



 AngloGold Ashanti

ARTISANAL AND SMALL-SCALE MINING

 Position paper



MINERALS COUNCIL
SOUTH AFRICA

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“There is also the option of mining companies incorporating ASM miners into existing workforces.”



1: INTRODUCTION

Recent proposals to address artisanal and small-scale mining (ASM) in South Africa

A number of non-governmental organisations (NGOs) and, more recently, the South African Department of Mineral Resources have suggested that integrating the ASM sector into the formal economy can help miners and communities by increasing security, creating a path towards more stable incomes, and ensuring that safer and more environmentally sustainable practices are employed. It could also spur longer-term economic and social development, and ensure that the entire nation benefits from the extraction of natural resources.

In an article entitled “Capacity building for self-regulation of the artisanal and small-scale mining (ASM) sector: A policy paradigm shift aligned with development outcomes and a pro-poor approach”, researchers from the University of the Witwatersrand propose that the present regulatory and policy framework for ASM in Africa needs reform, and that two shifts in policy are required: the first being a shift to outcomes-based policy and the second to an inclusive process of policy making.

According to the authors, “Outcomes relevant to ASM include, but are not limited to, the protection of natural resources, including appropriate extraction of the ore body; care for the environment such as water sources; social protection for women and children; good standards for health and safety practices; skills development and use of best practice technology; and access to legitimate channels for the processing of minerals and/or the sale of minerals. One element of a shift to outcomes-based policy is movement away from the control of individual miners and toward the management of spaces and ASM activity. In other words, policies should be designed to regulate the activity itself rather than its practitioners”.

The authors further proposed: “The top-down approaches hitherto dominant in ASM policy development that rely on enforcement through government agencies require urgent reform. Local associations and forms of self-regulation for ASM need to be strengthened through policies and laws that make provision for this. Of course, bottom-up approaches are not a panacea but they can and do provide the opportunity for context-specific approaches and capacity building of local stakeholders especially local level miners and the often very poor communities from which they come. Neither do we advocate for a laissez-faire approach to ASM that disregards important environmental, health, safety, legal and human rights concerns but rather we recognise that these concerns need to become the concerns of the local stakeholders themselves. A creative shift in policymaking needs [to] emphasise more inclusivity. We argue that beyond creating demarcated, legal spaces for activities, ASM policy must also emphasise building the capacity for existing forms of association, organisation, co-operatives and governance thus building on existing forms of self-regulation. Some of the structures that have been established in the ASM sector that lend themselves to self-regulation include miners’ associations and broad-based operational groups such as co-operatives”.

In view of these proposals from both NGOs and government to address ASM and also to be in a position to positively engage on this matter when called upon to do so, the Minerals Council South Africa (Minerals Council) established a task team comprising designated representatives of its members with the necessary expertise in the various fields that intersect with the issue of ASM. The task team held various meetings, which culminated in this draft position document for mandating by the Council of the Minerals Council.

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2: DEFINITIONS

The task team appreciated that, in order to have meaningful discussions on ASM, it was important that the stakeholders, right from the outset, have a common understanding or be broadly aligned as to what these concepts entail. Other concepts, such as legal and illegal mining, emerging and junior mining, would also find their way into such discussions and it would thus be equally important to have a shared understanding of the meaning of these concepts.

Defining ASM, also at international level, has proven to be quite a challenge. This is partly because definitions vary by country and in relation to the different resources being mined. Analysts have used a combination of criteria to arrive at working definitions.

The definitions below have been developed after taking into consideration mining companies’ national and international experience in dealing with these activities, definitions developed by international organisations, such as the International Council on Mining and Metals (ICMM), as well as other legislation.

Artisanal mining includes the activities of individuals using mostly rudimentary mining methods, manual and rudimentary tools to access mineral ore, usually available on surface, or at shallow depths although, in South Africa, such mining often occurs at relatively deep levels. These individuals conduct this activity mostly for subsistence. This activity is labour-intensive and poor in capital, mechanisation and technology.

Small-scale mining as opposed to large-scale mining (LSM) is conducted on a lesser scale than that of big mining houses. In the South African context, small-scale mining includes concepts such as junior and emerging mining, and it typically involves smaller producers undertaking mining activities sanctioned by approved rights or permits and other authorisations granted by the Department of Mineral Resources in terms of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) and relevant environmental legislation.

Legal mining generally constitutes mining activities undertaken in accordance with an approved mining right, permit or licence and the associated environmental authorisation(s) issued by the Department of Mineral Resources in terms of the MPRDA and the National Environmental Management Act 107 of 1998 (NEMA).

Illegal mining constitutes mining activities undertaken without a mining right, permit or licence and the associated environmental authorisation(s) issued by the Department of Mineral Resources in terms of the MPRDA and NEMA.

Illegal mining activities usually lead to various statutory, regulatory and criminal offences. Those participating in illegal mining activities may initially be guilty of trespassing but may thereafter be involved in other offences, such as corruption, by possibly paying bribes to the police, security and mine employees to ensure access to ore. These offences may be followed by additional offences such as intimidation, coercion, assault, murder, prostitution, using and dealing in drugs, committing environmental offences (such as holings or water contamination), among other offences related to the unauthorised possession and use of explosives, theft, and breaches in health and safety.

