WRITTEN SUBMISSIONS ON THE DRAFT MINERAL RESOURCES DEVELOPMENT BILL, 2025

(GN 6210 of Government Gazette, No. 52704 of 20 May 2025)

Prepared by:

The DST/NRF South African Research Chair Initiative Chair for Mineral Law in Africa,
(SARChI: MLiA), Department of Private Law: Faculty of Law
University of Cape Town South Africa

13 August 2025

ATTENTION: Ms Stella Mamogale

Per email: representations@dmre.gov.za

I. INTRODUCTION

[1] The SARChI Chair for Mineral Law in Africa (MLiA) was launched in 2016 as part of the South African Research Chairs Initiative (SARChI) established by the Department of Science and Technology (DST) and the National Research Foundation (NRF). The DST and NRF are jointly our main funders. MLiA, as a Tier 1 Chair, is hosted by the University of Cape Town (UCT) within the Faculty of Law, Department of Private Law.[1] The SARChI Chair is being led and directed by its current and inaugural holder – i.e., Professor Hanri Mostert.

[2] The research focus of the Chair is generally on mineral law and policy development in South Africa and the rest of the African continent, as the name suggests. Among the projects currently undertaken by MLiA is several doctoral and masters research studies that examine a wide range of aspects relating to mining and the law; mining and society; mining and the environment; mining and the economy; mining and governance; as well as mining and waste. Previously, the Chair made both written and oral submissions on the Draft Mine Community Resettlement Guidelines in 2020 and the suggestions made where all incorporated in the final gazetted Guidelines. We wish to commend the Department of Mineral & Petroleum Resources (now DMPR, but then 'DMRE') for considering and incorporating the suggestions we made at the time.

[3] Drawing from the wide expertise of its academics; researchers and collaborators, the SARChI Chair welcomes the opportunity to make written submissions on a number of discrete issues covered in the Draft Mineral Resources Development Bill of 2025 ('MRD Bill' or 'the Bill'), in response to a call by the Minister of Mineral and Petroleum Resources through GG of 20 May 2025. As in the past, we are amenable (in fact we would request) to make oral submissions with a view to articulate and provide further insight into some aspects of our written submission as the case may be. Lastly, the

[1] Further information about MLiA, its objectives, projects and activities can be accessed from its official website at https://law.uct.ac.za/mineral-law.

DST/NRF South African Research Chair: Mineral Law in Africa • University of Cape Town • Faculty of Law • Department of Private Law
Physical address: Wilfred & Jules Kramer Law School Building, Stanley Road , Middle Campus, Rondebosch, Cape Town
Postal address: Private Bag X3, Rondebosch, 7701, Cape Town, Republic of South Africa

views expressed here are the views of the scholars and researchers that contributed to this submission:

- Professor Hanri Mostert, DST/NRF SARChI Research Chair: Mineral Law in Africa, UCT
- Dr Gaopalelwe Mathiba, Senior Lecturer, UCT
- Dr Richard Cramer, Lecturer, UCT
- Professor Nic Olivier, Extraordinary Professor, NWU
- Mpho Sehlabo, Doctoral researcher at the SARChI: MLiA, UCT
- Lindsay Moses, Doctoral researcher at the SARChI: MLiA, UCT
- Ruvarashe Makonese, Doctoral researcher at the SARChI: MLiA, UCT
- Didintle Molefe, Doctoral researcher at the SARChI: MLiA, UCT
- Masande Qumba, Doctoral researcher at the SARChI: MLiA, UCT

[4] Our comments below commence with a preliminary observation on stakeholder consultation, and then proceed to state our point of departure as a preface to the comments on specific aspects of the Bill.

II. COMMENT ON STAKEHOLDER CONSULTATION

[5] There are various key stakeholders with diverse (and indeed conflicting) interests in the mining industry in general and particularly on the substantive amendments this Bill proposes. Each of these key stakeholders is indispensable to this process. As such, we urge the DMPR to ensure that the process is as broadly inclusive as possible to all these participants, for a fair and just outcome.

