For Attention: Department of Mineral Resources

C/O: Ms Stella Mamogale

Submission on the Draft Mineral and Petroleum Resources Development Amendment Bill, 2025

I. INTRODUCTION

The Land and Accountability Research Centre (LARC) is based in the University of Cape Town's Faculty of Law. LARC works within a collaborative network alongside a range of partners, including the Alliance for Rural Democracy, which provides strategic support to struggles for the recognition and protection of rights in the former homeland areas of South Africa. LARC integrates the use of action-research methodologies with support for mobilisation and litigation activities by our partners. An explicit concern of LARC is power relations, and the impact of national laws and policy in framing the balance of patriarchal and autocratic power within which rural women and men struggle for change at the local level.

It is in this context that LARC is concerned that the proposed amendments to the Mineral and Petroleum Development Act of 2002 (MPRDA) will be detrimental to the democratic rights of people living in the former homelands. LARC's concern is premised on the fact that the Draft Bill falls short of protecting these rights, and instead focuses on the *national economy* at the expense of the people who live in the former homelands.

In *Maledu and Others v Itereleng Bakgatla Minerals Resources (Pty) Limited and Another* (at para 5), the importance of mining for national economic reasons was postulated. However, the judgment calls for a weighing of the importance of mining against the rights of those who would be affected by mining. In Justice Petse's words:

> Mining is one of the major contributors to the national economy. But there is a constitutional imperative that should not be lost from sight, which imposes an obligation on Parliament to ensure that persons or communities whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices are entitled either to tenure which is legally secure or to comparable redress. Accordingly, this case implicates

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the right to engage in economic activity on the one hand and the right to security of tenure on the other.

Mining activities in South Africa are conducted mainly in rural areas, meaning that they primarily impact the land of a particular vulnerable group, namely, previously disposed black people. This poses a fundamental challenge in the balancing of national economic interests (the state's imperative) with the interests of communities, in that a power imbalance is produced between the state, other powerful actors, and these vulnerable groups of people. The MPRDA ought therefore to regulate these power imbalances and must be clear in how it is doing so.

LARC's concerns can be summarised into the following four themes:

1. "Meaningful consultation" definition is inadequate;
2. Problems with how the Draft Bill defines people;
3. Unaccountable centralisation of power to the Minister of Mineral Resources; and
4. Exclusion of communities

Below, we will discuss each of these in detail, highlighting specific provisions that are of concern.

II. "MEANINGFUL CONSULTATION" DEFINITION IS INADEQUATE

The proposed amendments to the definitions in section 1 of the MPRDA present another missed opportunity to reform the sector. LARC is concerned that several of the proposals will have further adverse impacts on people living in mine-affected communities. In this section, we consider the Draft Bill's proposed inclusion of a definition for "**meaningful consultation**", which comes after ongoing protracted tensions between mining companies and people living in the former homelands affected by mining activity.[1] While there are myriad points of contestation between the two parties, communities have bemoaned the government's and mining companies' ignorance of the interests and voices of "informal" or customary rightsholders in the guise of development and economic growth.

Elements of the definition

The proposed definition of "meaningful consultation" is problematic in several respects, addressed below:

[1] Amphonsah E & Agymnang F 'Securing indigenous land rights through community engagement in South African mining communities: lessons from international and national legislative and policy framework 2024 (85) *Town and Regional Planning* 78.

1. First, is the inclusion of the element of **good faith**, relating to the facilitation of participation in a manner that a reasonable opportunity was afforded. LARC is concerned with how one would ascertain whether the consultations held were conducted in good faith without the intervention of already overburdened courts. It is an established pattern in practice that mining companies and government officials undermine the rights, views, and interests of the people on several occasions who oppose mining projects. Therefore, it would be preferable to ensure that clear and tangible guidelines are set in respect of consultation.