Even more concerning is illegal mining activity on concessions licensed and operated by others – on surface and underground – where the licence holder is actually operating a mine (the mine is not closed or abandoned).

Often those involved in illegal mining activities in South Africa do not have access to markets, therefore all illicitly produced precious metals and stones are fed into the illicit market. It is in this space where an alternative and illicit economy is driven that the government also loses out on royalties, income tax and value added tax, among others. Of course, these are serious economic offences.

3: INTERNATIONAL CONTEXT

The majority of the global mining workforce is engaged in ASM. A study conducted by the World Gold Council in 2011 estimated that annual ASM gold production was about 13% of total annual production. According to a more recent study (involving the United Nations Development Project), the figure is closer to 20% of the world's annual gold production. According to recent estimates, close to 40.5 million people are directly involved in ASM globally with another 100 million indirectly involved in the industry. ASM covers many minerals but, generally, the focus is more on gold and diamonds. ASM has become integral to the economies of many mining countries in the developing world.

In some countries, such as Zimbabwe, artisanal miners enter the sector in desperation due to lack of employment/income and/or retrenchment from mines due to economic recession. Sometimes it is a way of life for people in a specific area or community, such as in Guinea, Mali and Ghana. Often rural communities supplement their income from seasonal farming with artisanal mining as in Tanzania. There is also sometimes a “get-rich-quick” mentality. The attraction to artisanal mining as opposed to farming is that it is not seasonal and provides a constant market.

The ASM sector can be a source of major social conflict and can result in serious negative impacts on human health and the environment. For example, ASM is the largest global source of mercury release into the environment from human activities with about 35% of total release from a number of ASM gold mine sites in over 70 countries. It is also plagued with exploitation of children and women. In Africa, it is estimated that about half of artisanal miners are women and 10% children.

Increasingly, LSM and ASM activities have connected and led to conflict. At the annual general meeting of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) on 16 to 20 October 2017, this issue was discussed. It was argued that relations could be improved by *inter alia* formalising the ASM sector, addressing power imbalances and supporting small-scale miners in accessing areas that have geologically proven reserves.

Four main governance and policy considerations regarding LSM and ASM interactions were discussed:

- **Separate ASM and LSM by demarcating concessions for ASM**
In order for this option to be successful, the ASM zones need to be located in areas that miners want to mine. Areas could be freed up for ASM *inter alia* by encouraging mining companies to shed unwanted or unused land.
- **Removal of ASM from LSM concessions**
The IGF concluded that this would be the “least effective measure”.
- **Co-operating, incorporating and transforming ASM**
The IGF identified ways in which LSM could work with ASM, including shedding and identifying land for ASM activities within their concessions, and exploring the potential for tribute and buy-back arrangements, technical support, equipment leasing schemes and opportunities for ASM to process and refine their ores, thus making them part of supply chains.
- **Dialogue between ASM and LSM**
This process should commence in the exploration phase. Governments need to play a role in creating streamlined dialogue and communication channels that outlast changes in ownership and help ASM practitioners to have a voice to air grievances.

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4: SOUTH AFRICAN CONTEXT

In South Africa, most artisanal mining is carried out illegally.

Illegal mining is on the rise in South Africa and presents challenges that need to be addressed from a range of perspectives. It takes place at abandoned and operating mines with illegal miners often operating under dangerous conditions.

The growth in illegal mining could be attributed to a combination of the difficult socio-economic climate and limited resources at the disposal of law enforcement agencies such as police, immigration, border control and prosecuting authorities. Thousands of people are currently estimated to be involved in illegal mining (directly and indirectly).

Miners enter mostly abandoned shafts, travelling as far as 4km underground where they may live for several months at a time, risking their lives and the lives of others.

Illegal mining and organised crime are usually inter-related. Very often, illegal mining is spearheaded by globally connected criminal syndicates. “Zama zamas”, as illegal miners are known in South Africa, are often heavily armed, have explosives and, when trespassing on operating mines, set ambushes and booby traps for employees, security personnel and rival groups of illegal miners. Following the severe drought in 2016, the excessive use of water by zama zamas to process the gold-bearing material directly impacted on local communities.

Illegal mining has a range of negative social and financial impacts on employees, companies, the mining sector and the country because of loss of revenue, taxes, employment opportunities, capital expenditure, exports, foreign exchange earnings and procurement, among others. It also presents a serious risk to the sustainability of the industry and its ability to contribute to a meaningful future for all South Africans.

According to information supplied by Minerals Council members, around 90% of all apprehended illegal miners are undocumented (illegal) immigrants.

By trying to incorporate the current illegal miners into the formal economy, we would practically be creating formal jobs for illegal immigrants rather than formal jobs for South African residents and people with valid working permits.

