and rising temperatures. The Council has also warned that climate change poses substantial risks to mining operations and long-term business viability. As the global economy transitions toward decarbonisation, mining companies that fail to adopt low-carbon technologies and practices risk being left behind, both competitively and in terms of regulatory compliance.

64. Flooding and severe storms can damage on-site and supporting infrastructure, such as roads, railways and ports. Not only can these lead to an increase in direct costs due to damages, but can also lead to disruptions in production, increased operational costs and capital costs. This is particularly concerning for South Africa, as a 1.5C warmer world globally will translate into a 3C rise in southern Africa. This makes South Africa's mining sector more exposed to the physical risks of climate change compared to the global average.

65. Several of South Africa's key trading partners are beginning to implement policies and regulations to combat climate change. This will create a shift in international demand and international trade, creating transition risks for the sector. South Africa currently depends on fossil fuel exports, and carbon-intensive mining and electricity sectors, exposing it to significant transition risks. If these are not addressed, the country will suffer from reduced exports, a dip in international competitiveness and GDP, and lost jobs.

66. The mining sector will also face increasing international trade risks, especially from the European Union's Carbon Border Adjustment Mechanism (CBAM). The CBAM is essentially a

carbon tax on imports to the EU based on their embedded greenhouse gas (GHG) emissions. According to a TIPS report[28], the CBAM will put a total of R52 billion (based on 2022 data) worth of exports at risk. Therefore, addressing these risks, both physical and transition, becomes critical within the proposed draft amendments within the MPRDA

67. The above becomes even more imperative to consider in light of the **Climate Change Act (No. 22 of 2024).** This act aims to address the pressing need for climate action by establishing a comprehensive legal framework to regulate greenhouse gas (GHG) emissions across sectors, particularly high-emission industries such as mining. Therefore, the mining sector, and in this regard the regulatory framework tasked to regulate its operations, must prepare for the far-reaching impacts of climate change. To neglect to establish a regulatory framework which addresses the risks posed by climate change, will not only result in a shift in international demand and international trade, creating transition risks for the sector, but is likely to result in reduced exports, a dip in international competitiveness and GDP and significant job losses.

68. The 2024 **Climate Change Act** introduces several crucial measures, including **carbon budgets**, **sectoral emission targets**, and penalties for non-compliance. These provisions will shape how the current MPRDA can and will regulate mining and mining related activities in the present and future. It is therefore imperative the proposed amendments of the Bill include provisions and measures that align with the principles that inform the application of Climate Change Act.[29]

69. Mining, being one of the most **GHG-intensive industries** in South Africa, will likely face strict emission limits that must align with sectoral emission targets and standards set by DFFE in line with the national goals for emission reduction outlined in the NDC. This approach is regulated by section 4(2)[30] and 7(1)(a) and 7(b)[31] of the CCA which both mandate that all organs of state exercising power or functions affected by climate change are required to align their policies, laws and measures with the Climate Change Act.

70. The interpretation of these provisions suggests that, given the binding nature of the Climate Change Act (CCA) on all organs of state, the Department of Mineral Resources and Energy (DMRE), along with its officials, is legally obligated to align its policies, laws, and measures, including the proposed amendments to the MPRDA, with the principles and objectives outlined in section 7(b) of the CCA.

---

[28] S Maimele. 2023. Responding to European Union's Carbon Border Adjustment Mechanism: South Africa's Vulnerability and Responses. See here https://www.tips.org.za/research-archive/sustainable-growth/green-economy-2/item/4590-responding-to-the-european-union-s-carbon-border-adjustment-mechanism-cbam-south-africa-s-vulnerability-and-responses

[29] Section 3(e) and 3(l) of the Climate Change Act 22 of 2024.

[30] This Act binds all organs of state

[31] 7. (1) Every organ of state that exercises a power or performs a function that is affected by climate change, or is entrusted with powers and duties aimed at the achievement, promotion and protection of a sustainable environment, must review and if necessary revise, amend, coordinate and harmonise their policies, laws, measures, programmes and decisions in order to—
(a) ensure that the risks of climate change impacts and associated vulnerabilities
are taken into consideration; and
(b) give effect to the principles and objects set out in this Act

71. These principles emphasize the need for integrated management in the context of climate change. This includes the requirement that climate considerations be incorporated into all decision-making processes that may significantly affect the Republic's ability to mitigate climate change or that may exacerbate its vulnerability to its impacts. Furthermore, the CCA underscores that a robust and sustainable economy, which the MPRDA Bill purports to seek to achieve within its objectives, as well as a healthy society depends on the services provided by well-functioning ecosystems. Enhancing the sustainability of economic, social, and ecological systems therefore becomes a necessary consideration within the ambit and scope of the proposed amendments to the MPRDA, especially in light of South Africa's obligations to implement effective and efficient climate change responses.

72. Natural Justice notes with concern that the Bill in its current draft, and its proposed amendments contain no cross-reference to the Climate Change Act, 2024, nor any mention of aligning the granting and regulation of authorized activities with sectoral emission targets set by DFFE.

73. Furthermore, there are no apparent measures or proposed amendments that mandate a duty on mining rights holders to disclose emissions, conduct climate risk assessments or align operations with carbon budgets under sections 24(3)[32], 25(4)(a)[33] s25(4)b)[34] section 25(6)[35] section 25(9)(c-d)[3637] and section 27(4)(a)[38] and section 27(6)(b)[39].

74. The draft text of the proposed amendments are silent on defining "greenhouse gas", "Scope 1 and Scope 2 and 3 emissions" and "sectoral emission targets" and therefore on reading of the Bill, it appears to lack coherence with the Climate Change Act. The mining sector as discussed above, must be governed by precise terms to "ensure risks… are taken into consideration.[40]

---

[32] Until such time as the Minister publishes the national greenhouse gas emissions trajectory in terms of subsection (1), the latest updated Nationally Determined Contribution serves as the trajectory

[33] Sectoral emissions targets must—
(a) be implemented by the Ministers responsible for the administration of sectors or sub-sectors listed in terms of subsections (1) and (2) through the relevant planning instruments, policies and programmes;

[34] Sectoral emissions targets must—
be aligned with the national greenhouse gas emissions trajectory, noting that the cumulative amount of greenhouse gas emission reductions which the sectoral emissions targets represent, ensures that the national greenhouse gas emissions profile is kept within the national greenhouse gas emissions trajectory; and

[35] The Minister responsible for each sector or sub-sector for which sectoral emissions targets have been determined, in accordance with subsection (3), must adopt policies and measures towards the achievement of the sectoral emissions targets.

[36] The Minister responsible for each sector and sub-sector for which sectoral emissions targets have been determined, within one year of the publication of the sectoral emissions targets, must—
implement the policies and measures within the relevant sectors and
sub-sectors; and

[37] The Minister responsible for each sector and sub-sector for which sectoral emissions targets have been determined, within one year of the publication of the sectoral emissions targets, must—
monitor the effectiveness of implementing such policies and measures in
achieving the relevant sectoral emissions target

[38] A person to whom a carbon budget has been allocated in terms of subsection (1) must prepare and submit to the Minister, for approval, a greenhouse gas mitigation plan

[39] A person to whom a carbon budget has been allocated must—
monitor annual implementation of the greenhouse gas mitigation plan in
accordance with the prescribed methodology;

[40] Section 25(4)(c) of the Climate Change Act 22 of 2024

Including these definitions is not optional but a statutory obligation under the Climate Change Act. Their absence would render these regulations and its framework inconsistent with national law, hinder accountability, and jeopardize South Africa's climate goals. Natural Justice strongly advocate for their explicit inclusion to ensure the offshore and onshore petroleum sector's transition aligns with a just, sustainable, and climate resilient future.

75. In an era of climate emergency, this legislative silence constitutes a dereliction of constitutional duty and commitments to international obligations defined by international law. Mining cannot be regulated in a climate vacuum.

76. Given the above, Natural Justice suggest the following recommendations to include within the ambit and scope of amendments to the MPRDA:

73.1. As part of the authorisation process for mining activities, applicants must be required to submit greenhouse gas (GHG) mitigation plans that demonstrate how they will operate within their allocated carbon budgets. To strengthen climate accountability, the Bill should include a legislative requirement that such authorisations be contingent upon an assessment of the proposed activities' compatibility with the sectoral emission targets set by the Department of Forestry, Fisheries and the Environment (DFFE). This would ensure that mining operations align with national decarbonisation goals and contribute to a just and sustainable transition.

73.2. The Bill should make provision for the insertion of penalty clauses to address non-compliance with established environmental standards. These clauses should apply to failures such as not submitting greenhouse gas (GHG) mitigation plans, providing false or misleading information, and breaching sectoral emission targets. Penalties may include the revocation or suspension of licenses and permits until identified irregularities are resolved, as well as the imposition of fines.

Deficiencies in the regulation of closure plans and rehabilitation duties

77. Although the Bill in its current draft makes reference to closure plans and requires legal compliance with regards to a closure strategy as part the Environmental Management Programme, there appears to be an absence of any provision for ongoing and periodic consultation on the progress of the implementation of closure plans and other rehabilitative initiatives.

78. This is significant as closure decisions have long term socio-ecological impacts especially on; water, land access/use and health risks (.g dust, AMD and structural collapse of mines or structures in close proximity to communities).