2. Further, the definition posits that the opportunity is being provided to the concerned parties as long as they can **comment about the impact the prospecting or mining activities would have on their right to use the land**. This suggests that the people occupying the land can only comment about the proposed mining activity, rather than being afforded an opportunity to reject the proposed activity or exercise their right to consent. The permissible content of the comments is also narrowly defined, being restricted to the "impact" of activities only as it relates to land use. Impacts on health, livelihoods, social relations, and identity are excluded. This is fundamentally flawed as it deprives the people concerned of an opportunity to voice their concerns in a participatory democracy and constrains the possibility for meaningful dialogue. This definition is proposed in the face of jurisprudence and international instruments that directly oppose this position.[2]

3. The definition further provides that the applicant, when conducting the consultation, needs to provide **relevant information** pertaining to the proposed activities. It is LARC's stance that such vague writing is problematic, as it provides applicants with an extra veil to not disclose fundamental information to the people affected by mining. Who will be the arbiter of whether particular information is "relevant" or not? It has, unfortunately, become an established practice that applicants, when conducting consultations, do not disclose fundamental details due to "corporate sensitivity". This omission is counter to the principles of transparency, access to information, and participatory governance that are at the heart of the democratic South Africa. At the United Nations level, access to information is viewed as a fundamental human right as it affords people the opportunity to make informed decisions, and deprivation of the right is tantamount to corruption.[3]

[2] United Nations Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly on 13 September 2007, for which South Africa has voted in favour of adopting.
[3] Un report on the principles to guide critical energy transition minerals towards equity and justice, 2024.

Therefore, LARC urges the Department to include explicit reference to the types of information that, at a *minimum,* must be provided to the people when they are being consulted. In the alternative, we recommend an additional definition of what, at a *minimum*, falls within the parameters of the relevant information. This is essential as it serves to protect ordinary South Africans from the powerful actors that often ignore their interests.

4. **The definition fails to require the adaptation of consultation methods to specific contexts and stakeholders, negating the "meaningfulness" of those processes**. Drawing from the principles outlined in relation to Free, Prior and Informed Consent (FPIC), the MPRDA must have clear and binding guidelines to ensure that people are afforded sufficient opportunity to assert their rights. This extends beyond merely consulting with the relevant stakeholders; it requires adopting mechanisms tailored to specific contexts to ensure that people make informed decisions in line with the pillars of FPIC. This includes language during consultations that enables communities to fully comprehend the proposed activity and make such informed decisions. For example, in *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy,* a language barrier surfaced as one of the points of contestation regarding the lack of participation by persons likely to be affected by offshore oil and gas exploration.[4] Announcements and consultations had been conducted in English and Afrikaans in an area dominated by Xhosa-speaking people.[5]

Scope of application

Beyond the specific parameters of the definition, LARC is concerned about the role envisioned for the definition within the broader Act. It is alarming that the relevance of this "meaningful consultation" only surfaces in relation to the proposed amendment of section 22(4), dealing with the Social and Labour Plan in a mining right application. This is flawed as it **narrows the relevance of meaningful consultation to the Social and Labour Plan** and negates its relevance to other provisions that pertain to the interests of people living on land governed by customary law.[6] While other provisions still require consultations to be conducted, they do not require such to amount to "meaningful consultation".[7] LARC proposes that the Department expand the relevance and applicability of meaningful consultation, which includes the application provisions dealing with prospecting rights and artisanal and small-scale mining permits.

Further, we submit that meaningful consultation is not limited solely to the applicant in relation to authorisations but must be expanded to other instances in

[4] Sustaining the Wild Coast v Minister of Mineral Resources and Energy 2022 (6) (ECMk) para 100.
[5] Ibid para 94.
[6] Section 22(4) of the MPRDA.
[7] This includes provisions catering to consultations by the Minister, and artisanal and small-scale miners.

the MPRDA where the Minister exercises powers that affect people's livelihoods. In the proposed Bill, section 7A posits that the Minister is empowered to designate land for small-scale mining and artisanal mining, solely consulting the Council of Geoscience.[8] Additionally, section 23(2A) entails that where the application for a mining right concerns land being occupied by a community, the Minister is mandated to impose necessary conditions promoting the interests and rights of the community.[9] Lastly, where applications for renewal of authorisations are considered, the Minister is not expected to facilitate consultation with the concerned mine-affected community.[10] **These outlined instances reveal how the MPRDA permits the continued disregard of the interests of the people in matters relating to mining, despite such disregard being detrimental to their fundamental human rights and livelihoods.** Incorporating "meaningful consultation" into these provisions could aid in rectifying this.

