AfriForum

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Dear Ms Bhayat

AFRIFORUM'S COMMENTARY ON THE GENERAL (MINING) LAWS AMENDMENT BILL, 2026

Introduction

1. AfriForum refers to the General (Mining) Laws Amendment Bill, 2026 ("the Bill"), published by the Department of Justice and Constitutional Development for public comment in Government Gazette No. 55166 of 7 August 2026. The Bill proposes amendments to the Criminal Procedure Act 51 of 1977, the Diamonds Act 56 of 1986, the Mineral and Petroleum Resources Development Act 28 of 2002 ("the MPRDA") and the Precious Metals Act 37 of 2005.[1]

2. This submission constitutes the comments of AfriForum NPC ("AfriForum"), a non-profit company registered as such in terms of the Company Laws of the Republic of South Africa.

3. Illegal mining presents a serious threat to lawful mining, affected communities, public infrastructure and the environment. Its modern manifestation extends beyond individual illegal miners and frequently involves organised networks responsible for financing, supplying, processing, transporting and disposing of illegally extracted minerals. AfriForum therefore accepts the need for an effective legislative and enforcement framework capable of addressing the entire illegal-mining value chain.

[1] General (Mining) Laws Amendment Bill, 2026, Government Gazette No. 55166 of 7 August 2026.

4. The Bill contains several positive measures. AfriForum supports the clearer criminalisation of assistance to illegal prospecting and mining, the substantially increased penalties for serious offences and measures intended to improve cooperation between the Department of Mineral and Petroleum Resources ("DMPR") and the South African Police Service ("SAPS"). The proposed section 5B and amendments to sections 98 and 99 of the MPRDA are particularly relevant in this regard.[2]

5. However, stronger legislation alone cannot overcome deficient enforcement. The Bill must be considered against the institutional and operational realities within which it will function, as well as alongside the separate draft Mineral Resources Development Bill published in 2025 ("the 2025 Bill"). That Bill remains an unfinished legislative process and proposes, amongst other things, an entirely new framework for artisanal and small-scale mining.[3]

6. AfriForum previously submitted detailed comments on the 2025 Bill on 13 August 2025. Several concerns raised in that submission have become more, rather than less, pertinent because the present Bill incorporates provisions and concepts from the 2025 Bill while simultaneously seeking to strengthen the criminal enforcement framework around them.[4]

7. This submission accordingly adopts a narrative and thematic approach, situating the Bill within the wider legislative, institutional and enforcement environment in which illegal mining occurs.

Strengthened offences and penalties

8. AfriForum welcomes the intention to strengthen enforcement against illegal mining. The Bill expressly makes contraventions of sections 5A and 5B offences, criminalises attempts, conspiracy and various forms of assistance, and proposes increasing the

[2] Ibid., clauses 5, 8 and 9, proposing section 5B and amendments to sections 98 and 99 of the MPRDA.
[3] Draft Mineral Resources Development Bill, 2025, Government Gazette No. 52704 of 20 May 2025, including the proposed amendments relating to artisanal and small-scale mining.
[4] AfriForum, *Comments on the Mineral Resources Development Bill, 2025*, submitted 13 August 2025, particularly paras 3–4, 12–21 and 27–29.

relevant maximum penalty to R100 million or 30 years' imprisonment. It also grants SAPS members additional powers in respect of offences under the MPRDA.[5]

9. These amendments should nevertheless be understood principally as a strengthening and repair of the existing enforcement framework, rather than the creation for the first time of a prohibition against illegal mining. Section 5A of the existing MPRDA already prohibits mining without the required statutory authorisations. In Rapoloti v S, the Gauteng High Court confirmed that a contravention of section 5A already constituted an offence through the residual offence provision in section 98(a)(viii), but identified the defective cross-reference that resulted in the offence attracting the residual maximum penalty of six months' imprisonment.[6]

10. AfriForum therefore supports correcting this anomaly and providing penalties proportionate to serious and organised illegal mining. However, the deterrent value of a maximum sentence depends upon a credible prospect that unlawful conduct will be detected, investigated and successfully prosecuted. Increasing the theoretical consequence of an offence cannot compensate for a low probability of enforcement.