79. Whilst the Act and the Bill continue to regulate mine closure as part of the broader environmental management framework for mining and related activities, through provisions

requiring applications for the issuance of closure certificates to be submitted to the Minister, subject to compliance assessments of environmental obligations, the Bill remains silent and does not attempt to mandate the notification of communities impacted by mining regarding the submission of closure applications. It also fails to provide for opportunities for these communities to object, participate in, or endorse closure applications, or to verify rehabilitation efforts through community monitoring mechanisms

80. Once a closure certificate is issued by the Department, liability is discharged both environmentally and financially, in line with the current provisions of the MPRDA. However, communities affected by mining have no statutory right to be notified of, participate in, or influence the application process for closure certificates.

81. It is at the closure stage of mining where extractive harm becomes apparent and permanent. Omitting participation of mining affected communities in the oversight of the application and evaluation of rehabilitation and closure obligations effectively weakens accountability and undermines public trust[41] as has been expressed and reported on in many historical instances.[42]

82. As part of the findings of the hearings by the South African Human Rights commission, it was reported[43] that in practice mining companies develop their own closure costing calculation models, resulting in multiple distinct approaches and no standardised approach for the assessment of appropriate liability. The fact that mining companies are responsible for determining their own model has, in some instances, meant that the required quantum for proper closure is grossly underestimated.

83. Although the Department commendably sought to address concerns around mine closure and rehabilitation through the development of a National Mine Closure Strategy in 2021, the strategy has not been revised since. This lack of progress is concerning, as it undermines efforts to establish greater certainty and best practices in addressing the full scope of issues related to mine closure, decommissioning, and rehabilitation, particularly in light of the evolving challenges faced by communities and the environment under climate change.

84. Communities should be able to participate meaningfully in mine closure planning and implementation. However, the proposed 2021 draft of the National Mine Closure Strategy, which has not been amended since, fails to provide clear, high-level guidelines on the form and scope of such participation. As a result, this critical aspect has not been reflected in the proposed amendments to the current MPRDA.

85. In relation to the oversight and regulation of financial provisioning, as mandated by the Financial Provisioning Regulations under NEMA, the Bill provides no clarity on whether amendments are

[41] Carolina is among hundreds of communities in South Africa that are threatened by unmaintained coal mines. HRW reported that of roughly 6,000 abandoned coal mines in South Africa, at least 2,322 are classified as “high risk” to the public. But only 27 of these have been cleaned since 2009, South Africa’s auditor general reported in 2021.

[42] Human Rights Watch Report.2022. The Forever Mines: Perpetual Risks from unrehabilitated Coal Mines in Mpumalanga, South Africa. See here https://www.hrw.org/report/2022/07/05/forever-mines/perpetual-rights-risks-unrehabilitated-coal-mines-south-africa

[43] National Hearing on the Underlying Socio-economic challenges of Mining Affected communities in South Africa (2016) at page 26.

required to ensure a formal review of closure plans, updates to closure design, rehabilitation milestones, or post-closure land use. The Bill's **financial provisioning framework** is framed around **sufficiency of funds**, not **adequacy of plans**. Furthermore, it remains unclear whether the Bill intends to introduce provisions for independent ecological verification of closure, reassessing ecological restoration targets, enhancing community engagement, or incorporating new environmental data into closure and rehabilitation processes.

86. As a result, closure plans submitted at the time of licensing under the MPRDA, and likely to remain unchanged under the proposed amendments, may persist for decades without revision, even in the face of shifting ecological baselines, evolving land use patterns, or increasing climate-related risks.

87. Given the above-mentioned concerns, Natural Justice proposes the following inclusions as part of the proposed amendments to the MPRDA. These measures are intended to address deficiencies in the closure application process, particularly those related to the issuance of closure certificates:

    83.1. The development of a legislative measure that would form part of a standalone access to information provision that requires annual community engagement on closure and rehabilitation progress, verified through public records.

    83.2. Mandatory public consultation on closing certificate applications that require notice to mining affected communities, a public comment period, and an objection mechanism prior to the decision to issue closure certificates.

    83.3. No financial provision held for mine closure, rehabilitation, or decommissioning should be released unless environmental restoration has been verified and signed off by affected communities through a formal participatory process. The Minister could in consultation with relevant stakeholders prescribe the procedures and standards for community verification, which could be reflected as a proposed amendment to the current closure procedures outlined in the MPDRA.

    83.4. Site-based oversight structures should be established with equal representation from mining rights holders and affected communities. These structures must be empowered to verify rehabilitation milestones as outlined in Environmental Management Programmes (EMPrs), ensuring transparency and accountability in mine closure processes.

    83.5. The amendment of current legal requirements governing the authorisation of EIAs and EMPr, to require comprehensive preparation and provision of information by mining rights applicants on the quality of land and sustainable options for potential post closure land use.

    83.6. The development of a legislative measure that requires a mandatory review of a closure plan submitted by applicants in response to: material changes, changes in land ownership and declared ecological emergencies (e.g water crisis, biodiversity threats)

Role of custodianship and objectives of the Act and Bill

88. Section 2 of the Act speaks to the objects of the Act. These objects speak to the State being a custodian of all minerals for the benefits of all people in South Africa through equitable access, expanding opportunities for historically disadvantaged persons, creating economic growth and development, promoting employment and advancing social and economic welfare of all South Africans, upholding section 24 of the Constitution and ensuring implementation of social and labour plans.

89. However, the role of state to be custodian and to achieve these objectives is not apparent with the objects of the Act resulting in irreparable and devasting consequences like:
    89.1. The Marikana Massacre[44];
    89.2. The killing of human rights defenders and environmental activists against mining like Bazooka Radebe from the Amadiba Crisis Committee[45] and Fikile Ntshangase from Somkhele[46];
    89.3. And most recently the tragedy at Buffelsfontein[47]
90. The lack of clarity of custodianship and its meaning in South Africa has been debated with academics and Courts not finding agreement.[48] Legal certainty is required to promote and respect the Constitutional value of supremacy fo the Constitution and the rule of law in terms of section 1(c).

91. Therefore to create legal certainty, we suggest that a definition of custodianship is included which reflect how state will bind to the objects within section 2 of the Act. The Act should include a section on how the people within South Africa hold state accountable should it not be in line with the objects of the Act. This accountability mechanism is in line with Constitution as per section 1(d) and section 195[49]1(b), (e) and (f).

---

[44] Council of the Advancement of the South African Constitution "Summat and Analysis of the report of the Marikana Commission of Enquiry" (2015) available at https://www.casac.org.za/wp-content/uploads/2015/02/Summary-and-Analysis-of-the-Report-of-the-Marikana-Commission-of-Inquiry.pdf.
[45] Life After Coal "Sikosiphi Bazooka Radebe" available at https://lifeaftercoal.org.za/defend-our-defenders/sikosiphi-bazooka-radebe.
[46] Centre for Environmental Rights "The killing of Somkhele environmental activist Fikile Ntshangase: A joint statement" available at https://cer.org.za/news/the-killing-of-somkhele-environmental-activist-fikile-ntshangase-a-joint-statement.
[47] Human Rights Watch "Death of Miners in South Africa a Government Failure" available at https://www.hrw.org/news/2025/01/22/death-miners-south-africa-government-failure.
[48] Isaah M, Sulaiman L A, Raji A, Aliu F, Yusuff R O, Abdulbaqi S Z, Akor S J, Malik N A 'Mineral resource exploitation and landownership rights: understanding the 'doctrine of custodianship' in minerals and mining legislation in South Africa' The Extractive Industries and Society 22 (2025) 101611; Minerals Council of South Africa v Minister of Mineral Resources and Energy and Others (20341/19) [2021] ZAGPPHC 623; [2021] 4 All SA 836 (GP); 2022 (1) SA 535 (GP) (21 September 2021); AGRI SA v MINISTER FOR MINERALS AND ENERGY 2013 (4) SA 1 (CC)
[49] 195. (1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:
(a) A high standard of professional ethics must be promoted and maintained.
(b) Efficient, economic and effective use of resources must be promoted.
(c) Public administration must be development-oriented.
(d) Services must be provided impartially, fairly, equitably and without bias.
(e) People's needs must be responded to, and the public must be encouraged to participate in policy-making.
(f) Public administration must be accountable.

92. To guide what custodianship and equitable access to minerals should entail, the African Charter on Human and People Rights Article 21[50] applies. South Africa has ratified the African Charter. Article 21 speaks to that wealth and natural resources will be disposed of in the exclusive interest of the people, that the disposal shall promote international economic cooperation based on mutual respect; equitable exchange and principles of international law. The disposal will be with a view to strengthening African unity and solidarity and eliminate all forms of foreign economic exploitation particularly those practiced by international monopolies so to enable a state's people to fully benefit for the advantages derived from their natural resources.

93. This in essence states what custodianship by a state shall entail and that the minerals of a state are for the benefit of all people. At present communities and Indigenous People in South Africa are not able to fully benefit from the advantages of mineral disposal, with large scale mines only making profits and illegal mining syndicates using the opportunity of unrehabilitated mines and abandoned mines as opportunity. As a custodian, the state should protect the rights and nautral resources of communities and Indigenous Peoples. These rights include the free, prior and informed consent to be able to say no to mining to protect the natural resource wealth which communities and Indigenous people benefit from. Communities and Indigneous Peoples who wish to benefit from mining, should be supported and have access to mining rights/permits in terms of artisanal mining permits read with Section 104 of the Act.