Considerations regarding the Interim Protection of Informal Land Rights Act

The Draft MPRDA Amendment Bill opens by saying that one of its purposes is "to…align the Act with domestic legislation".[11] This is important to create uniformity and clarity regarding the law. In doing so, it prevents the possibility of rights infringements, since these may be insufficiently protected through conflicting provisions. More importantly, conflicting legislation creates confusion and uncertainty.

Mining is not conducted in isolation – it is performed in the context of land rights and reform in South Africa, where mining projects take place in rural areas. In the *Maledu* case, Justice Petse thus concluded that **the MPRDA must be read with the Interim Protection of Informal Land Rights Act of 1996 (IPILRA)**.[12] This means that the regulation of minerals and related resources must be balanced with the protection of informal land rights, such as those enjoyed by communities living according to customary law in the former homelands. The former cannot trump the latter.

It was held further in *Baleni and Others v Minister of Mineral Resources and Others* that, where the land is held on a communal basis, the community must be placed in a position to consider the proposed deprivation and be allowed to decide, in terms of their particular customary law, whether or not they consent to a proposed disposal of their land rights.[13]

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[8] Section 7A of the MPRDA.
[9] Section 23(2A) of the MPRDA.
[10] This provision applies on several fronts, including renewals of prospecting rights, mining rights, artisanal and small-scale permits, and other authorisations under the MPRDA.
[11] Draft Mineral Resources Development Amendment Bill at 2.
[12] Both *Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited and Another 2019 (2) SA 1 (CC)* at para 68 and *Baleni and Others v Minister of Mineral Resources and Others 2019 (2) SA 453 (GP)* at para 77 posit that this legislation should be read together.
[13] *Baleni and Others v Minister of Mineral Resources and Others* [2018] ZAGPPHC 829. Para 83.

These judicial interventions were necessitated by government officials and mining companies disregarding these land rights in practice. **LARC submits that this pattern of rights abrogation remains relevant and demands an explicit response from the Department**. While the Draft Bill appears to appropriate certain buzzwords from constitutional jurisprudence relating to consent and participatory decision-making, it does not substantively address the ongoing undermining of the Constitutional Court's findings in *Maledu*. Informal rights to land, held by persons who were historically dispossessed, remain incredibly vulnerable in the face of mining activity.

The definition of "meaningful consultation" is insufficient to address the issues raised in *Maledu* and *Baleni,* since consultation, even if done "meaningfully", will not equate to obtaining informed **consent**. For people holding customary land rights, both processes are required. **Consent** gives the community the power and voice to make decisions regarding their land, while **meaningful consultation** helps to obtain the necessary information for providing informed prior consent and fully understanding the effect of mining.[14] Moreover, as argued above, the specific elements of the definition and the limited scope of its application are likely to undermine the "meaningfulness" of consultation processes in practice. This tilts the scales of power not to the people who might be affected by mining, but to the state actors or people wanting to mine.

Something more is needed from the government to ensure that the obligations stipulated in *Maledu* and *Baleni* are upheld. **LARC thus requests that the Department make clear how it plans to respond to these court findings** in order to protect those ordinary South Africans – historically affected by dispossession under colonialism and apartheid – who are presently affected by mining. Otherwise, the Department may be opening itself and mining companies up to continued contestation and litigation.

III. PROBLEMS WITH HOW THE DRAFT BILL DEFINES PEOPLE

Interested and affected parties

Since 2002, reference has been made to 'Interested and affected parties' in the MPRDA without allocating a definition for the term. While this can be seen as a good initiative to provide legal clarity in terms of who qualifies for consultation, it also poses problems. LARC submits that restrictive and enigmatic elements of the definition should be revised to ensure a more expansive definition. Lessons can be

[14] Further support for this can be found in the fundamental principles of Free, Prior, and Informed Consent (FPIC). This entails that the requisite consultation for authorisations must culminate in people giving consent to the proposed mining activities. This aligns with South Africa's international legal commitment in terms of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007, and the International Labour Organisation Indigenous and Tribal Peoples Convention, 1989 No. 169, which states that FPIC is a binding principle where land and resource extraction are concerned.

drawn from the definition proffered under the *National Environmental Management Act*, which aligns with the principle of inclusive, meaningful participation, and consent.