Parallel legislative processes, coordination and legal certainty

11. Of greater concern is that substantial parts of the present Bill duplicate amendments already contained in the 2025 Bill. The earlier Bill already proposes amendments to section 5A, inserts section 5B dealing with assistance to illegal mining, amends section 91, inserts section 91A granting powers to SAPS members, and amends sections 98 and 99 dealing with offences and penalties.[7]

12. The duplication is not merely technical. The two Bills do not always propose identical wording or legal consequences.

13. For example, the 2025 Bill defines "artisanal mining" as traditional and customary mining operations using traditional or customary ways and means, including activities using mostly rudimentary methods and tools. The 2026 Bill removes the traditional and

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[5] General (Mining) Laws Amendment Bill, 2026, clauses 5 and 7 to 9.
[6] *Rapoloti v S* (A24/2023) [2024] ZAGPPHC 1233 (28 November 2024), particularly paras 9–14.
[7] Draft Mineral Resources Development Bill, 2025, clauses 5–6, 52–53 and 57–58.

customary component and instead defines artisanal mining directly by reference to rudimentary mining methods, manual and rudimentary tools, and ore usually occurring at the surface or shallow depths. The concept of "rudimentary" remains undefined in both formulations.[8]

14. More seriously, the 2026 Bill defines an "artisanal mining permit" as a permit issued under section 27A(6) and a "small-scale mining permit" as one issued under section 27(6). Those provisions form part of the proposed 2025 framework and do not presently constitute the operative artisanal and small-scale permit regime under the MPRDA. The 2026 Bill nevertheless proposes replacing the existing reference to a "mining permit" in section 5A with these new permit categories.[9]

15. The present Bill is therefore being drafted on the assumption that another Bill, with its own legislative process and potentially further amendments, will ultimately be enacted in materially the form presently proposed. As recently as the DMPR's 2026/27 planning process, submission of the Mineral Resources Development Amendment Bill to Parliament remained a planned departmental output.[10]

16. This creates an unnecessary sequencing problem. If the 2026 amendments were commenced before the relevant provisions of the 2025 Bill, they would refer to statutory permit provisions that have not yet been created. Conversely, delaying the whole 2026 enforcement regime until the 2025 framework is enacted would make urgently required enforcement reforms dependent upon a separate and considerably broader legislative process.

17. There is also potential conflict in the penalty provisions themselves. The 2025 Bill proposes its own amendments to sections 98 and 99, while the 2026 Bill proposes a materially different structure culminating in the new R100 million and 30-year maxima.

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[8] Draft Mineral Resources Development Bill, 2025, clause 1; General (Mining) Laws Amendment Bill, 2026, clause 3.
[9] General (Mining) Laws Amendment Bill, 2026, clauses 3–4; Draft Mineral Resources Development Bill, 2025, clauses 26–27.
[10] Portfolio Committee on Mineral and Petroleum Resources, report on the DMPR's 2026/27 Annual Performance Plan and budget, recording submission of the Mineral Resources Development Amendment Bill to Parliament as a planned output and the rollout of the new mining cadastre across eight regions.

If the two Bills amend the same provisions in different sequences without careful consolidation, uncertainty could arise as to the ultimate wording and effect of those sections.[11]

18. The institutional history of the present Bill makes this overlap particularly noteworthy. The General Laws Amendment Bill addressing illegal mining was initially developed through cooperation between the mineral resources authorities and law-enforcement agencies within the Justice, Crime Prevention and Security Cluster. Its stated purpose included synchronising the relevant legislation. The present Bill is now being advanced through the Department of Justice and Constitutional Development while the DMPR's separate 2025 Bill, which proposes amendments to several of the same MPRDA provisions, remains unfinished.[12]

19. AfriForum does not suggest that the involvement of different departments is itself objectionable. Illegal mining necessarily requires cooperation across the mineral-regulation and criminal-justice systems. However, effective interdepartmental cooperation should produce a coherent legislative framework. Parallel Bills proposing overlapping and, in certain respects, different amendments to the same statutory provisions create precisely the uncertainty that legislative coordination should prevent.