"*Failure to mandate the provision of adequate and effective compensation for displacement due to lack of regulation.*

94. During the construction stage, affected and interested persons often are removed from the land that they have often occupied for long periods of time, without due process or compensation being discussed and determined in advance. The flaw here is that communities are susceptible to being evicted, with their land expropriated before compensation is even offered.

95. Section 54, in our view, is flawed by virtue of its inadequacy in ensuring that compensation is discussed and determined before a mining right can be granted, mining operations can commence, and disputes sufficiently dealt with it. It is a common occurrence that communities and their traditional leaders and mining companies become embroiled in disputes around expropriation and relocation of communities, in order to make space for the construction of mines.

96. It is telling to note that section 54 does not provide guidance as to how and when compensation is deemed appropriate and justifiable in the circumstance. That scenario is left to the absolute

---

(g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
(h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
(i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

[50] African Charter of Human and Peoples Rights https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf

discretion of the mining or permit right holder, subject to a dispute resolution process overseen by an arbitrator or court.

97. Another flaw in section 54, that is not addressed by any amendment, is that the amendment Bill continues to make no provision made for the compensation of affected and interested parties who face impacts caused by mining, but who occupy land close to the mine and not land on which the project exists. Such people, by virtue of not actually occupying the land that seems to be in dispute, still suffer ill effects such as cracks in the houses, and dust affecting their crops from blasting processes. This gap in the law fails to empower them to receive compensation because of their occupancy not falling within the purview of section 54.

98. Having raised the above mentioned concerns regarding section 54, Natural Justice proposes the following measures that the Department should consider as part of its overall objective of amending the MPRDA to achieve the objectives of the Act as set out section 2 and its preamble:

    98.1. Mandate Pre-Right Compensation Agreements by ensuring that no mining right may be granted unless the applicant has concluded a written agreement with all affected landowners, occupiers, and proximate communities, detailing compensation for land acquisition, relocation costs, and foreseeable physical damages, OR has secured a determination by the Regional Mining Development and Environmental Committee.

    98.2. Define and develop regulations that outline the determination of just compensation, whereby the Minister publishes regulations outlining the methodologies for determining just and equitable compensation under Section 54, including market value, disturbance damages, cultural heritage loss, depreciation of neighbouring properties, and environmental remediation costs. These methodologies can be utilized by the RMDEC or the Minister in their discretion to ascertain compliance with the Act.

Specific comments

Below are a specific comments linked to identified provisions, following the format of the relevant section, the original draft texted provided by DMRE, the proposed changes to the draft text by Natural Justice and the rationale informing Natural Justice's proposed revisions.

Relevant section	Draft text	Proposed changes to draft text	Rationale
Definition of broad based economic empowerment	" 'broad based economic empowerment' [means a social or economic strategy, plan, principle, approach or act which is aimed at (a) redressing the results of past or present discrimination based on race, gender or other disability of		The removal of this section and reference only to the Broad-based Black Economic Empowerment Act will not address the specific inequalities and inequities in the mining sector. Both the previous definition and the current definition should be included to ensure inclusivity.

	historically disadvantaged persons in the minerals and petroleum industry, related industries and in the value chain of such 15 industries; and (b) transforming such industries so as to assist in, provide for, initiate or facilitate- (i) the ownership, participation in or the benefiting from existing or future mining, prospecting, exploration or production operations; (ii) the participation in or control of management of such operations; (iii) the development of management, scientific, engineering or other skills of historically disadvantaged persons; (iv) the involvement of or participation in the procurement chains of operations; (v) the ownership of and participation in the beneficiation of the proceeds of the operations or other upstream or downstream value chains in such industries; (vi) the socio-economic development of communities immediately hosting, affected by the of supplying labour to the operations; and (vii) the socio-economic		

	development of all historically disadvantaged South Africans from the proceeds or activities of such operations;] has the meaning assigned to it in the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);";		
Definition of community	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;"	A 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 and/or a traditional community if it- occupies a specific geographical area; or, in cases **where historical land dispossession prevents occupation of a specific geographical area, recognition may be based on other indicators of community identity and governance, including cultural ties, historical connection to ancestral lands, social cohesion, or community continuity without a defined area of jurisdiction.**	The definition of community should be inclusive as possible to ensure all types of communities are included, especially those who are impacted and affected by mining operations or fall under a community as mentioned in section 104.
Definition of	Gasification means a	*Gasification means a*	The original draft text framed

gasification	process applied to a non mined coal seams, using injection drilled from the surface, which enables the coal to be converted from original state into gas	*process applied to non mined coal seams in place, using injections wells drilled from the surface, which converts the coal from its original state into gas for extraction*	underground coal gasification purely as a technical conversions while completely ignoring its inherent destructive nature. Underground Coal Gasification (UCG) *requires* fracturing coal seams deep underground, creating uncontrolled combustion zones. This poses severe risks: groundwater contamination with carcinogens (benzene, phenols, heavy metals), potential land subsidence damaging structures and ecosystems, and uncontrolled release of pollutants into surrounding rock formations. UCG generates significant greenhouse gas emissions (CO2, fugitive methane) *during* the process. Critically, the resulting syngas is primarily used for combustion, releasing *more* CO2. Defining it solely as "conversion to gas" without acknowledging its carbon intensity and contribution to climate change does not address the long last impacts of this activity on communities By clearly stating that gasification is done for extraction, the revised definition will ensure that the regulations governing mining for underground gas deposits, as an extractive industrial activity,, water and soil address the full range of consequences, from environmental damage to land due to social harm.
Historically disadvantaged person	Deletion	This definition still is needed to be included and in addition should include Traditional communities and Khoi-san community.	This term needs a definition due to its usage in terms of Section 2 and 12 of the Objects of the Act. As South Africa proceeds with a just transition, the Just Transition Framework speaks to the implementation of restorative justice. Removing this definition removes restorative justice from the mining sector, which has been plagued with past harms which have continued. The communities and Indigenous Peoples of South Africa who have been impacted by the mining sector, and continue to be,

			should be recognised. This is especially in light of the goals set out in the Critical Mineral Strategy and the use of these minerals in renewable energy supply chains.
Interested and affected persons	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;	interested and affected persons' means a natural or juristic person or an association of persons with an interest in the proposed or existing prospecting or mining operation or who may be affected by the proposed or existing prospecting or mining operation or is required by law to be consulted with in terms of the National Environmental Management Act;	As mining operations not only impact those in the direct area, the scope of who may be interested, may be because of indirect impacts such as social, environmental and cultural. The limitation to direct interest does not enshrine the spirit of the Constitution in respect of the right to access to information, right to administrative action. In addition, civil society and watchdogs of human rights like the SA Human Rights Commission are entitled to have a vested interest in mining processes and role to play, including in meaning full consultation, submission of comments and other processes.
Definition of meaningful consultation	'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 bv availing all relevant information pertaining to the proposed activities enabling these parties to make an informed decision regarding the impact of the proposed activities;	'meaningful consultation' means that the applicant/holder, has in good faith facilitated consultation, before commencing any mining activities, in such a manner that reasonable opportunity is given to provide informed comment and objection by the landowner, lawful occupier, community 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 rights including land, livelihood, culture, social cohesion and environment bv availing all relevant information pertaining to the proposed activities. In terms of community, Interim Protection of Informal Land Rights Act 31 of 1996	Meaningful consultation is not only being able to make comments and parties needing to deal with the impacts, but to address all comments and objections adequately. This includes consultation on certain protections afforded to communities, local and Indigenous in terms of international law, and South African legal framework. Land is not the only right that is impacted by mining, other rights include all rights afforded in the Constitution which protect dignity, equality, livelihoods, culture, environment, water, basic services and social cohesion of a community.

		and the principles of free, prior informed consent as per the United Nations Declaration on the Rights of Indigenous Peoples are upheld;	
Definition of Regional Development and Environmental Committee	Regional Mining Development and Environmental Committee means a regional mining development and environmental committee established in terms of section 64(1)	Regional Mining Development and Environmental Committee means a regional mining development and environmental committee established in terms of section 64(1), **comprised of representatives from affected communities, with a mandate to review and advise on mining proposals, and closure plans and associated climate considerations**	Additions to the definition of the Regional Mining Development and Environmental Committee operationalize constitutional participatory rights, technical rigor, and climate-justice imperatives. They shift the Committee from a nominal institution to a robust guardian of environmental integrity and community well-being, all while preserving the Bill's overall structure and ensuring legislative tractability.
Definition of security of supply	Security of supply means the orderly supply of designated minerals or mineral products for local beneficiation in order to support and sustain national developmental imperatives.	Security of supply means the orderly supply of designated minerals or mineral products for local beneficiation **in a manner that safeguards ecologically sustainable development and in order to support and sustain justifiable national developmental imperatives."**	Without anchoring "security of supply" to "ecologically sustainable development," the proposed amendment definition risks legitimizing practices that sacrifice local environments and community well-being for abstract national goals, directly contradicting environmental justice principles and potentially violating Section 24 of the Constitution These proposed changes by Natural Justice advance the definition of "security of supply" as not an amoral, purely logistical concept, but is intrinsically linked to the foundational environmental obligations of the state, as established through s 24(b)(iii), NEMA and constitutional jurisprudence reflected for example through Fuel Fuel Retailers Association of Southern Africa v Director-General, Environmental Management: Department of Agriculture, Conservation and the Environment, Mpumalanga Province 2007 (6) SA 4 (CC) – see paras 45 and 82