The proposed definition provides that an interested and affected person **relates to natural and juristic persons.** Even though this reference implies little at face value, it can be used restrictively to exclude non-juristic formations such as unregistered or informal community forums and church-based groupings. This would negatively impact those organisations that are essential in surfacing the issues and voices of communities who do not fall within the ambit of juristic and natural parties. These groupings are more prevalent in rural areas where there is a dearth of literacy and constraints in financial resources. Therefore, the Department must clarify the parameters of this new reference in respect of juristic persons.

In terms of this definition, the persons must be those with a **direct interest** in the proposed or existing prospecting or mining operation. This element within the definition is restrictive and excludes those who might indirectly be impacted by the proposed mining immediately or in the future, or those who might be acting in the public interest. This position is counter to participatory governance, which is at the heart of the Constitution as enshrined in section 195, and procedural fairness in section 33, which allows for all affected people to be given a reasonable opportunity to be heard before a decision can be taken.[15] Therefore, **it is LARC's submission that the definition be revised to remove the restriction regarding direct interest.**

We propose that lessons be drawn from the definition in the National Environmental Management Act. This definition states that interested and affected parties entail:

> any person, group of persons, or organisation interested in or affected by such operation or activity, and includes organs of states. [16]

This version of the definition achieves legal clarity and precision while not restricting participation where a mining operation is being proposed, and a social and labour plan must be formulated.

Community

The Bill aims to reintroduce the 2002 definition of what constitutes a "community". This move seeks to repeal the definition introduced in the Amendment Act of 2008, which notes that a community is constituted predominantly by *historically disadvantaged people*. This reference to historically disadvantaged persons importantly aligns with the interpretation clause of the MPRDA,[17] which is centered

[15] Constitution of the Republic of South Africa 1996, sections 33 & 195.
[16] National Environmental Management Act 107 of 1998, section 1.
[17] MPRDA section 4(1).

around promoting the objects of the Act, including ensuring meaningful participation of women and communities.[18] **The revival of the 2002 definition thus appears to be a counter-transformative amendment to the MPRDA.**

It is important to unpack the relevance of the definition of community in the broader scope of the MPRDA. This term is instrumental in several transformative provisions, including, amongst others, sections 17(4A) and 23(2A).[19] These provisions become relevant where an application for prospecting and mining rights concerns an area occupied by the community and mandates the Minister to devise conditions aimed at protecting the interests and rights of the community. This is one of the measures that brought reforms to the mining sector from the past realities that were characterised by forceful removals of communities and excluded them from participating meaningfully in the mining operation occurring on the land of their forebears.

In *Bengwenyama Minerals v Genorah Resources*,[20] section 104, which gives communities a preferential right for prospecting and mining rights, had a material impact in asserting the interests of the communities.[21] In this case, the mining company proceeded and was awarded prospecting rights over land belonging to communities who had already begun their application processes with the Department of Mineral Resources and Energy.[22] In reaching its decision, the court affirmed the special nature of the right enjoyed by the communities under section 104 and ordered that the prospecting right be set aside.[23] This signifies the relevance of the term "community" within the MPRDA.

LARC submits that, by requiring **cohesion** for a group of people to be considered a "community", the proposed definition could have grave implications. It may exclude groupings that fall short of the cohesion element due to the inherent (and inevitable) divergence of interests within groups of persons constituted as "communities". Further, given the brutal history of the country where people were forcefully removed to bantustans and others pushed to townships for employment opportunities, it is less likely for such groups to live in harmony with absolute "cohesion".