[6] The Department has been working on this Bill for quite some time, and some stakeholders were consulted in some forms in that process. Our view is that such consultation is commendable, but its selective nature is not. There are at least five key stakeholders in the South African extractive industry that deserve mention here:

DST/NRF South African Research Chair: Mineral Law in Africa • University of Cape Town • Faculty of Law • Department of Private Law
Physical address: Wilfred & Jules Kramer Law School Building, Stanley Road , Middle Campus, Rondebosch, Cape Town
Postal address: Private Bag X3, Rondebosch, 7701, Cape Town, Republic of South Africa

- The Government, as the custodian of all mineral resources in the country, who has the powers to grant or refuse prospecting, exploration and extraction or mining rights and permits. The government also has the responsibility to enforce the legal framework regulating the sector.
- Mining companies, who conduct exploration, prospecting and mining activities. These companies have the corresponding obligation to comply with the law in their operations and prevent human rights violations in the process.
- Investors (local and foreign), who provide the necessary financing for mining operations to take place. The business of mining involves extensive capital outlay before the profit can be generated through the minerals that have been realised.
- Local communities, who host these mining operations, are often overlooked even though the operations negatively affect them.
- The workforce, i.e. labourers who conduct the actual work of mining. They often operate under risky and life-threatening conditions, and their health and well-being are exposed mining-related risk.

[7] Justice and fairness would dictate that all these key stakeholders and participants be afforded equal audience and opportunity by the Department to make representations from their various points of view.

III. POINT OF DEPARTURE

[8] Mining activity generates immense wealth for the country, but the benefits are not enjoyed in an equitable manner by all of the above participants in the sector. There should be equal distribution of both benefits and risks that come with mining. Concerningly, the benefits of the South African mining industry and the broader economy to which the sector is among the key contributors, have for the long time favoured the government, mining companies and investors to the exclusion of mine labourers and communities. Our point of departure, therefore, is that any law reform

DST/NRF South African Research Chair: Mineral Law in Africa • University of Cape Town • Faculty of Law • Department of Private Law
Physical address: Wilfred & Jules Kramer Law School Building, Stanley Road , Middle Campus, Rondebosch, Cape Town
Postal address: Private Bag X3, Rondebosch, 7701, Cape Town, Republic of South Africa

and amendment regulating the extractive industry must seek to address these systemic disparities to advance the constitutional vision of a society that is based on democratic values of social justice and fundamental human rights.

[9] We remain mindful of the central objective of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA), the legislation which stands to be amended by the Bill, which is fundamentally committed to foster transformation of the mining sector; render it accessible (equitably) to the historically disadvantaged groups; and revisit the control, access and ownership of mineral resources which has historically been concentrated in the hands of the few elite. The MPRDA aims to achieve this through state custodianship model over natural resources, with the DMPR exercising the authority to grant (or deny) mineral rights, licenses and permits.

IV. COMMENTS ON THE BILL

[10] In our preparation of this submission, we conducted a comparative analysis of the MPRDA as it stands against the MRD Bill of 2025. This analysis reveals both elements of continuity through retained provisions and several missed opportunities through amendments and revisions that require further refinements and reconceptualisation.

A. Clause 1(y) – Definitions ('meaningful consultation')

[11] Definitions are a fundamental component to any sector legal framework. There are a number of suggested amendments of definitions in the Bill which merit attention. The obvious one is a new definition of '**meaningful consultation'**, that it means "*the applicant has in good faith facilitated participation in such a manner that reasonable opportunity was given to provide comment by the landowner, lawful occupier or interested and affected person in respect of land subject to an application about the impact the prospecting or mining activities would have to his or her right of use of the land by availing all relevant information pertaining to the proposed activities* ..." The suggested definition clearly embraces the binding constitutional commitment to transparency, public participation and accountability.