Definition of invasive operations	No definition currently exists in the current draft version of the MPRDA	invasive operations" means any activity involving ground disturbance beyond hand-held sampling or site reconnaissance, including but not limited to drilling, blasting, excavation, trenching, track grading or vegetation clearance,	
Section 2(1)(e) Definition of optimal	Promote optimal economic growth and mineral resources development in the republic	"Promote optimal **, <u>within the context of justifiable ecologically sustainable development</u>,** economic growth and mineral resources development in the republic"	Natural Justice's suggested revision of the proposed amendment advances that any economic growth or mineral development deemed "optimal" must first and foremost comply with the principles of ecological sustainability, intergenerational equity, and demonstrable justification (balancing economic, social, and environmental factors). This anchors the pursuit of growth firmly within planetary boundaries and the constitutional right to a healthy environment, The proposed revision by Natural Justice also ensures that the definition remains internally consistent with the Act's constitutional imperatives and is aligned with NEMA and the Climate Change Act.

Section 3(3)	The Minister must ensure the sustainable development of South Africa's mineral resources within a framework of national environmental legislation, policy, norms and standards while promoting economic and social development	The Minister must ensure the **justifiable ecologically sustainable** development of South Africa's mineral resources within a framework of national environmental legislation, policy, norms and standards while promoting economic and social development	The original draft amendment text positively **explicitly links the Minister's duty to ensure sustainable development directly to the "framework of national environmental legislation, policy, norms and standards."** This provides a crucial anchor, preventing the Minister from operating in a vacuum and requiring alignment with existing environmental protections. However, Natural Justice supports the insertion of **"justifiable ecologically"** before "sustainable development". This will mandate the Minister to ensure development is not merely labeled "sustainable," but demonstrably *justified* through rigorous assessment proving its long-term ecological viability and social benefit outweighs costs. The proposed revision by Natural Justice aims to ensure there is a retention of the positive link to the national environmental framework but ensures the Minister's overarching duty is unambiguously tied to a robust, defensible standard of ecological sustainability and justice.
Section 7A	In order to give effect to the objects referred to in section 2(c) and (d), the Minister may, by notice in the gazette- (a) after consultation with the Council for Geoscience, designate certain areas for black persons for small-scale and artisanal mining;	"In order to give effect to the objects referred to in section 2(c) and (d), the Minister may, by notice in the gazette- (a) **in consultation with the Regional Mining Development and Environmental Committee**, designate certain areas for black persons for small-scale and artisanal mining **after considering technical advice from the Council for Geoscience**."	RMDECs, which include representatives from local government, and environmental stakeholders, possess crucial *contextual knowledge* about local water scarcity, biodiversity, existing land uses, and community vulnerabilities that the purely technical CGS lacks. Failing to prioritize consultation with RMDECs risks, as is apparent in the current draft amendment text, designating areas that are ecologically sensitive or socio-culturally inappropriate. Replacing "after consultation with the Council for Geoscience" with "**in consultation with the Regional Mining Development and Environmental Committee** will ensure that the RMDE which the Act

			envisions to support the Minister in the implementation of his/her duty, is the primary institutional body best suited to incorporate local environmental and community perspectives in advising the Minister ensuring the designation process considers ground-level impacts and rights from the outset. The Minister must *consider* this vital geological data, but the *consultative duty,* implying dialogue and integration of broader concerns, rests with the RMDEC. This structure as supported by Natural Justice's suggestion, will ensure technical feasibility is informed by, and balanced against, local sustainability and justice imperatives.
Section 9A	(1) The Minister must, in the form and manner prescribed, bv notice in the Gazette, invite applications—	(1) The Minister, in the form and manner prescribed, will bring to attention of the general public, invitation for applications	Artisanal miners and small scale miners being prioritised for these applications should be in line with the licensing criteria per the Artisanal and Small Scale Mining Policy of 2022. These would be historically disadvantaged South Africans, women and vulnerable groups. This would include many grassroot organisations who do not have access/ knowledge of the Government Gazette. Notice in the Government Gazette would purposefully preclude those from making application, who the small-scale and artisanal mining permit were created for.
Section 10C(1) Section 10C(3)	10C(1)The Regional Mining Development and Environmental Committee must consist of not more than 14 members appointed by the Minister and must include- (a) the Regional Manager as the chairperson (b) the Principal	10C.(1)The Regional Mining Development and Environmental Committee must consist of not more than 14 members appointed by the Minister and must include— (a) the Regional manager as the chairperson: (b) the Principal Inspector of Mines for that region; a (c) representatives officials from relevant national	Objections to mining are made by interested parties which impact communities and environment. Therefore there should be representation of these parties on the Committee. This include community representation, civil society and those who work with the National Environmental Management Act which governs the environmental requirements for mining. Should this stakeholders not be represented, the decisions made

	inspector of Mines for that region; a (c) representatives officials from relevant national departments or relevant organs of state within national, provincial and local sphere of government 10C(3) The Minister may appoint a representative from any relevant public entity from time to time: Provided that such representative shall not have a right to vote at any of the meetings of the committee	departments or relevant organs of state within the national, provincial and local sphere of government, including those dealing with environmental protection in terms of the National Environmental Management Act. (d) **representatives from mining affected communities and civil society who engage with mining law** (2) **The members appointed to the Regional Mining Development and Environmental Committee must have expertise in mineral and mining development, mine environmental management and environmental law.**	will not be fully informed.
Section 18(5)(a) Section 18(5)(b)	(a) A prospecting 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 such application has been refused (b) whilst the prospecting right remains in force, the holder of such right is entitled to continue to conduct prospecting operations in terms of the existing prospecting work programme	"(a) A prospecting 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, **provided that the Minister may suspend the force of the right pending verification of compliance with the conditions of the relevant environmental authorisation and prospecting work programme** (b) whilst the prospecting right remains in force, the holder of such right is entitled to continue to conduct prospecting operations in terms of the existing prospecting work	The original proposed amendment clauses have the effect of unconditionally entitling the holder to continue operations "in terms of the existing prospecting work programme" while the right remains in force. **This fails to acknowledge that environmental risks and impacts can escalate or change over the life of a prospecting right.** The "existing" work programme might be based on outdated assumptions or proven insufficient to mitigate newly identified risks. Allowing continuation *without* linking it to an *up-to-date* assessment of compliance and environmental performance ignores the precautionary principle and the state's duty to prevent harm. Adding the proviso **"provided that the Minister may suspend the force of the right pending verification of compliance..."** to subclause (a) has the effect of empowering the

		programme **and applicable environmental authorisation**	Minister to intervene to prevent ongoing harm during the renewal period while compliance is formally verified. It does *not* mandate automatic suspension but provides a necessary safeguard. Adding **"and applicable environmental authorisation** to subclause (b) has the effect of conditioning the holder's entitlement to continue operations on adherence *not just* to the work programme, but crucially *also* to the binding environmental permits and plans.
Section 22(4)(c)	Upon receipt of the application, the Minister must within the prescribed period, accept the application and notify the applicant in writing- (c) To meaningfully consult with interested and affected persons, within the prescribed period, regarding the prescribed social and labour plan and submit a social and labour plan in the prescribed manner,	"Upon receipt of the application, the Minister must within the prescribed period, accept the application and notify the applicant in writing- (c) To meaningfully consult with mining affected communities, within the prescribed period, regarding the prescribed social and labour plan **and secure their approval thereto,** submit a social and labour plan in the prescribed manner, **which shall be duly considered by the Minister prior to granting approval**.	While the original proposed amendment text commendably uses "meaningfully consult," **it fails to specify the *outcome* or *weight* of that consultation in the Minister's final decision.** The clause mandates the *process* but not the *substance* of justice. Adding **"and secure their approval thereto,"** after "meaningfully consult" has the effect of transforming consultation from a passive information-sharing exercise into an active negotiation requiring community *agreement* on the SLP's content. It establishes community acceptance as a necessary precondition, aligning with FPIC principles and giving substantive weight to the consultation process. Adding **"which shall be duly considered by the Minister prior to granting approval"** has the effect **of** explicitly mandating the Minister to actively engage with the *final* SLP *and the consultation record/community approval* before making a decision. It prevents the Minister from ignoring the outcomes of the consultation/approval process
Section 22(5)	Upon receipt of the application, the	"**Subsection (5) is reinstated and amended to read:**	The proposed revision of the deletion of subsection 5 supports the reinstating of the critical