20. AfriForum submits that the anti-illegal-mining reforms should be decoupled from provisions dependent upon the unfinished artisanal and small-scale mining framework. At minimum, the commencement of overlapping provisions must expressly be coordinated. Preferably, amendments to the same MPRDA provisions should be consolidated before enactment so that Parliament considers one coherent final text rather than parallel amendments capable of overwriting or contradicting one another.

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[11] Draft Mineral Resources Development Bill, 2025, clauses 57–58; General (Mining) Laws Amendment Bill, 2026, clauses 8–9.

[12] Parliament of the Republic of South Africa, *Amendment of the legislation in response to the challenge of illegal mining*, 2023, recording that the DMRE and law-enforcement agencies within the Justice, Crime Prevention and Security Cluster had drafted a General Laws Amendment Bill to strengthen and coordinate legislation dealing with illegal mining; see also National Assembly, *Unrevised Hansard*, 11 July 2024, where the Minister of Mineral Resources and Energy stated that the Bill sought to "synchronise" provisions of the MPRDA, Diamonds Act and Criminal Procedure Act.

21. Certain drafting anomalies should also be corrected. Proposed section 98(aA), for example, refers to assisting or providing a service “as contemplated in section 5A”, whereas section 5B is the provision that specifically regulates assistance. The proposed Schedule 1 amendment similarly refers to illegal prospecting and mining activities under “section 5A or section 5B” before separately listing assistance under section 5B. These provisions should distinguish more clearly between the underlying illegal mining activity and the separate offence of facilitating it.[13]

Formalisation and regulatory camouflage

22. The Government has expressly presented the proposed artisanal and small-scale mining regime as a mechanism to formalise informal operators, improve compliance with environmental, safety and labour requirements and reduce illegal mining. That objective is legitimate. Formalisation is not inherently undesirable where operators can genuinely comply with an appropriate regulatory framework.[14]

23. The difficulty is that formalisation substantially changes the regulatory burden. The 2025 Bill proposes artisanal permits for areas not exceeding 1.5 hectares, valid for up to two years and renewable for a further two years, together with a separate small-scale mining permit regime. It therefore envisages potentially numerous comparatively small operations distributed across the country.[15]

24. AfriForum warned in its 2025 submission that spreading regulatory oversight across large numbers of small sites could overwhelm already constrained regulators. It further warned that small-footprint permits could become legal cover for broader unlawful extraction if cadastral transparency, environmental oversight and enforcement capacity were inadequate.[16]

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[13] General (Mining) Laws Amendment Bill, 2026, clauses 1, 5 and 8.

[14] Department of Mineral and Petroleum Resources, statement on the approval of the Critical Minerals and Metals Strategy and Draft Mineral Resources Development Bill, 20 May 2025, stating that the proposed ASM licensing regime is intended to formalise artisanal and small-scale mining, improve compliance and reduce the risk of illegal mining activities.

[15] Draft Mineral Resources Development Bill, 2025, clauses 26–27, including proposed sections 27 and 27A.

[16] AfriForum, *Comments on the Mineral Resources Development Bill, 2025*, paras 15–21.

25. That risk may be described as "regulatory camouflage". A valid permit does not authorise mining outside its conditions. An operation that expands beyond its authorised area, extracts an unauthorised mineral, employs impermissible methods or receives minerals unlawfully extracted elsewhere remains subject to the law. The difficulty is that the existence of a valid permit provides an initial appearance of legality behind which those activities may become more difficult to detect.

26. The regulatory question consequently becomes more complex than merely asking whether a person has permission to mine. Regulators must establish whether the activity actually occurring corresponds with the authorised area, mineral, method and conditions, whether production records are credible, and whether minerals entering the legitimate supply chain originate from authorised workings.