DST/NRF South African Research Chair: Mineral Law in Africa • University of Cape Town • Faculty of Law • Department of Private Law
Physical address: Wilfred & Jules Kramer Law School Building, Stanley Road , Middle Campus, Rondebosch, Cape Town
Postal address: Private Bag X3, Rondebosch, 7701, Cape Town, Republic of South Africa

However, as it stands, the definition is cluttered and too lengthy, at the cost of clarity and precision. As such, we suggest that the definition be formulated into at least four stand-alone definitional elements – i.e., the manner (good faith and what it means in this context); the means (inclusive public participation, procedurally and substantively); the purpose (to provide an opportunity to make representations); and the key participants (all those that must be heard). Further, any acknowledgement of the seminal importance of meaningful consultation is a progressive step.

[12] A major omission in the Bill is the absence of a clear provision on how **meaningful consultation** is to be carried out by an applicant. One cannot have a clear assessment of whether consultation is 'meaningful' – procedurally and substantively – when there are no strict regulatory benchmarks against which such meaningfulness can be assessed. We are aware that the Department gazetted *Guidelines* on this in 2020. We had an opportunity to contribute to that process. However, the Guidelines are without any legal force. As such, we strongly suggest that the Regulations be revised and/or amended to reflect this change and to articulate in clear terms the exact scope, depth and procedural requirements of the consultation process.

[13] Similarly, we urge the Bill's drafters not to disregard several key judgments of the Constitutional Court that affirm the position that communities hold the right to determine the use of their land and that their **consent** is a pre-condition to any deprivation of their land rights and should be treated as such.[2] We are aware of the Department's view on this issue, that the consent provision threatens the ministerial (and constitutional) powers to grant mining permits, licenses and rights by subjecting them to a form of veto by means of community consent. However, we submit that the withholding of consent by a community does not interfere with the exercise of this ministerial power to grant or refuse a right or permit/license. Even though the consent requirement is well safeguarded under the Interim Protection of Informal Land Rights Act 31 of 1996, which must be read and interpreted harmoniously with the MPRDA, as the courts have consistently instructed over the years, the drafters of the Bill would

[2] *Maledu*; *Baleni* and *Bengwenyama* cases.

DST/NRF South African Research Chair: Mineral Law in Africa • University of Cape Town • Faculty of Law • Department of Private Law
Physical address: Wilfred & Jules Kramer Law School Building, Stanley Road , Middle Campus, Rondebosch, Cape Town
Postal address: Private Bag X3, Rondebosch, 7701, Cape Town, Republic of South Africa

do well to acknowledge the existence of the consent requirement and elevate it to a binding standard in the Bill itself.even though the lack thereof does not mean anything in law as the requirement is well safeguarded under the Interim Protection of Informal Land Rights Act 31 of 1996 which must be read and interpreted harmoniously with the MPRDA, as the courts have consistently instructed over the years.

[14] The retention of the definition of **"interested and affected persons"** is intended to broaden the scope of individuals and groups whose rights, interests, or livelihoods may be affected, thereby reinforcing participatory governance and transparency in mineral development processes. The Department should be commended for preferring this all-inclusive definition that embraces all categories of those that can potentially be impacted by mining activities and whose rights, interests and/or livelihoods may be affected.

B. Clause 1(b) – Definitions ('beneficiation)

[15] We applaud the Bill's aim to improve **beneficiation** of mineral resources. Beneficiation is a mechanism with strong potential to advance the transformation and development imperatives underscored in the MPRDA by promoting local industry participation in the beneficiation process, and creating opportunities for new participants in the economy, including previously disadvantaged individuals, and ensuring that South Africa's retention of mining-derived revenue is optimised and distributed evenly.

[16] It is important to locate the mining industry within the larger picture and acknowledge its potential to contribute to growing the country's economy and therefore to furthering the realisation of state obligations to provide basic services for the benefit of all South Africans in the spirit of constitutional vision of substantive equality which entails the empowerment of those disadvantaged by factors such as race, gender, class and disability. For this aspiration to find expression in the Bill is inspiring. The question, however, is **whether the proposed amendments in this**

DST/NRF South African Research Chair: Mineral Law in Africa • University of Cape Town • Faculty of Law • Department of Private Law
Physical address: Wilfred & Jules Kramer Law School Building, Stanley Road , Middle Campus, Rondebosch, Cape Town
Postal address: Private Bag X3, Rondebosch, 7701, Cape Town, Republic of South Africa

regard will result in enhanced beneficiation - and ultimately increased development and economic growth – in South Africa. We treat this potential with great suspicion for the following reasons.

