

13 August 2025

Ms S. Mamogale  
Department of Mineral Resources and Energy  
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By email: [representations@dmre.gov.za](mailto:representations@dmre.gov.za)

Dear Ms Mamogale

## COMMENTS ON THE MINERAL RESOURCES DEVELOPMENT BILL, 2025

### Introduction

1. We refer to the Mineral Resources Development Amendment Bill, 2025 (**"the Bill"**) introduced by the Minister of Mineral and Petroleum Resources (**"the Minister"**) on 20 May 2025.<sup>1</sup> Interested parties have been invited to submit comments on the Bill by no later than 13 August 2025.
2. This document is submitted in response to that invitation. It constitutes the submissions of AfriForum NPC (**"AfriForum"**), a non-profit company with registration number 2005/042861/08, registered as such in terms of the Company Laws of the Republic of South Africa with its principal place of business at AfriForum Building, cnr Union and DF Malan Streets, Kloofsig, Centurion, Gauteng.
3. AfriForum's main concerns with the Bill are that the formalisation of the Artisanal and Small-Scale mining (**"ASM"**) sector would result in, *inter alia*, the encouragement of further illegal mining activities that not only has a detrimental impact on the environment, but may also lead to corruption within the ASM sector. This, in turn, could result in local and global divestment in the South African mining economy.
4. AfriForum further warns of a concrete risk that formalisation could be used as a cover by organised syndicates. The availability of rapid, small-footprint permits may be exploited to mask broader unlawful extraction where cadastral transparency, enforcement capacity and funded environmental oversight are inadequate. Without mandatory public registers, stronger cadastral controls and resourced inspection regimes, formalisation risks becoming a mechanism to launder illegal mining rather than to control it.

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<sup>1</sup> Mineral Resources Development Amendment Bill, 2025

June 2024

5. AfriForum appreciates the need for the Bill to strike a balance between the need to attract investment into this key sector of the economy and the need to ensure that the South African mining industry is regulated in an equitable and sustainable manner.
6. AfriForum is concerned, however, that certain provisions in the Bill do not strike this balance in an appropriate or rational manner. These provisions, furthermore, undermine several of the Bill's stated objectives, such as to "*promote equitable access to the nation's mineral resources to all the people of South Africa*" (section 2(c)), to "*promote optimal economic growth and mineral resources development in the Republic*" (section 2(e)), to "*promote employment and advance the social and economic welfare of all South Africans*" (section 2(f)), and to "*provide for security of tenure in respect of prospecting and mining operations*" (section 2(g)).
7. Despite AfriForum's main concern raised above, the Bill nevertheless represents a commendable improvement on the principal act, the Mineral Resources and Petroleum Development Act, No. 28 of 2002 ("the act").
8. The purpose of this submission is to highlight the provisions which AfriForum respectfully submits should be revisited by the Minister and the Department of Mineral Resources and Energy before the final Act is promulgated.
9. Unless commentary on a specific provision is required, these submissions will address the above issues thematically.

### **Separation of Petroleum activities from Mining Activities**

10. AfriForum welcomes the separation of petroleum activities from mining activities. This proposed amendment must be read with the Upstream Petroleum Resources Development Act, 2024 ("UPDRA"), which has yet to be commenced.
11. The commencement of the UPRDA will repeal all sections of the Act relating to petroleum resources. The Bill, therefore, makes provision for the pending repeal. The separation will lead to regulatory certainty which will, in turn, increase investor sentiment in the country's mining sector.

### **Formalisation of the Artisanal- and Small-Scale Mining Sector**

12. The Bill, in various sections thereof, introduces artisanal mining and small-scale mining as another formalised sector within the mining sector of the country.<sup>2</sup> This follows the publication of the Artisanal and Small-Scale Mining Policy in 2022.

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<sup>2</sup> (n1 above) sec 1

13. Although AfriForum welcomes the formalisation of the ASM mining sector, there are concerns that the legitimisation of the ASM mining sector may, advertently or inadvertently, legitimise illegal mining methods and operations. More importantly, the ASM sector must not be formalised at the expense of the established mining sector. Any regulatory uncertainty or the inadvertent introduction of criminality by the formalisation of the ASM sector, will lead to substantial divestment in the country's mining sector.
14. The introduction of the definitions of artisanal mining and small-scale is to some extent, vague. The words "customary mining operations" and "rudimentary mining methods" within the definitions of artisanal mining and small-scale mining do not have corollary definitions in the Bill. This uncertainty may, for various reasons, result in mining methods and operations that result in the degradation of the environment. We suggest that the Bill be amended to include specific definitions to create the necessary certainty within the ASM sector.
15. AfriForum also notes a practical constraint: requiring individual environmental authorisations for numerous small-scale operators may overwhelm an already stretched provincial and national environmental authorities. Regulators currently find it difficult to process and monitor large-scale applications. Spreading oversight across many 1.5-hectare sites will significantly increase administrative churn, particularly given the Bill's two-year cycle for certain authorisations. The Bill should therefore be amended to ensure that environmental compliance obligations are realistic and supported by appropriate provincial resourcing, streamlined processes and measured rollout phases.
16. Alternatively, we suggest the incorporation of a requirement that the Minister prescribe regulations pertaining to the mining practices and methods to be used in the ASM sector. This will be in line and in response to the ASM policy's recognition that the ASM sector as it currently stands, does not conform to environmental best practices which is due to the lack of knowledge, skills, capacity and the informal nature of the ASM sector.
17. AfriForum welcomes the statutory prohibitions on any person, whether natural or juristic, to assist in illegal mining, and the illegal possession and transport of mined minerals.<sup>3</sup> The introduction of more severe punishments for illegal mining and miners is welcomed.