27. This requires a functioning cadastre, mineral traceability, accurate records, regular inspections, environmental oversight and effective enforcement. Yet established evidence confirms capacity constraints within the institutions expected to perform those functions.

28. Parliament warned in January 2026 that inadequate numbers of Environmental Mineral Resource Inspectors were weakening compliance monitoring and enforcement. Parliament has separately recorded that SAPS lacked specialised training specifically designed for illegal mining, referred to its "thin resources" and called for enhanced resourcing across the departments involved.[17]

29. The modern mining cadastre is itself still being rolled out. The DMPR's 2026/27 plans provide for rollout of the new cadastre across eight regions while simultaneously processing thousands of mining and prospecting applications.[18]

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[17] Parliament of the Republic of South Africa, *Mineral and Petroleum Resources Committee Concerned About Capacity Challenges in KZN*, 29 January 2026; Parliament of the Republic of South Africa, *Lack of SAPS Training to Tackle Illegal Mining Is Incomprehensible, Says Police Chairperson*, 17 September 2025.

[18] Portfolio Committee on Mineral and Petroleum Resources, report on the DMPR's 2026/27 Annual Performance Plan and budget.

30. The 2026 Bill does not transfer the ordinary regulatory burden to SAPS. Proposed section 91A expressly excludes routine inspections under section 92 and the issuing and enforcement of compliance notices under section 93 from the powers automatically given to SAPS members. Those powers may only be separately assigned by the Minister with the concurrence of the Cabinet member responsible for police. Day-to-day regulatory supervision therefore fundamentally remains a departmental responsibility.[19]

31. This is significant. If formalisation produces a substantially larger number of mining operations requiring supervision, the DMPR's regulatory workload will increase at the same time that Parliament is already identifying shortages in the inspectorate. Severe criminal penalties cannot remedy unlawful activities that are never detected.

32. AfriForum accordingly reiterates its earlier submission that any artisanal and small-scale mining framework should be phased in only with adequate regulatory capacity. A fully functional and publicly accessible cadastre, reliable mineral traceability, appropriate production and transport records, sufficient inspection capacity and transparent information on permit holders should be prerequisites rather than aspirations to be achieved after formalisation.

33. Without these safeguards, formalisation risks becoming a mechanism through which illegal mining is obscured rather than controlled.

Centralisation and executive discretion

34. AfriForum is also concerned by the continued concentration of regulatory discretion in the executive. The 2025 Bill already proposes replacing the Regional Manager with the Minister as decision-maker in several parts of the licensing framework. The present Bill adds to this concern by empowering the Minister to designate not only an officer but "any person with appropriate expertise" as an authorised person for purposes of

[19] General (Mining) Laws Amendment Bill, 2026, clause 7, proposed section 91A.

the MPRDA. Neither "appropriate expertise" nor objective qualification criteria are prescribed.[20]

35. The need for additional technical capacity is understandable, particularly in light of acknowledged staffing constraints. However, widening the category of persons who may exercise statutory inspection and enforcement powers should be accompanied by clear standards governing qualifications, training, conflicts of interest, appointment and accountability. Enforcement capacity should be strengthened institutionally rather than through an undefined Ministerial discretion to designate individual persons.

36. Proposed section 91A(2) similarly permits the Minister, with the concurrence of the Cabinet member responsible for police, to confer routine inspection and compliance powers upon SAPS members. AfriForum supports improved cooperation between the DMPR and SAPS, but submits that the exercise of specialised regulatory powers should depend upon demonstrable training and competence and should operate within transparent lines of accountability.[21]

37. Greater Ministerial discretion cannot substitute for properly staffed and professionally capable regional institutions. The regulatory system should operate predictably according to objective criteria rather than depend excessively upon central executive intervention.

Racial allocation within the underlying formalisation framework

38. The 2026 Bill does not itself contain an express racial qualification for artisanal or small-scale mining permits. However, its incorporation of these permit categories cannot be considered entirely separately from the 2025 framework from which they originate.