[17] While clause 25(b) of the Bill states that the Minister "must" (as opposed to "may" in the MPRDA) promote and support **local beneficiation** of mineral resources, there are still issues related to high discretionary powers that arise in the amendments. The Bill extremely concentrates broad discretionary powers to restrict mineral exportation in the Minister. We believe that this untrammeled discretion would prove problematic in the absence of clearly defined boundaries within which they should be exercised or not.

[18] We urge that the Regulations be revised and/or amended to provide further clarity and guidance on how these broad discretionary powers are to be interpreted and exercised by the Minister. For instance, clause 26(c) of the Bill introduces a new requirement for every producer of minerals to make such minerals or mineral products available for local beneficiation. However, a major omission in this provision is clear and specific terms on a number of legitimate factors that must be considered in making such determination – such as the baselines and volumes.

[19] As to the utility and potential of the proposed amendment around beneficiation, we are critical about whether they would really enhance development and economic growth when regulations pertaining to beneficiation under the current MPRD have not yet been published. As such, the Bill in its current form may simply introduce aspirational provisions on beneficiation, but will lack the corresponding enforcement mechanisms for same. Instead of comprehensive regulation of these matters, the Bill over-concentrates and subsumes them under the ministerial discretionary powers. We believe this to be problematic.

DST/NRF South African Research Chair: Mineral Law in Africa • University of Cape Town • Faculty of Law • Department of Private Law
Physical address: Wilfred & Jules Kramer Law School Building, Stanley Road , Middle Campus, Rondebosch, Cape Town
Postal address: Private Bag X3, Rondebosch, 7701, Cape Town, Republic of South Africa

C. Clause 2.2; 21(b) – Environmental, Social and Governance (ESG)

[20] We note clause 2(2)(b) of the Bill which introduces aspirational language on Environmental, Social, and Governance (ESG) principles and a just transition. This is a worthy acknowledgement, but the lack of corresponding enforceable measures threatens any meaningful impact this proposed amendment can have. We therefore strongly suggest that the ESG principles be translated and framed into realistic and measurable compliance standards and obligations as opposed to out-of-reach wording it is currently framed along.

[21] Clause 21 of the Bill (amendment of section 22 of the MPRDA) introduces a requirement for the application of environmental authorisations to be conducted in terms of the NEMA following the granting of a mining right, when all the requirements under clause 21(c)(2) have been met. Our view is that this amendment is imperative for environmental review. However, we are concerned that it is likely to fragment the timelines and cause undue delays in the process of environmental oversight.

[22] The Bill also requires accountability for mine closure and rehabilitation. This is a progressive step given the persisting lack of regulation of derelict or abandoned mines which then poses serious environmental and safety risks to nearby communities. Importantly, we strongly suggest that the Bill and regulations be revisited to incorporate and mandate strong regulation over the **Rehabilitation Fund** that will then ensure that the State has funds to manage post-mining issues that persisted for years. We are prepared to assist the Department with our time and expertise to develop a strong regulatory framework that governs the fund.

[23] Clauses 24 of the Bill (amendment of section 25 of the MPRD Act) strengthen the enforceability of the **Social & Labour Plans (SLP)** commitments. The Bill mandates that failure to comply with these commitments could trigger ministerial directives, suspension of mining rights, and other remedial enforcement. Interestingly, the Bill has introduced a new definition for “community,” which requires mining companies

DST/NRF South African Research Chair: Mineral Law in Africa • University of Cape Town • Faculty of Law • Department of Private Law
Physical address: Wilfred & Jules Kramer Law School Building, Stanley Road , Middle Campus, Rondebosch, Cape Town
Postal address: Private Bag X3, Rondebosch, 7701, Cape Town, Republic of South Africa

to meaningfully consult with affected communities and include them in SLPs before the granting of the mining right. The Bill also introduces transformation within framework of the Broad-Based Black Economic Empowerment (B-BBEE) Charter, which elevates it to a binding statutory framework as a non-negotiable condition for granting a mining right.