	Minister must within the prescribed period, accept the application and notify the applicant in writing- Deletion of subsection (5) The regional manager must within 14 days of receipt of the environmental reports and results of the consultation contemplated in subsection 4(b) and section 40 forward the application to the Minister for consideration	The regional manager must, within 14 days of receipt of the environmental reports and results of the consultation contemplated in subsection 4(b) and section 40, **complete their assessment of the application and** forward the application **together with their assessment and recommendations** to the Minister for consideration."	temporal and procedural safeguard of subsection (5) but enhances it to address potential concerns about the RM's role. Adding **"together with their assessment and recommendations"** clarifies that the RM must forward *both* the underlying evidence *and* their synthesized advice. This strengthens the RM's advisory role by ensuring their conclusions are presented concurrently with the evidence, making their advice more robust and transparent for the Minister.
Section 23(1)(g)	Subject to subsection (4) , the Minister must grant a mining right if- (g) the applicant is not in contravention of any provision of this Act	"Subject to subsection (4), the Minister must grant a mining right if- (g) the applicant is not in contravention of any provision of this Act **or any other legislation pertaining to the Republic's climate change obligations.**	Subsection (g) only prohibits granting the right if the applicant contravenes *this specific mining Act*. This ignores the applicant's potential violations of South Africa's *other* binding climate laws and commitments, particularly the Climate Change Act, and Nationally Determined Contribution (NDC) under the Paris Agreement. This siloed approach undermines the principle of "cooperative governance" (Section 41, Constitution) and the state's duty to ensure laws are harmonized to achieve sustainable development and protect environmental rights (Section 24, Constitution). Furthermore, the NDC define South Africa's core sustainable development pathway, including its just transition. Granting mining rights without assessing compliance with *these* instruments treats mining as an isolated economic activity, not an integral part of (and potential threat to) the nation's broader sustainable development framework. By adding "or any other legislation

			pertaining to the Republic's climate change obligations, has the effect of mandating that the Minister consider contraventions of any law, in this case key climate laws or national/international commitments. This insertion requires that the Minister incorporates an integrated assessment which requires a nationally driven, coordinated and cooperative legal and administrative response to responding to climate change
Section 24(2)(b)	An application for renewal of a mining rights must- (b) be accompanied by a report reflecting the right holders compliance with the conditions of the National Environmental Management Act, 1998 (No. 107 of 1998)	*An application for renewal of a mining rights must-* *(b) be accompanied by a report reflecting the right holders compliance with the conditions of the National Environmental Management Act, 1998 (No. 107 of 1998) <u>and any other relevant law</u>*	Limiting the compliance report solely to the National Environmental Management Act (NEMA**)** creates a critical gap. The original amendment text fails to mandate reporting on compliance with the *Climate Change Act* and other laws regulating Greenhouse Gas (GHG) emissions and climate impacts, despite mining (especially coal) being a major GHG source**.** Renewal is a pivotal moment to assess cumulative impacts and future risks. A right holder could be fully NEMA compliant (managing water, waste, biodiversity) while simultaneously operating a massively emissions-intensive mine, violating carbon budgets or adaptation requirements under the Climate Change Act. The proposed revision by Natural Justice supports the integration of essential climate accountability into the renewal process with minimal alteration: By adding "and any other relevant legislation, the proposed revision explicitly broadens the scope of the required compliance report. It moves beyond the narrow confines of NEMA to encompass *all* relevant environmental and climate laws.
Section 24(3)(a)	The Minister must grant the renewal of a	*The Minister must grant the renewal of a mining*	Limiting the compliance report solely to the MPRDA creates a critical gap.

	mining right if the application complies with subsection (1) and (2) and the holder of the mining right as complied with - (a) terms and conditions of the mining right and is not in contravention of this act	*right if the application complies with subsection (1) and (2) and the holder of the mining right as complied with -* *(a) terms and conditions of the mining right and is not in contravention of this act <u>and any other law</u>*	The proposed revision by Natural Justice supports the integration of essential climate accountability into the renewal process with minimal alteration: By adding "and any other relevant legislation, the proposed revision explicitly broadens the scope of the required compliance report. It moves beyond the narrow confines of NEMA to encompass *all* relevant environmental and climate laws
Section 24(5)(a))	5(a) 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	A mining right in respect of which an application for renewal has been lodged **<u>at least 90 days prior to its expiry date</u>**, shall, despite its stated expiry date, remain in force **only** until such time as such application has been granted or refused, <u>or for a maximum period of 180 days after the expiry date, whichever occurs first. The Minister may, by written notice and based on compelling reasons related to the complexity of the application or unforeseen circumstances, extend this maximum period by a further 90 days. The Minister retains the power to suspend operations under the right during the review period if there is evidence of material non-compliance with the existing right conditions or applicable laws, or if there is a serious threat to the environment or public health."</u>	The original amendment provision allows a mining right to operate indefinitely *beyond its legal expiry date* solely because a renewal application is pending. The effect of this is that the right operates under this extension, and does so *without* its original, time-bound conditions and environmental safeguards being formally renewed. The proposed revision by Natural Justice has the effect of supporting the preservation of operational continuity while introducing crucial safeguards against indefinite operation and ongoing harm. Granting the **Minister explicit power to suspend operations during the review period** based on non-compliance or threats to environment/health provides a vital safety valve, as it allows the Minister to act immediately to stop ongoing harm without waiting for the final renewal decision. The core concept of continuity during review is maintained, but it is now bounded and conditional on responsible operation.
Section 24(5)(b	(b) Whilst the mining right remains in force in terms of paragraph (a), the holder of the mining right is entitled to continue mining operations in terms of	b) Whilst the mining right remains in force in terms of paragraph (a), the holder of the mining right is entitled to continue mining operations **<u>strictly in accordance with the</u>**	By framing continuation as an absolute "entitlement," the original provision strips the Minister of any discretion to impose *temporary* restrictions or suspensions during the review process, even in the face of clear and

	the existing mining work programme	**existing mining work programme and all applicable laws and conditions, provided that the Minister may, by written notice and based on compelling evidence, immediately suspend specific operations or impose additional conditions if:** **(i) the holder is in material breach of the existing mining right conditions or any relevant environmental or health and safety legislation; or** **(ii) there is a serious and imminent threat to the environment, public health, safety, or national water resources arising from the continued operations under the existing programme.**"	present danger. If evidence emerges during review showing the mine is causing irreversible damage, contaminating water, or operating unsafely, the Minister is rendered impotent until the final renewal decision The proposed revision by Natural Justice has the effect of preserving the core operational continuity principle but crucially conditions it on *ongoing compliance. By adding* **"strictly in accordance with the existing mining work programme and all applicable laws and conditions",** the revised provision safeguards communities and the environment from any continuation of environmental violations where it is apparent. The key addition is the "**provided that"** clause granting the Minister power to suspend operations or impose conditions during the review period based on compelling evidence of either material breach. The proposed revision of this clause empowers the state to act swiftly to prevent immediate harm or stop ongoing violations without waiting for the final renewal decision, upholding the precautionary principle and the state's duty to protect. The "entitlement" remains, but it is now a *conditional* entitlement, reflecting the reality that the right to mine is always subject to the state's overriding duty to safeguard the environment and public welfare.
Section 25(2)(h)	The holder of a mining right must- (h) submit the prescribed annual report detailing the holder's compliance with section 2(d) and	"The holder of a mining right must- (h) submit the prescribed annual report detailing the holder's compliance with section 2(d) and (f), section 100(3)(b), the	The original draft amendment as currently drafted, renders the DMRE unable to effectively "collate, compile and synthesise" sector progress (as required by S25(12) CCA) if individual mines aren't

	(f), section 100(3)(b), and the approved social and labour plan	approved social and labour plan, **and compliance with applicable sectoral emissions targets.**"	mandated to report *their specific compliance status with those targets*. Without this data at the mine level, the DMRE's annual report to Cabinet lacks granular accuracy, masking non-compliance and hindering effective climate policy adjustment. This omission renders the CCA's reporting architecture ineffective for the mining sector. By adding **"and compliance with applicable sectoral emissions targets"** to the list of reporting requirements, has the effect of explicitly mandating that each mining right holder must report annually on how its operations align with the emissions reduction targets set for the mining sector under the Climate Change Act. This specific mandatory reporting provides the DMRE with the necessary mine-level compliance data to accurately discharge its S25(12) of the Climate Change Act duty to collate, compile, synthesize, and report progress to Cabinet. The term "applicable" provides necessary flexibility, acknowledging that the specific mechanisms for translating the sectoral target to individual mines may evolve.
Section 26(1)(c)	The Minister must, in order to regulate the mining industry to meet national development imperatives and to bring optimal benefit for the Republic, promote the beneficiation of mineral resources in the Republic- (c) to develop local beneficiation capacity	The Minister must, in order to regulate the mining industry to meet national development imperatives and to bring optimal benefit for the Republic, promote the beneficiation of mineral resources in the Republic- (c) to develop local beneficiation capacity, **in a fair. equitable and socially just manner.**	The proposed revision by Natural Justice supports the promotion of the development of local beneficiation capacity in a fair, equitable and socially just manner reflecting an awareness that past industrial development often concentrated benefits while externalizing costs onto workers and communities. The suggested revision advocates for *economic gains* from beneficiation that are distributed more broadly ("fair, equitable") and that the process avoids exploitative labour practices or marginalizing certain groups ("socially just").
Section 26(2)(b)	The Minister must- (b) taking into	*The Minister must-* *(b) taking into*	Prioritizing *only* national imperatives like "industrialization" or "macro-