LARC is furthermore **concerned with the element denoting that the community is a social group existing within a metropolitan municipality or a separate municipality, as defined in the Local Government: Municipal Structures Act 117 of 1998**. The concern emanates from the numerous instances where the Constitutional powers conferred to the Municipal Demarcation Board have been

[18] MPRDA section 2(d).
[19] MPRDA section 17(4A) & 23(2A).
[20] *Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others* 2010 (CC).
[21] Ibid Para 73.
[22] Ibid para 10.
[23] Ibid para 74.

politicised and weaponised against communities.[24] This has culminated in several protests where municipal communities are dissatisfied with the decisions of the Board in determining the municipal boundaries.[25] As presently worded, the definition may be interpreted to mean that "communities" can only constitute themselves in terms of municipal boundaries i.e. as *municipal communities*. This may result in a disjuncture between how groups of people constitute themselves in practice for purposes of the MPRDA and the groups recognised as "communities" within this definition.

Therefore, LARC submits that the proposed definition is fundamentally flawed and will possibly exclude many communities falling short of the qualifications. **LARC recommends retaining the current version of the definition or revising the proposed version to be less restrictive and exclusionary**, encompassing the broad dynamics of the country. People should be given an opportunity to self-determine what constitutes their "community" based on their context, including the incorporation of living customary law.

Historically disadvantaged persons

The proposed Bill seeks to repeal this definition, which is at the heart of the MPRDA's transformative agenda, centered around ensuring that the mining sector is reformed and that those who were systematically excluded from participating are enabled to meaningfully participate. It is LARC's position that the removal of this definition is an attempt to reverse the gains of the post-apartheid government. Further, this definition still holds fundamental value, as the status quo in this sector remains unchanged, with the majority of people still on the peripheries of the ecosystem.

In the architecture of the MPRDA, the importance of this definition is surfaced under section 12, empowering the Minister to employ measures aimed at assisting those who were historically disadvantaged. Further, section 9(2) provides that where the Minister receives more than one application on the same day concerning the same area to be concessioned, preference must be given to applicants who are historically disadvantaged persons. Whilst the success of the Minister in exerting these powers remains questionable, the definition must be kept within the Act for purposes of legal certainty and precision. Thus, it avoids protracted litigation to ascertain the parameters of the concept, which holds different meanings across various pieces of legislation. If the Department's issue is one of definitional

[24] Mathebula N 'Politics of Municipal Demarcation in the South African Democratic Dispensation A Case of Selected Mergers' (2018) 10 *African Journal of Public Affairs* 264; Nkwatile Boikanyo 'The Demarcation Board at a Crossroads: Three Decades of Democracy and the 2026 Elections' available at https://www.accord.org.za/analysis/the-demarcation-board-at-a-crossroads-three-decades-of-democracy-and-the-2026-elections/, accessed on 01 August 2025.
[25] Op cit note 24 at 265.

alignment across statutes, then the definition could be amended rather than removed altogether.

In *Agri South Africa and Others v Minister for Minerals and Energy,* Mogoeng CJ highlighted the gravity of the impact of the apartheid system on 'historically disadvantaged persons' in the mining industry:

> South Africa is not only a beauty to behold but also a geographically sizeable country and very rich in minerals. Regrettably, the architecture of the apartheid system placed about 87 per cent of the land and the mineral resources that lie in its belly in the hands of 13 per cent of the population. Consequently, white South Africans wield real economic power while the overwhelming majority of black South Africans are still identified with unemployment and abject poverty. For they were unable to benefit directly from the exploitation of our mineral resources by reason of their landlessness, exclusion, and poverty. To address this gross economic inequality, legislative measures were taken to facilitate equitable access to opportunities in the mining industry.[26]

It is LARC's position that the proposed removal of the definition should be reconsidered, as it is a central tool in the transformative goal of the MPRDA. The Department is thus called upon to explain the purpose of removing this transformative tool. Further, the removal of this definition poses a risk of ambiguity regarding what the concept means within the mining sector, particularly since, as stated above, the concept carries different meanings depending on the legislation.