[24] Overall, we believe the above proposed amendment is a progressive step since SLPs are a fundamental component in any mining license regime, and communities should be given an opportunity to contribute on what goes into the SPL and how it gets implemented. The only notable shortcoming is that such pro-active measures are entirely at the discretion of the Minister, and further, there is no guidance provided as to the circumstances, factors and manner in which such discretion can and should be exercised by the Minister.

[25] We note with concern clause 49 of the Bill which fails to mandate gender-responsive planning, specify financial contributions or require participation by communities and municipalities (for the purposes of ensuring that their IDPs corresponds with SLPs) in the design and monitoring of SLPs. The same provision also fails to pronounce on the consequences for non-compliance or obligations to publish these plans widely. We urge that the Bill should require adequate notice of **the review of SLPs** to be given to communities to make written and oral representations on the existing SLPs and the ways they should be improved, implemented or monitored as the case may be. It is critical for the communities to be meaningfully engaged, for their voices to be heard and respected when decisions are made about the programmes - such as those contained in the SLPs – that are designed to benefit them.

D. Proposed amendments around 'historical mine dumps'/'residue stockpile'

[26] The Bill is also seeking to introduce a new section which would bring historical mine dumps within the scope of the Act. At present, the MPRDA only regulates

DST/NRF South African Research Chair: Mineral Law in Africa • University of Cape Town • Faculty of Law • Department of Private Law
Physical address: Wilfred & Jules Kramer Law School Building, Stanley Road , Middle Campus, Rondebosch, Cape Town
Postal address: Private Bag X3, Rondebosch, 7701, Cape Town, Republic of South Africa

residue stockpiles and residue deposits created after its enactment. A "residue stockpile" is defined as "any debris, discard, tailings, slimes, screening, slurry, waste rock, foundry sand, beneficiation plant waste, ash or any other product derived from or incidental to a mining operation and which is stockpiled, stored or accumulated for potential re-use, or which is disposed of, by the holder of a mining right, mining permit, production right or an old order right". A "residue deposit", on the other hand, is a residue stockpile that remains after the termination, cancellation or expiry of one of these rights. The insertion of "old order right" into the above definitions was an attempt to regulate historical mine dumps in terms of the MPRDA, albeit unsuccessful, enacted in response to the decision in D*e Beers Consolidated Mines Ltd v Ataqua Mining (Pty) Ltd*. In De Beers, the court firstly found that historical mine dumps were not "residue stockpiles" as defined by the MPRDA. Secondly, the court found that diamonds occurring in historical mine dumps do not occur naturally in the earth, and therefore are not included in the definition of "mineral" in the MPRDA. As such, historical mine dumps are not "mineral resources" for the purposes of section 3(1) of the MPRDA.

[27] The new definition of "historic residue stockpiles" includes any mine dumps created by the holder of a right other than those rights which may be issued in terms of the MPRDA. The definition includes common-law ownership of such mine dumps. Evidently, this definition is wide enough to include mine dumps created by rights under the legal framework prior to the enactment of the MPRDA, which would finally bring them within the scope of the Act.