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<sup>3</sup> (n1 above) sections 5B and 5C.

## Risks of Brownfield and Greenfield ASM Exploitation

18. In addressing the formalisation of ASM, it is critical to distinguish between two different contexts in which illegal or irregular artisanal mining occurs.
19. Brownfield ASM involves illegal mining activity within existing or historical underground mine operations. This often carries severe safety risks, fosters organised criminal activity, and undermines lawful operations. The 2024 Stilfontein incident is a stark example: zama zamas were trapped underground for months in disused shafts, resulting in 78 fatalities despite extensive police intervention. Such brownfield ASM directly interferes with lawful mining rights and the safe closure of historical mines.
20. Greenfield ASM, by contrast, occurs where operations commence in areas without prior large-scale mining — often with a lawful permit — but subsequently expand well beyond their authorised footprint. Recent examples include a spike in small-scale gold operations along the Blyde River in Mpumalanga, illegal sand extraction along riverbanks, and “fly-by-night” operators who acquire a permit and immediately move heavy machinery in to mine outside the approved area.
21. The formalisation of ASM through the Bill could unintentionally accelerate both forms of exploitation if regulatory and enforcement capacity is not strengthened. There is a concrete risk that syndicates or opportunistic operators will use fast-track permits with small footprint thresholds as legal cover for broader illegal operations. Without a transparent and publicly accessible cadastral system, properly funded environmental oversight, and sufficient policing resources, formalisation risks becoming a tool for laundering illicit activity rather than curbing it.

## Black Economic Empowerment

22. The Bill provides that the Minister may designate specific areas for artisanal- and small-scale mining to historically disadvantaged individuals, specifically black persons as defined in the Broad-Based Black Economic Empowerment Act, No. 53 of 2003 (“B-BBEE act”), by notice in the Government Gazette.<sup>4</sup> This is exacerbated by the reference to section 9A which implies that only one group of individuals stand to benefit from the ASM sector.
23. The Bill seeks to align mining transformation obligations with the broader B-BBEE act, which allows for sector-specific charters to be gazetted under national empowerment law.<sup>5</sup> The consequences thereof is that ownership, procurement and licensing will be governed by mining-specific legal standards derived from the B-BBEE act, including penalties for non-compliance thereof. This amendment reduces

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<sup>4</sup> (n1 above) section 7A

<sup>5</sup> (n1 above) section 100(3)

corporate discretion and increase state enforcement of transformation in the mining sector. The shift from policy obligations, in relation to the mining sector code, to statutory obligations, in relation to the Bill, as it ultimately relates to the transformation of the mining sector will invariably have an impact on investor sentiment in the country's mining sector.

24. While Afriforum respects the noble intention of these provisions, namely, to expand opportunities for black persons to enter into and participate in the mining sector, it wishes to emphasise that such clauses have historically not provided any benefits to ordinary people, including black people in South Africa generally, and have merely provided benefits to a select few.

### **Meaningful consultation**

25. AfriForum welcomes the inclusion of “meaningful consultation”, including consultations in general, as it relates to the granting, renewal or transfer of mining permits. Notably, the definition of “community” is expanded to include groups with interests or rights in any particular area of land which is, or will be, affected directly or indirectly by the pending mining operations.<sup>6</sup>
26. The inclusion of the obligatory public participation requirements in the application of various rights and permits is in line with leading case law on the importance of public participation of matters that has an impact on the rights of interested parties.

### **Conclusion**

27. The most important role of the legal framework governing the resources sector is to ensure that the sector contributes to the wider economy and thereby advances the social and economic welfare of all South Africans.
28. As mentioned at the outset, while Afriforum acknowledges and appreciates the improvements that have been made to the Bill since its first iteration in 2012, it respectfully submits that the Bill contains unnecessary obstacles to the achievement of its objects.
29. These obstacles are in essence twofold.
- 29.1. The first is the formalisation of the ASM sector, which, even though a commendable shift in protecting the mining sector against illegal mining and its consequences on the environment, may nonetheless lead to the opposite of what the Bill seeks to achieve through the formalisation of the ASM sector.

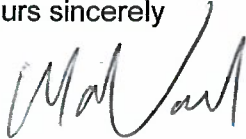
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<sup>6</sup> (n1 above) sec 10

29.2. The second is the unnecessary provisions that is made in the Bill for black economic empowerment, which, in addition to setting up racial barriers for investment, has been shown not to provide any benefit to ordinary South Africans, or even ordinary black South African, and serves only to enrich a select few.

30. For these reasons, Afriforum further respectfully urges the Minister and the Department to reconsider whether the sections in the Bill that provide for the formalisation of the ASM sector and black economic empowerment are necessary to achieve the Bill's stated objectives.

Yours sincerely



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