	consideration the national development imperatives, such as macro-economic stability, energy security, industrialization, food security and infrastructure development and	*consideration the national development imperatives, such as macro-economic stability, energy security, industrialization, food security and infrastructure development,* ***and promoting fair, equitable and socially just local beneficiation of mineral resources***	economic stability" creates a dangerous loophole. It assumes these automatically translate to local benefit or justice. History shows the opposite: resource-rich communities often suffer displacement, pollution, loss of livelihoods, and cultural erosion while wealth is extracted elsewhere. This clause *facilitates* this injustice by failing to mandate that the Minister actively ensure **local** benefits are **fair, equitable, and socially just**. Without this explicit requirement, "beneficiation" could simply mean processing minerals near the mine solely for export, enriching national coffers and corporations while leaving communities impoverished and polluted , the antithesis of environmental and social justice The revision inserts the specific requirement missing from the original text: that the Minister *must* consider **"the promotion of fair, equitable and socially just local beneficiation."** Beneficiation legally often means processing the mineral, not ensuring local communities benefit fairly. Beneficiation is a technical and economic term focused on the resource and not the people. If the legislator intended beneficiation to include fair community benefits, it would be explicitly stated here, where the Minister's considerations are defined. Its absence here is a critical gap. Adding the specific phrase ensures the intention for just local outcomes is unambiguous. Lastly, local beneficiation must not be left to the Mining Charter only. Without statutory backing, the Charter's **targets remain aspirational. Elevating beneficiation to the Act itself makes non-compliance a legal, not just policy, breach.**
Section	The Minister must-	*c)* **<u>considering the advice</u>**	Focusing solely on "security of supply

26(2)(c	(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	**<u>of the council as contemplated in section 56B, publish in the prescribed manner conditions required to ensure security of supply for local beneficiation and to promote fair, equitable and socially just local beneficiation outcomes for mining-affected communities, including measurable targets and timelines aligned with the Mining Charter beneficiation and B-BEEE scorecard requirements,</u>**	for local beneficiation" risks turning the Minister's duty into a narrow procurement exercise, ensuring that raw minerals flow to downstream processors, but without any guarantee that the benefits of processing actually reach the workers, small-scale entrepreneurs, or historically marginalized neighbourhoods. The original framing implicitly prioritizes the operational needs of the beneficiation industry (often large corporations) over the fundamental question of *who benefits* and *how justly*. It assumes that simply having beneficiation occur geographically "locally" automatically translates to fair, equitable, and socially just outcomes for the affected mining communities. Lastly isolating justice from the core economic mechanisms (like securing supply) is a critical error. It allows beneficiation projects to technically comply with peripheral "community development" requirements (like building a clinic) while the core economic engine , the supply agreements and beneficiation operations themselves –, perpetuate inequitable wealth extraction and control. The proposed revision explicitly supports that the mechanisms guaranteeing resource supply for local beneficiation must be designed and implemented in a manner that actively promotes fairness, equity, and social justice. This means the conditions cannot solely focus on guaranteeing volume or continuity of supply to processors; they must inherently incorporate principles ensuring that the *arrangements* governing that supply deliver tangible, just benefits to affected communities.

Section 27A(2)	Any person who wishes to apply to the Minister for an artisanal mining permit must simultaneously submit an artisanal mining environmental authorisation, as prescribed, and must lodge the application	Any person who wishes to apply to the Minister for an artisanal mining permit must simultaneously submit an artisanal mining environmental authorisation, as prescribed, and **must lodge the application for operation within a community designated artisanal mining zone established under section 7A, where miners operate collectively**	The original draft text requires each person to apply solo for both an artisanal mining permit and the associated environmental authorisation, which has the effect of entrenching an approach to mining that treats artisanal miners as isolated entrepreneurs rather than members of communities with shared rights and responsibilities. By ignoring the potential of section 7A to create designated collective zones, the Bill forfeits an opportunity to foster mutual oversight through collective permits and environmental clearances, pooled resources, and economies of scale that could improve both compliance and environmental stewardship. By adding a reference to community designated mining zones established under section 7A, where miners operate collectively, the revisions anchors individual permit applications within a framework of communal oversight and shared responsibility. This change does not rewrite the permit procedure but simply embeds it into the collective zones mechanisms already envisioned in the Bil. It ensures that communities have the primary role in defining where and how artisanal mining may occur, reinforcing environmental monitoring, dispute resolution, and benefit sharing at the local level. In so doing it balances the state licensing prerogative with the constitutional right of communities to participate in decisions that directly affect their land and livelihoods, without imposing any sweeping new categories or procedural burdens on the Minister.
Section 28(2)(c)	The holder of a mining right, small scale mining permit or artisanal mining permit, the manager of	(c) the prescribed annual report detailing accurate information and data in respect of mineral reserves and resources	As drafted, sub paragraph c omits any requirement to disclose how minerals move from mine to market, ignoring the social and environmental harms that can flow

	any mineral or mineral product processing plant and any agent, purchaser or seller of any mineral or mineral product operating as part of or separately from a mine, must submit to the Director-General- (c) the prescribed annual report detailing accurate information and data in respect of mineral reserves and resources within the mining areas	within the mining areas, **including but not limited to information required to demonstrate responsible sourcing and the transparency of supply chains relating to such minerals or mineral products**	through poorly controlled supply chains, such as child labour, land or land grabs. The proposed revised sub paragraph c transforms a purely geological report into a joint environmental-social accountability tool by requiring holders of mining rights to not only report what lies underground but also demonstrate how their minerals are responsibly sourced and tracked through subsequent stages of the value chain. The suggested revision builds on existing data systems rather than overhauling them, and signals to investors and operators in other jurisdictions such as the EU for example, that South Africa will not separate mineral wealth from human rights or environmental integrity
Section 28(3)	The holder of a mining right must submit to the Minister the prescribed annual report detailing the holder's compliance with section 2(d) and (f), the broad based socio-economic empowerment prescribed elements of ownership inclusive procurement, supplier and enterprise development, human resources development, employment equity and mining community development and the approved social and labour plan	The holder of a mining right must, prior to submission to the Minister, make the prescribed annual report detailing the holder's compliance with section 2(d) and (f), the broad-based socio-economic empowerment elements of ownership inclusive procurement, supplier and enterprise development, human resources development, employment equity and mining community development, and the approved social and labour plan, **available for review and comment by directly affected mining communities for the prescribed period, and must submit the report together with any community comments to the Minister**	The proposed revision does not reorder or replace current obligations, it merely extends the process to include a defined comment period, ensuring that the Minister receives both the holders account and the community's perspective together. Submitting reports solely to the Minister, without independent verification by those directly experiencing the mine's impacts, creates a significant risk of inaccurate or misleading reporting. Mining companies have an inherent conflict of interest in self-reporting their compliance. Communities possess vital on-the-ground knowledge about actual job creation, procurement practices, environmental management, and the real impact (or lack thereof) of community development projects The proposed revision balances efficiency since comments can be time bound and procedural, with democratic legitimacy because affected communities gain a statutory right to see, challenge and enrich the report before finalized.

			This proposed revision respects the need for timely submissions whilst safeguarding the environmental and social justice goals at the heart of section 2 of the Bill.
Section 30(2) Section 30(3)	"(2) No information or data may be disclosed to any person if it contains information or data which is of commercially nature and is supplied to be treated as confidential [in confidence] by the supplier of the information or data. " (3) Any person submitting information or data in terms of section 28 or 29 must inform the Regional Manager concerned and indicate which information and data is of commercial nature and must be treated as confidential and may not be disclosed.	"(2) No information or data may be disclosed to any person if it contains information or data which is of commercially nature and is supplied to be treated as confidential [in confidence] by the supplier of the information or data, provided that this prohibition shall not apply if disclosure is necessary to protect public health, safety, or the environment, or is required in the public interest as determined by the Minister after consultation with relevant stakeholders." *(3) Any person submitting information or data in terms of section 28 or 29 must inform the Regional* **must indicate which** information and data is claimed to be of a commercial nature and confidential, providing reasons based on criteria to be prescribed by the Minister. The Regional Manager may request justification and, if unconvinced, refer the claim to the Minister for determination. Information remains confidential pending final determination." **Add a new subsection (4) which would read as follows:**	In terms of Section 30 of the Act, disclosure of information should take place to any person to achieve the objects referred to in section 2, to give effect to the Constitutional right to access to information and if such information is publicly available. This limitation being proposed on commercial nature and confidential information is an unreasonable limitation of the right to access to information and enforcing social labour plans which are based on commercial dealings of mining operations. In addition, no mention is made of access to the designated application system, which should be publicly available information.