[28] The proposed clause 42A is extensive and near identical to the section proposed by the Mineral and Petroleum Resources Development Bill of 2013. The proposed subsection 1 provides that "all historic residue stockpiles and residue deposits currently not regulated under this Act belong to the owners thereof", which remains in force for two years following enactment of the amendment. Clause 42A differentiates between historical mine dumps which exist inside the mining area, on the one hand, and those which exist outside the mining area, on the other. The owner of a historical mine dump located within the mining area has an exclusive right to apply for an

DST/NRF South African Research Chair: Mineral Law in Africa • University of Cape Town • Faculty of Law • Department of Private Law
Physical address: Wilfred & Jules Kramer Law School Building, Stanley Road , Middle Campus, Rondebosch, Cape Town
Postal address: Private Bag X3, Rondebosch, 7701, Cape Town, Republic of South Africa

amendment to their mining works programme to include the mine dump in their existing right in the Act. The mine dump must then be processed in terms of the amended mining works programme. Where the historical mine dump exists outside the mining area, the owner has an exclusive right to apply for a mining right in respect of it, within a two-year period of the commencement of the Amendment Act. So long as the owner/applicant satisfies the necessary requirements in terms of sections 23 or 27, the Minister must grant them the right. Once granted, the right holder must lodge the right at the Mineral and Petroleum Title Registration Office for recording or registration, following which the historical mine dump will become regulated in terms of the Act. Where the owner of a historical mine dump fails to apply for a right in the prescribed time period, the custodianship of the minerals in the dump "revert back to the State".

[29] The proposed clause 42A outlined above presents a number of issues which have been carried over from the 2013 Bill, which were noted by Badenhorst and Van Heerden in 2018 in the *South African Law Journal*. Firstly, it says that custodianship in minerals in historical mine dumps "revert back to the State". The wording here is at odds with the reality of the situation. Custodianship of these minerals cannot "revert" to the State when the State never had custodianship in them in the first place as they exist in mine dumps created prior to the enactment of the MPRDA. As such, it is suggested that wording be changed to reflect the correct position, that the State is vested with custodianship in these minerals "anew".

[30] Secondly, the question arises whether the operation of clause 42A would amount to an expropriation of a historical mine dump outside the mining area when the landowner fails to apply for a right. In this respect, one needs to consider the decision of the Constitutional Court in *Agri SA v Minister for Minerals and Energy*. In this case, it the majority held that for an expropriation to occur, the State must acquire the "substance or core content" of the right of which the claimant was deprived. As clause 42A would only give the State the power to grant another party a right to mine/process the minerals in a historical mine dump in the event the owner fails to apply for a right themselves (or is unable to meet the requirements of sections 23 or 27 in that time), it is unlikely its operation amounts to expropriation.

DST/NRF South African Research Chair: Mineral Law in Africa • University of Cape Town • Faculty of Law • Department of Private Law
Physical address: Wilfred & Jules Kramer Law School Building, Stanley Road , Middle Campus, Rondebosch, Cape Town
Postal address: Private Bag X3, Rondebosch, 7701, Cape Town, Republic of South Africa

[31] Finally, while the proposed clause 42A provides for what happens when the owner of a historical mine dump outside the mining area fails to apply for a right in that dump, it fails to clearly state what happens when the owner of a mine dump within the mining area fails to apply to have its mining work programme amended. Given the potential implications for the private ownership of these historical mine dumps, the legislature should clearly state the consequences of such failure.

[32] If enacted, the Bill would finally achieve the aim of bringing historical mine dumps within the scope of the MPRDA. However, it is troubling and concerning that the same issues observed in respect of the 2013 Bill remain in the 2025 Bill. It is hoped that all these issues will be addressed in an updated version of the Bill – and we will be grateful of an opportunity to make oral submissions thereof.

E. Proposed amendments around 'disposal of mineral rights' (abandonment)

[33] The current MPRDA, in section 56(f), anticipates the possibility of abandoning rights to minerals. It states that a right lapses when "it is abandoned". Other references to abandonment are made in the context of mine closure. Despite these references to the abandonment of rights, the MPRDA does not explicitly clarify how abandonment may be achieved. The regulations under the Act similarly provide no guidance as to how abandonment may be achieved. Section 11 of the MPRDA provides for the "[t]ransferability and encumbrance of prospecting rights and mining rights". It requires ministerial consent for the transfer and encumbrance of these rights, including where a right is "otherwise disposed of".