Landowner and owner in relation to land

According to the Bill, a "landowner" means a natural or juristic person, or a community that holds a right in land, registered or unregistered, over which such person or community enjoys protection under any law. Based on the elements of the definition, it is important that communities holding informal rights over land are being given recognition. This is of the essence, as evident from cases where black people purchased land in groups but were prohibited from registering under their names and owning title deeds.[27] Additionally, LARC supports the reference to registered and unregistered rights under any law since it does not privilege rights held under common law. This definition is expansive and extends the recognition of landownership to those who enjoy rights under customary law, whose tenure is often in a precarious state. This will allow those who enjoy rights under IPILRA and any other custom and/or legislation to be duly considered as "owners" for the purposes of notice, consultation, compensation, and transformation. LARC notes,

[26] *Agri South Africa and Others v Minister of Mineral Resources and Others* 2013 (4) SA 1 (CC) para 1.

[27] Strauss M 'A historical exposition of spatial injustice and segregated urban settlement in South Africa' (2019) 25 *Fundamina* 145.

however, that this definition does not negate the requirement that the MPRDA be read alongside IPILRA, meaning that IPILRA's consent processes will still apply in cases of rights deprivation.

While this definition is a step in the right direction, it conflicts with the definition of an "owner" in relation to land, which has not been removed from the MPRDA in the Draft Bill. According to MPRDA, currently, an owner in relation to land refers to the person in whose name the land is registered, or if it is land owned by the State, means the State together with the occupant thereof.[28] It is LARC's position that this definition narrows the understanding of owners, as it is limited to people with a registered right, meaning that where one enjoys rights under customs or any law but is not registered, such a person falls outside the scope of an owner.

The discordance between the two definitions is problematic in provisions where these terms are used interchangeably within the MPRDA but denote different meanings. In several provisions, reference is made to "landowner" pertaining mainly to consultations where social and labour plans have to be crafted and where environmental authorisations are concerned. These are relevant in instances where communities and owners under IPILRA are seldom adequately consulted and given an opportunity to consent to proposed mining activities. However, other provisions make reference to "owner" in relation to land, such as section 50 of the MPRDA, where the Minister is empowered to cause an investigation to establish if any mineral formations occur on any land, and, if such an investigation results in damages, the "owner of the land" is entitled to compensation.

LARC submits that the Department must revisit the two definitions and how they overlap in the broader scheme of the MPRDA. This is important for ensuring legal clarity and removing redundancy that can lead to disputes over interpretation.

IV. UNACCOUNTABLE CENTRALISATION OF POWER TO THE MINISTER

LARC notes with concern that the powers previously held by the regional manager have been given to the Minister in the proposed amendments. Centralising power in the Minister is a problem because it makes accountability dependent on the good faith conduct, values and politics of individuals within the ministry, rather than institutionalising checks and balances. It also results in further issues, such as a significant workload within the ministry.

For example, sections 10 (A) and (B) posit that the Regional Mining Development and Environmental Committee (hereafter "Committee"),[29] which includes the Regional Manager, will only adjudicate and make recommendations to the Minister regarding certain applications, while the Minister is now responsible for receiving

[28] MPRDA section 1 (definition of an owner).
[29] Draft Mineral Resources Development Amendment Bill.

all applications. This is centralising several powers into the Minister's office. This means that the system will wholly depend on the minister's competence and benevolence (their politics and beliefs) to function. In a constitutional democracy, this is undesirable as power should not be concentrated within individual government personnel, but the structure or system put in place by the people.

In this case, all power will be vested in a single Minister who will run all related processes and also have ultimate decision-making power. If the Minister, per section 10 (B),[30] decides that the comments received are not worthy as "objections" for the Committee's consideration, which will depend on the Minister's subjective perception, then they are not considered further in the process of adjudication. In this way, the Minister could skew the Committee's findings that are then fed back to the same Minister for final decision-making. What qualifies as an "objection" and what happens to the other comments received? One Minister's decisions might not be the same as those of a subsequent Minister because of the subjective nature of the decision. South Africa's constitutional democracy requires that systems of decision-making function without bias and with democratic checks and balances, to ensure fair outcomes as far as possible, and that they are detached from the personal interests of the people who hold the positions. Thus, **LARC submits that, for democratic accountability, powers must be decentralised away from the office of the Minister and adequate checks and balances put in place.** For example, to insert more objectivity, a greater decision-making role could be granted to the Committee rather than vesting solely in the person of the Minister.