		(4) "*Where information or data submitted under section 28 or 29 is designated as confidential under subsection (3), relates to impacts on public health, safety, or the environment, the supplier must simultaneously provide a non-confidential summary or version of that information sufficient to enable the public and affected communities and the publics to understand its material implications.*	
Section 37(1)	All environmental requirements provided for by this Act will be implemented in terms of the National Environmental Management Act, 1998	All environmental requirements provided for by this Act will be implemented in terms of the National Environmental Management Act, 1998, and, where applicable, in accordance with any other **and any other applicable legislation specifically relating to climate change.**"	The original draft text of this provision had the effect of narrowly elevating NEMA as the sole vehicle for environmental oversight and inadvertently sidelining other critical statutes, like the National Water Act, and emerging climate-change legislation that carry distinct procedural safeguards and substantive standards. The proposed revision to the draft text aims to advocate that that the environment is safeguarded not only through NEMA's broad umbrella but also by the specific rules and standards of other sectoral laws whenever they apply.
Section 43(1A)	(1A) Despite the issuing of the closure certificate, the holder or owner referred to in subsection (1) remains liable for any latent or residual environmental liability, pollution, ecological degradation, the pumping and treatment of extraneous water which may become known in future.	Replace "owner" with "ultimate beneficial owner"	Natural Justice commends the Department for the reinforcement of the polluter's pay principle in the insertion of this provision, by explicitly stating that liability for latent or residual environmental damage persists indefinitely even after a formal closure certificate is issues. While strong in principle, there is some aspects of the original draft text that could be strengthen to reinforce the polluter's pay principle. The definition of "holder or owner"

			can be further refined to "**ultimate beneficial owner**" as this will extend liability to parent companies, or shareholders in instances where operational holders or owners dissolve or become asset poor after closure thereby risking the potential of escaping liability. This proposed inclusion ensures liability extends beyond the immediate permit holder to the entities or individuals who ultimately control and profit from the mining operation, closing a critical loophole used to evade long-term responsibility.
Section 43(2)	On the written application, in the prescribed manner, by the holder of a prospecting right, mining right, retention permit, small scale mining permit or artisanal mining permit, or previous holder of an old order right or previous owner of works that have ceased to exist, the Minister may transfer such environmental liabilities and responsibilities as may be identified in the environmental management report and any prescribed closure plan to a person with such qualifications as may be prescribed	On the written application, in the prescribed manner, by the holder of a prospecting right, mining right, retention permit, small scale mining permit or artisanal mining permit, or previous holder of an old order right or previous owner of works that have ceased to exist, the Minister may transfer such environmental liabilities and responsibilities as may be identified in the environmental management report and any prescribed closure plan, **provided the applicant demonstrates good cause for the transfer of such liabilities and responsibilities**, to a person with such qualifications as may be prescribed.	By inserting a requirement that the applicant must demonstrate good cause for the transfer of environmental liabilities and responsibilities, the provision strikes a balance between commercial flexibility and public accountability. By embedding a "good cause" requirement in the text, parliament gives regulators a transparent benchmark against which to assess every transfer application. This clarity will benefit all parties in that applicants will need to justify transfer requests taking into consideration financial capacity, mining affected community well-being, and the environmental integrity of the natural resources supporting the well being of present and future generations.
Section 43(14)	The holder of a right or permit, who formally or legally abandons the right and has not conducted any invasive operations in terms of the right, is exempted from the provisions of section 43(6)	The holder of a right or permit, who formally or legally abandons the right and has not conducted any invasive operations in terms of the right, **where "invasive operations" means any activity involving ground**	As written, "invasive operations" is left entirely undefined. Without legal clarity, even modest test pits or track-building for vehicles might be argued to constitute "invasive operations," allowing the company to avoid cleanup entirely. The exemption in the original draft

		disturbance beyond hand-held sampling or site reconnaissance, including but not limited to drilling, blasting, excavation, trenching, track grading or vegetation clearance, is exempted from the provisions of section 43(6).	text focuses narrowly on the *absence* of specific "invasive operations" by the *final* holder. It fails to consider scenarios where multiple holders might have conducted seemingly minor, individually "non-invasive" activities over time (e.g., repeated small-scale sampling, temporary camps), cumulatively degrading the site. The last right holder could then abandon the right, claiming exemption despite the collective impact, leaving the land impaired and communities without recourse. By embedding a concise definition of "invasive operations" directly into the clause, the proposed amendment makes it crystal clear which pre-abandonment activities oblige a rights holder to rehabilitate in terms of section 43(6). This suggested revision clarifies that only those rights relinquished without any ground disturbing works, escape rehabilitation duties. Furthermore, The exemption *can* be justified for true non-use, but *only* if "non-use" is rigorously defined to exclude *any* physical disturbance. The current text fails this test.
Section 45(1)	45(1) If any prospecting mining reconnaissance or production operations cause or results in ecological degradation, pollution or environmental damage which may be harmful to the health or well being of anyone and requires urgent remedial measures the Minister may direct the holder of the relevant right or permit in terms of this Act or the holder of an environmental	If any prospecting mining reconnaissance or production operations cause or results in ecological degradation, pollution or environmental damage which may be harmful to the health or well being of anyone and requires urgent remedial measures the Minister **must** direct the holder of the relevant right or permit in terms of this Act or the holder of an environmental authorisation in terms of National Environmental Management Act, 1998 to	Replacing "may" with "must" transforms the Minister's power into a clear legal duty to issue remedial directions whenever urgent harm is identified. This change does not mandate a specific timetable or form of remedy, leaving the Minister full discretion over the content and timing of the directive, but it removes any question about *whether* a directive is required at all. A statutory obligation aligns with constitutional and international norms requiring both preventive and corrective environmental action. Requiring the issuance of a direction is a threshold duty, and therefore regulation authorities will still control

	authorisation in terms of National Environmental Management Act, 1998 to		scope and schedule of the directives.
Section 50(4)(a)	No person may for the purposes of an investigation contemplated in subsection (1) enter upon land unless the owner, occupier or person in control of such land or community has been consulted and notified, in writing of the intention to enter and to conduct the investigation.	No person may for the purposes of an investigation contemplated in subsection (1) enter upon land unless the owner, occupier or person in control of such land **has been notified in writing and consulted, and the affected community or communities have been notified in writing and have provided their free, prior and informed consent** to the intention to enter and to conduct the investigation	For individual owners/occupiers, notification and consultation remains sufficient in the proposed revision. However, for affected communities, particularly those who do not have secure land tenure but have rights protected under IPILRA, the requirement of notification and consultation is explicitly strengthened to have “provided their free, prior and informed consent” The addition of “free, prior and informed consent” signals that communities must understand the purpose, scope and potential impacts of the investigation, and agree without coercion. Requiring “meaningful engagement” makes consultation a two-way process, where communities can ask questions, request clarifications and voice concerns
Section 54(2)(a)	The holder of a reconnaissance permission, prospecting right, mining right or mining permit must notify the relevant Regional Manager if that holder is prevented from commencing or conducting any reconnaissance, prospecting or mining operations because the owner or the lawful occupier of the land in question— (a) call upon the owner or lawful of the land to make representations regarding the issues	"(a) call upon the owner or lawful occupier **or a community whose informal land rights are protected under applicable law including the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996),** of the land to make representations regarding the issues raised by the holder of the reconnaissance permission, prospecting right, mining right, small-scale mining permit or artisanal mining permit"	The original draft text limits representation rights to the "owner or lawful occupier." This **fails to recognize communities holding land under customary tenure or informal rights protected by statutes like South Africa's Interim Protection of Informal Land Rights Act (IPILRA)**. IPILRA explicitly safeguards land rights acquired through informal means, including ancestral or traditional occupation, even without formal title or permits. Excluding these communities from being "called upon" denies them a critical voice regarding mining applications impacting their land and livelihoods. Furthermore, The term "lawful occupier" is typically interpreted narrowly within formal property law frameworks, focusing on individuals with leases, permits, or licenses. It inherently **excludes collective**

	raised by the holder of the reconnaissance permission, prospecting right, mining right, small-scale mining permit or artisanal mining permit		**communities whose occupation and use are sanctioned by custom, tradition, or laws like IPILRA, but not by individual formal title.** This ambiguity creates a gap where mining applicants and regulators could bypass the most directly affected groups simply because their land rights exist outside the formal system,
Section 96(2)(a)	Subject to subsections (2A) and (2B), an appeal in terms of subsection (1) does not suspend the administrative decision, unless it is suspended by the Minister (2A) Any pending administrative decision in terms this Act, which, in the opinion of the Minister, may affect the outcome of an appeal in terms of subsection (1), must be suspended pending the finalization of the appeal	Subject to subsections (2A) and (2B), an appeal in terms of subsection (1) does not suspend the administrative decision, unless it is suspended by the Minister. (2A) Any pending administrative decision in terms of this Act that may affect the outcome of an appeal in terms of subsection (1) must be suspended pending the finalization of the appeal **if the Minister, upon reasonable grounds communicated in writing, determines that the decision is likely to prejudice the appeal**.	When an appeal challenges a decision with significant environmental or social consequences as envisaged by the proposed amendment in section 96(2)(a), the *potential* for serious, irreversible harm during the appeal process must be paramount. Relying solely on the Minister's subjective "opinion" may create a systemic bias *against* suspension, favouring project continuity over safeguarding environmental integrity and community rights during the crucial appeal period. The proposed revision to the original draft text attempts to strike a balance between administrative agility and the rule-of-law imperative that powerful decisions be justified in accordance with the principles of PAJA. The proposed revision by Natural Justice in no way advocates for the elimination of the Minister's power to suspend; instead it requires that suspensions be anchored in identifiable reasons thereby enhancing transparency, predictability, and accountability
Section 102(1)	A reconnaissance permission, prospecting right, mining right, mining permit, retention permit, reconnaissance permit, prospecting work	A reconnaissance permission, prospecting right, mining right, mining permit, retention permit, reconnaissance permit, prospecting work programme, mining programme, social and	The exclusion of mandatory consultation with key environmental agencies, specifically the Department of Water and Sanitation and the Department of Forestry, Fisheries and the Environment, risks weakening coordinated oversight.