[34] Given the MPRDA's clear reference to the lapsing of rights through abandonment, but failing to provide any clear guidelines, it would seem the most reasonable interpretation of the Act is to bring abandonment within the scope of the wording "otherwise dispose of". Given the obligations that attach to such a right – particularly mine closure and rehabilitation – it is important that such a right only be terminated with ministerial consent. The question, then, is whether the Bill propose to change the

DST/NRF South African Research Chair: Mineral Law in Africa • University of Cape Town • Faculty of Law • Department of Private Law
Physical address: Wilfred & Jules Kramer Law School Building, Stanley Road , Middle Campus, Rondebosch, Cape Town
Postal address: Private Bag X3, Rondebosch, 7701, Cape Town, Republic of South Africa

position described above? In particular, does it bring clarity to the question of the abandonment of mining and prospecting rights granted in terms of the MPRDA? We do not think so, for as long as the following concerns persist.

[35]The Bill proposes to amend section 11(1) of the MPRDA by deleting the words "or otherwise disposed of". However, it also proposes to add a new subsection 5 to section 11 which states that "[a]ny cession, transfer, letting, subletting, assignment, alienation or disposal of prospecting or mining right…in contravention of subsection 1 is void". As the Bill retains, as well as adds, references to the abandonment of rights to minerals, it is strongly suggested that section 11(1) should retain the words **"or otherwise disposed of"**. These are the only words in section 11(1) reasonably capable of an interpretation which includes abandonment, and we say taking away the basis of this interpretation is problematic. We also believe that deleting these words does not make any logical sense when the proposed insertion of subsection 5 makes reference to "disposal" in contravention of subsection 1 being void.

[36]Unilateral abandonment of rights granted in terms of the MPRDA is not possible. But it is desirable for the legislature to bring clarity to the situation. The Bill unfortunately does not do this. Section 11(1) should ideally be amended to include the word "abandon" as an action which requires ministerial consent. Otherwise, it will remain unclear how, exactly, one abandons a right in terms of the Act on first reading. Furthermore, the regulations should provide detail on the process to be followed when abandoning a right granted in terms of the Act.

[37]It could be argued that given that abandonment in the true legal sense is not possible in terms of the MPRDA, even with the amendments envisioned by the Bill, the Bill should replace references to abandonment with "surrender". The word "surrender" is perhaps a more accurate description of what the MPRDA as well as the Bill envision when using the term "abandon". The Minister ultimately has (on a reasonable interpretation of the Act, including as amended by the Bill) the discretion to accept or reject the conveyance of the right by the holder.

[38]That "surrender" is what is envisioned is supported by the proposed insertion of clause 9A, which provides that the Minister must invite applications "in respect of land or minerals relinquished or abandoned or which was previously subject to any right,

DST/NRF South African Research Chair: Mineral Law in Africa • University of Cape Town • Faculty of Law • Department of Private Law
Physical address: Wilfred & Jules Kramer Law School Building, Stanley Road , Middle Campus, Rondebosch, Cape Town
Postal address: Private Bag X3, Rondebosch, 7701, Cape Town, Republic of South Africa

permit or permission in terms of this Act, which has been cancelled or relinquished or which has been abandoned". This proposed insertion acknowledges that any surrendered right does not simply become unowned and open to appropriation (as happens to abandoned movable property at common law), but once again falls into the custodianship of the State, meaning that the Minister is empowered to award any part thereof to any future applicant.

[39] The Bill does propose the insertion of subsection 14 into section 43, which would exempt a holder who has abandoned their right before conducting invasive operations from the provisions of section 43(6). Section 43(6) would in terms of the proposed amendment empower the Minister when issuing a closure certificate to retain "any portion of such financial provision for latent and residual environmental impact which may become known in the future" for a period to be determined by the Minister. It is suggested though that regardless of whether invasive operations have been conducted, the abandonment or surrender of a right should still be subject to ministerial consent in terms of section 11(1).