39. Proposed section 7A of the 2025 Bill expressly empowers the Minister to designate certain areas "for black persons" for artisanal and small-scale mining. Section 9A then

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[20] Draft Mineral Resources Development Bill, 2025, including amendments replacing the Regional Manager with the Minister in several decision-making provisions; General (Mining) Laws Amendment Bill, 2026, clause 6, proposed amendment to section 91.

[21] General (Mining) Laws Amendment Bill, 2026, clause 7, proposed section 91A(2).

provides for invitations for applications in designated areas. These provisions were among the matters to which AfriForum objected in its August 2025 submission.[22] The subsequent erratum to the 2025 Bill corrected provisions concerning sections 11 and 17, but did not remove this race-based designation mechanism.[23]

40. AfriForum reiterates its objection to using racial classification as a criterion for access to mineral resources. A formalisation regime intended to reduce illegal mining should encourage lawful participation according to objective considerations such as technical competence, environmental compliance, safety, financial capability and the ability to comply with permit conditions.

41. The anti-illegal-mining objective of the 2026 Bill should therefore not be made dependent upon, or be construed as legislative endorsement of, a racially selective permit framework that remains subject to a separate and unfinished legislative process.

42. This further demonstrates why the 2026 enforcement reforms and the contested policy choices contained in the 2025 Bill should not be unnecessarily intertwined.

Conclusion

43. The Bill represents a serious attempt to strengthen the legal response to illegal mining. AfriForum supports the clearer offence provisions, stronger penalties, the prohibition of assistance to illegal miners and improved cooperation between SAPS and the mining regulator.

44. However, the principal weakness in South Africa's response to illegal mining is not merely the severity of the penalties appearing in legislation. Parliament itself has

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[22] Draft Mineral Resources Development Bill, 2025, clauses 8 and 10, proposed sections 7A and 9A; AfriForum, *Comments on the Mineral Resources Development Bill, 2025*, paras 22–24.

[23] *Erratum: Mineral Resources Development Bill, 2025*, Government Gazette No. 52842 of 9 June 2025. The erratum amended the proposed changes to sections 11 and 17 but did not amend proposed sections 7A or 9A.

documented shortages in regulatory and policing capacity, deficiencies in specialised policing expertise and the continuing need for stronger intelligence-led enforcement.[24]

45. Against that background, the simultaneous formalisation of artisanal and small-scale mining could substantially enlarge the universe of operations requiring regulatory oversight. Without sufficient inspectors, cadastral transparency, mineral traceability and enforcement capacity, valid permits could provide regulatory camouflage for activity extending beyond what has lawfully been authorised.

46. The Bill also unnecessarily overlaps with an unfinished 2025 legislative process, including by amending several of the same provisions and relying upon permit categories that do not yet exist under the operative MPRDA. This creates avoidable risks to legislative coherence and legal certainty.

47. AfriForum therefore respectfully submits that the core enforcement reforms should proceed only in a coherent legislative form that is not dependent upon unresolved provisions in the 2025 Bill. Any future formalisation of artisanal and small-scale mining should be accompanied by measurable regulatory-capacity prerequisites, transparent cadastral and traceability systems, appropriately qualified inspectors and effective enforcement mechanisms.

48. The framework should further avoid undefined concentrations of executive discretion and should provide access to the formal mining sector according to objective, non-racial regulatory criteria.

49. Ultimately, stronger legislation can improve the tools available to the state, but legislation cannot substitute for functioning institutions. A maximum sentence of 30 years will have little deterrent effect where unlawful activity is unlikely to be detected, permit contraventions remain unnoticed and organised syndicates operate with little prospect of meaningful consequences.

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[24] Parliament of the Republic of South Africa, *Mineral and Petroleum Resources Committee Concerned About Capacity Challenges in KZN*, 29 January 2026; Parliament of the Republic of South Africa, *Lack of SAPS Training to Tackle Illegal Mining Is Incomprehensible, Says Police Chairperson*, 17 September 2025.

50. AfriForum respectfully requests that the above concerns be considered before the Bill is introduced into Parliament.

Yours sincerely

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