Finally, section 23(2A) posits that "If the application relates to the land occupied by a community, the Minister [**may**]*must* impose such conditions as are necessary to promote the rights and interests of the community [, **including conditions requiring the participation of the community**]."[31] The italicised words in the above quote refer to the inserted words in the amendment Bill, and the words in bold and in brackets refer to the deleted words. While it is positive that the Minister is now obliged to impose these conditions, it is still within the Minister's discretion to determine whether these conditions are "necessary". Moreover, the Minister is no longer obligated to consult with the community regarding the conditions being imposed. This is concerning because the rights and conditions of communities vary and are not stagnant, and it is impossible for the Minister to understand each community's needs inherently. In this case, **the Minister should be obligated to consult with communities to understand their rights, circumstances, and desired conditions.**

V. EXCLUSION OF COMMUNITIES

[30] Ibid.
[31] Ibid.

LARC is concerned about the extent to which the Regional Mining Development and Environmental Committee excludes local and affected communities from engaging and expressing their views. This Committee is tasked with providing advice and recommendations to the Minister about section 10(2) and section 54(5) as per section 10 (B). Section 10(2) pertains to the consideration of objections made regarding a mining right application over land. Section 54(5) pertains to the recommendations of the Committee to the minister regarding the expropriation of the land concerned in the case of failed negotiations with a landowner or occupier. Both these sections involve undertaking serious considerations that could affect communities. Yet, the Draft Bill excludes a role for communities in the Committee's membership (section 10 (c)(1-3)) and its deliberation processes (e.g. voting on contested mining applications and objections received in order to advise the Minister), restricting this to state involvement. Even if, on an ordinary meaning, community groups could be included on the Committee in terms of section 10(C)(3), the "public entity" referred to there would not enjoy voting rights. Moreover, in terms of the Draft MPRDA Amendment Bill, the definition of "public entity" is:

> ''a 'public entity' as defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999)."

In the Public Finance Management Act:

> " 'national public entity' means—
>
> (a) a national government business enterprise; or
>
> (b) a board, commission, company, corporation, fund or other entity (other than a national government business enterprise) which is—
>
> (i) established in terms of national legislation;
>
> (ii) wholly or substantially funded either from the National Revenue Fund, or by way of a tax, levy or other money imposed in terms of national legislation; and
>
> (iii) accountable to Parliament"[32]

This makes it clear that the reference to a "public entity" in section 10C(3) excludes the voices of communities from the Committee's processes. The government has a duty to protect *both* national economic interests and the communities that hold or occupy land affected by mining, without prioritising so-called development

[32] Public Finance Management Act No 1, 1999.

projects over land rights. Thus, **LARC urges the Department to consider mechanisms to facilitate the inclusion of communities in the processes of the Regional Mining Development and Environmental Committee**, to have a voice in decision-making, particularly decisions that affect communities.

VI. CONCLUDING REMARKS

As outlined above, it is LARC's submission that the inserted definition of "meaningful consultation" inadequately addresses the realities within which consultation takes place and is severely limited in its proposed application. Moreover, this definition does not cure the ongoing contestations around the undermining of IPILRA consent processes – mandated by constitutional jurisprudence – in practice. We further submit that the Department must reconsider some of the proposed amendments or additions to the definitions section of the MPRDA, particularly regarding how groups of people are defined. The Department must clarify some of the concepts where contradictions are likely to emerge, especially with the overlapping definitions of landowner and owner in relation to land, and where transformative definitions are being repealed. LARC is also concerned about the Draft Bill centralising several powers to the Minister and the impact this will have on processes of accountability and democratic decision-making. Finally, the Bill ought to meaningfully incorporate the voices of affected communities by ensuring their participation in the Regional Mining Development and Environmental Committee's processes. This also extends to instances where the Minister has to exercise powers that affect the livelihoods of the people. Such participation is essential given the profound impact these decisions have on the lives of communities.

Thank you for considering our submission. LARC remains available for further engagement on the content of this submission.

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