[40] Regardless of whether reference to abandonment is retained, or if it is replaced by the more accurate "surrender", the Bill should ultimately create "a clearly circumscribed process through which a right holder could surrender his right". It should further retain the requirement that abandonment be subject to ministerial consent in terms of section 11(1). It is unfortunate that the Bill fails to do so, but instead retains and perhaps exacerbates the lack of clarity in the existing MPRDA. It is hoped that future versions of the Bill will address these concerns.

F. Proposed amendments around 'artisanal mining'

[41] We note with concern that clause 39 of the Bill continues to treat artisanal mining as a subset of small-scale commercial mining. This is a problematic proposed arrangement. We urge the Department to consider the development of a strong, dedicated and inclusive framework for artisanal small-scale mining (ASM). It is unfortunate that despite the growing call for the formalisation of ASM, the Bill still fails to acknowledge this as a contemporary reality. We strongly suggest that the Bill or at least its regulations be revisited to address various aspects of ASM formalisation such as licensing flexibility, technical assistance, financing, and integration into local economies, among other imperatives.

DST/NRF South African Research Chair: Mineral Law in Africa • University of Cape Town • Faculty of Law • Department of Private Law
Physical address: Wilfred & Jules Kramer Law School Building, Stanley Road , Middle Campus, Rondebosch, Cape Town
Postal address: Private Bag X3, Rondebosch, 7701, Cape Town, Republic of South Africa

[42] Notably, the MPRDA makes limited reference to small-scale mining permits under Section 27. Clause 39 of the Bill enjoys the opportunity to address this issue more concretely, but fails to do so nonetheless. The clause does not establish a differentiated and rights-based regulatory framework for ASM and, as a result, this sector continues to be conflated with small-scale commercial operations – a parallel that we strongly discourage. We hold this view because this approach disregards pressing need and urgency to develop specific sector legislation and institutional support for ASM as a livelihood strategy. Our view is that the continued lack of a distinct regulatory framework in this regard undermines the socio-economic inclusion of artisanal miners.

G. Capacity for adequate monitoring and oversight

[43] We realise that the DMPR (formerly DMRE) faces considerable capacity constraints. Many reasons may account for this constraint, including (perhaps) the separation of Energy/Electricity from the department to being a stand-alone ministry, and any other capacity issues. We have seen the dire consequences of this in recent times with significant backlogs on mining right applications, irregular oversight and inspection for compliance in some operations across various parts of the country. As such, we note with concern that the Bill does not propose any measures to strengthen the capacity of the Department or establish independent monitoring mechanisms that ensure that all these proposed amendments and those already in existence are met with an acceptable level compliance on the ground.

[44] These omissions on institutional and state capacity undermines all the key objectives of the mining legal framework. In fact, the widespread non-compliance culture within the extractive industry could be attributable to the Department's inability to conduct rigorous monitoring and oversight. We suggest, strongly, that the Bill considers this and makes provision for strengthening capacity to execute the processes it stewards.

DST/NRF South African Research Chair: Mineral Law in Africa • University of Cape Town • Faculty of Law • Department of Private Law
Physical address: Wilfred & Jules Kramer Law School Building, Stanley Road , Middle Campus, Rondebosch, Cape Town
Postal address: Private Bag X3, Rondebosch, 7701, Cape Town, Republic of South Africa

V. CONCLUSION

It is always an honour to serve the Department with our expertise, and we wish to reaffirm our support for the Department in its work. The 2025 Bill presents a unique opportunity to forge a resilient, just, inclusive, accountable and transparent mining regime. However, it still falls short of key undertakings in order to meet the aspirations of the MPRDA. We have noted some of these shortcomings and concerns in this submission, and we are keen to expound more on these issues given an opportunity for oral engagements.

DST/NRF South African Research Chair: Mineral Law in Africa • University of Cape Town • Faculty of Law • Department of Private Law
Physical address: Wilfred & Jules Kramer Law School Building, Stanley Road , Middle Campus, Rondebosch, Cape Town
Postal address: Private Bag X3, Rondebosch, 7701, Cape Town, Republic of South Africa