	programme, mining programme, social and labour plan or an environmental authorisation issued in terms of the National Environmental Management Act, 1998, as the case may be, must not be amended or varied (including by extension of the area covered by it or by the addition of minerals or a share or shares or seams, mineralised bodies or strata, which are not at the time the subject thereof) without the written consent of the Minister	labour plan or an environmental authorisation issued in terms of the National Environmental Management Act, 1998, as the case may be, must not be amended or varied (including by extension of the area covered by it or by the addition of minerals or a share or shares or seams, mineralised bodies or strata, which are not at the time the subject thereof) without the written consent of the Minister, **following consultation with directly affected mining communities and employees and the Departments of Water and Sanitation and of Forestry, Fisheries and the Environment**.	Environmental authorisation amendments often affect water quality, aquatic ecosystems, and biodiversity, yet the Bill centralizes decision-making within the mining portfolio. This undermines interdepartmental collaboration and the integrated approach needed to safeguard environmental integrity. Given that section 96(1)(b) of the Bill already provides for oversight by these departments, their involvement should be mandatory in decisions impacting water and environmental resources. The proposed revision by Natural Justice targets the consultation to high-risk amendments, focusing on the departments' core mandates. The Minister retains final decision-making power, but this power can only be exercised *after* these key stakeholders have been consulted on the relevant amendments. This ensures affected voices are heard and expert environmental input is obtained without removing the Minister's ultimate responsibility.
Section 107(1)(g)	(1) The Minister may, by notice in the Gazette, make regulations regarding— the form, conditions, issuing, renewal, abandonment, suspension or cancellation of any permit, licence, certificate, permission, receipt or other document which may or must have to be issued, granted, approved, required or renewed in terms of this Act;	"(1) The Minister may, by notice in the Gazette, make regulations regarding— the form, conditions, issuing, renewal, abandonment, suspension or cancellation of any permit, licence, certificate, permission, receipt, **environmental management programme,** or other document which may or must have to be issued, granted, approved, required or renewed in terms of this Act"	The proposed amendment eliminates the explicit mention of an Environmental Management Programme (EMPr) from the Minister's regulation-making powers, as previously provided in the Mineral and Petroleum Resources Development Amendment Act. This change subtly but significantly undermines the importance of site-specific environmental plans. EMPrs are legally binding tools that convert broad environmental obligations into practical measures for monitoring, mitigation, and rehabilitation. By categorizing EMPrs under vague references like "any … other document," the Bill risks enabling their amendment, suspension, or cancellation without the transparent procedures required for mining rights

			or permits. While EMPs are linked to the Environmental Authorisation (EA) under NEMA, their *effective implementation* is absolutely central to the environmental sustainability of the *mining operation* itself. Excluding EMPs from the Minister's regulatory powers here implies that ensuring EMP compliance is solely a NEMA function, not a core responsibility of the *mining* regulator. This fragmentation hinders integrated enforcement, creates potential jurisdictional confusion, and dilutes accountability The reinsertion of "environmental management programme" achieves essential legal clarity. The reinsertion **explicitly empowers the Minister** to create regulations specifically governing the form, conditions, suspension, and cancellation of EMPs under *this* mining Act. This closes the dangerous regulatory gap by ensuring EMPs are recognized as core instruments subject to the same regulatory oversight mechanisms as permits and licences within the mining context. The proposed reinsertion of "environmental management programme" **does not remove or duplicate** NEMA's role but ensures the *mining regulator* has the necessary, explicit statutory authority to develop efficient, enforceable procedures for dealing with EMP non-compliance directly linked to mining operations.
Section 107(1)(jC)	The Minister may, by notice in the Gazette, make regulations regarding— (jC)(i) the manner and form in which interested and affected	The Minister may, by notice in the Gazette, make regulations regarding— (i) the manner and form in which interested and affected persons must be informed of an application for a right in terms of	Limiting the Minister's regulatory power to define consultation standards *only* for applications under sections 16, 22, and 27 (new rights) while **omitting critical sections like 102(1) 50(4)(a) 28(3), and 23(2)** creates a problematic two-tiered system. The omission signals that meaningful consultation is only

	persons must be informed of an application for a right in terms of section 16,22, or 27 of this Act (ii) the manner and form of consultation required with such interested and affected persons	section 16, 22 or 27 of this Act; and (ii) the manner and form of consultation required with such interested and affected persons, **including procedures that align with section 102(1), section 50(4)(a), section 23(2)**.and **28(3) of the Act**	required at the *outset*, not throughout the mine lifecycle, undermining procedural justice and FPIC principles. By appending "including procedures that align with section 102(1), sections 50(4)(a), 23(2), 28(3), regulations will now have to weave a consistent, unified consultation process that respects depth of engagement, timelines, notice requirements and feedback mechanisms, rather than drafting ad hoc notification rules.
Preamble	"Acknowledging that South Africa's mineral resources are a common heritage that belong to the nation and that the state is the custodian thereof	Acknowledging that South Africa's mineral resources are a common heritage that belong to the nation and that the state is the custodian thereof **on behalf of its citizens and in their best interests**	The proposed revision by Natural Justice inserts the phrase **"on behalf of its citizens and in their interests"** immediately after "custodian thereof". It **explicitly defines the *fiduciary nature* of the state's custodianship**, transforming it from a passive acknowledgement of ownership into an active duty to manage resources *for the ultimate benefit of the people*. This reinforces the constitutional imperative that state power must serve the public good. Crucially, it **ensures the concepts of "common heritage" and "custodian" are inseparably linked to the well-being of the people**, safeguarding intergenerational equity and providing a foundational principle for interpreting all subsequent provisions of the Act. Therefore, the clause grounds the state's role in a public-trust doctrine: resources are not an asset of the executive but held in trust for the entire population. This simple addition does not redraw the scope of custodial powers or introduce new processes; it merely clarifies the fundamental purpose of custody, that is to benefit citizens, protect

			communities, and safeguard the environment.
Preamble	“Affirming the State obligation to protect the environment for the benefit of present and future generations, to ensure ecologically sustainable development of mineral resources and to promote economic and social development”	"Affirming the State obligation to protect the environment for the benefit of present and future generations, to ensure ecologically sustainable development of mineral resources **that seeks to promote justifiable economic and social development**."	The original draft text amendment lists three separate state obligations: (1) protect environment (intergenerational), (2) ensure ecologically sustainable development of minerals, and (3) promote economic/social development. Crucially, **it fails to establish the *hierarchical relationship* or *integrative imperative* between them.** By presenting ecologically and sustainable development and economic/social development as distinct, parallel goals, the text implies they carry equal weight, potentially allowing decision-makers to justify sacrificing ecological sustainability for immediate economic gain . This omission fundamentally undermines the core principle of sustainable development, that economic and social progress *must* occur *within* ecological limits. Natural Justices proposed recommendation advocates for **explicit commitment as an objective of the Act, to the goal of economic and social development being anchored to the overarching imperative of ecologically sustainable development.**

Conclusion

The MPRDA Bill (2025) represents a missed opportunity to advance transformative environmental and social justice. It shores up some technical aspects—particularly around environmental liability—but fails to shift the structural power imbalance that marginalizes communities and undermines participatory democracy.

While it nods to equity and sustainability, it does not embed these principles as enforceable rights. Legislative reform must go further to align with the Constitution, international human rights standards, and the lived realities of impacted communities. The omission of IPILRA protections, climate change obligations, and just transition architecture are not just technical gaps in the current

framework—they appear to be Departmental policy choices that stand to be challenged by numerous stakeholders if left unaddressed.

In closing, Natural Justice calls for the following reforms to ensure the Bill aligns with constitutional and international obligations:

1. **Define and operationalize "meaningful consultation"** with FPIC standards.
2. **Expand the definition of I&APs** to include civil society, NGOs, and communities with informal land rights.
3. **Mandate community participation in SLPs**, including validation, monitoring, and financial provisioning, as well as, community verification of implementation, and independent audits.
4. **Align the Bill with the Climate Change Act**, including GHG mitigation, emissions reporting, as well as mandate emissions disclosures and proof of alignment with national emission reduction targets under the Climate Change Act.
5. **Operationalize Intergenerational Equity**: Require integration of climate risk and ecological thresholds into licensing decisions
6. **Establish community oversight in closure and rehabilitation processes**, with binding verification mechanisms.
7. **Clarify custodianship and introduce accountability mechanisms** for the state.
8. **Develop a compensation framework** for displacement and environmental harm.
9. **Ensure gender-responsive and intersectional approaches** to mining governance.
10. **Create a Public Mining Registry**: Include licences, EMPrs, rehabilitation funds, and trust structures.
11. **Transition Mineral Regulation**: Define and prioritize transition minerals for licensing reform, community access, and environmental oversight.