The Minerals Council is aware of one case in South Africa where illegal miners have successfully been incorporated into an existing mine workforce. This has been done on the following basis:

- The miners were not employed by the mining company. They formed two formally registered co-operatives – each with 20 miners as members and one the leader. The co-operatives are contracted by the mining company to mine for it.
- The mining company provides training, supervision, personal protective equipment (PPE) and health monitoring for the miners.
- The miners are paid purely on production. The money is then split equally between the members of the co-operatives who worked on that shift.
- The mining company does not get involved in any human resource (HR) issues related to the miners. For example, if a miner is ill and cannot work, the co-operative concerned will deal with the matter, such as finding a replacement.
- The mining company only employs South African citizens and only from the local community. While the mining company will verify the legality of the documentation, each co-operative will ultimately decide whether or not a person is allowed to be a member of that co-operative.
- The miners arrange their own transport from the local community to and from work, contracted to a service provider of their choice.

5: MINERALS COUNCIL'S POSITION

The Minerals Council does not support illegal mining activities.

The Minerals Council and its members are fully committed to supporting the regularisation of ASM where this can be undertaken safely, in an environmentally responsible manner, and without undermining the health, safety and security of other people, including employees of lawful mining operations. Such regularisation could ensure livelihoods for thousands of skilled ex-miners who had lost their jobs due to a decline of formal LSM in South Africa.

With regard to small-scale mining, the MPRDA already makes provision for applications for prospecting rights, mining rights and permits, which small-scale miners can apply for. However, the Department of Mineral Resources should investigate how these processes could be simplified and how the time for processing these applications could be shortened.

The MPRDA does not make provision for applications by artisanal miners for mining rights and permits, and the real issue is how to bring them within the regulated framework.

In dealing with regulated artisanal mining, all relevant role players should be involved and at least the following principles should apply:

- Artisanal mining should be limited to surface mining. Underground mining poses many significant challenges and can only be undertaken safely with access to large financial resources, appropriate machinery and equipment, and personnel with various areas of expertise and experience.
- Government must ensure that the activities of artisanal miners are performed according to all legal and other requirements. This includes adherence to, among other legislation:
 - Mineral
 - Health and safety
 - Financial
 - Environmental legislation, especially relating to authorisations, permits, closure liabilities and rehabilitation
 - Labour
 - Social and labour plans
 - Local municipalities' integrated development plans

The proposal by the researchers from the University of the Witwatersrand mentioned earlier, that voluntary ASM associations should be allowed to self-regulate to a certain extent, should be considered with great caution as this could seriously undermine the regulation of artisanal mining.

- Given the nature of artisanal mining, government enforcement agencies will require extensive additional resources and training to monitor and enforce adherence to all applicable legislation. Non-compliance by artisanal miners could create severe, adverse consequences for the artisanal miners themselves, government, surrounding mining communities, other legitimate miners and the environment. Unless there is proper law enforcement, it would also lead to additional illegal mining activities – often in competition with the (legal) artisanal miners – thereby undermining the viability of artisanal mining and creating numerous social conflicts, particularly turf wars.
- The selection of artisanal miners should benefit local communities and local employment.
- There should be local community involvement and the establishment of co-operatives could be considered.

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- Artisanal miners should be legal South African residents or have legal working permits. As such, the hurdle for acquisition of legal working permits for artisanal mining must not be restrictively high so as to dissuade potential applicants.
- There should be a legally valid transfer of liabilities to the artisanal miners if mining areas/rights are abandoned/partitioned by exiting rights holders.
- There should be formal channels for sale/dispatching and beneficiation of the products of artisanal miners to prevent other illegal activities.
- The probable influx of illegal immigrants should be controlled as this will inflate the current problem with illegal miners and immigrants.

The work done to date to combat illegal mining should continue and should not be replaced with the efforts to assist ASM. It should be viewed as two separate work streams and not on the basis that the ASM project will overtake and resolve the illegal mining activities. Stringent enforcement action should be taken against illegal miners to send a strong message to others to discontinue their illegal actions or to discourage others from such activities.

Addressing the issue should be done in a way that does not encourage further illegal mining activities, should not merely be “legalised” without requiring compliance with the law as this will encourage further illegal mining activities.

Holders of existing mining rights’ security of tenure must be protected at all times. An artisanal or small-scale miner should not be granted a mining right, which could impact on another holder’s pre-existing right. Nobody should ever be granted a mining right for the same mineral and over the same land where a pre-existing right exists.

Existing holders should be given a window period to apply for other minerals on the land concerned in addition to minerals already held under a mining right. Some holders would prefer to apply for the additional minerals, to incorporate them into an existing mining right and thereafter to contract with a small-scale miner to conduct the relevant mining activities on their behalf as the holder of the right will have more control over the activities of the small-scale miner.



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Currently, it is not possible to subdivide existing mining rights and to transfer subdivided portions of mining rights to other persons. The MPRDA does not prohibit this but, for some reason, the Mining and Petroleum Titles Registration Office is not willing to register such subdivided rights unless consolidated with an existing mining right. If this issue can be resolved, it will allow holders of mining rights to subdivide and transfer subdivided rights to small-scale miners where they have applied for such rights.

There should be proper planning to deal with closure of an ASM operation irrespective of whether or not the mineral has been mined out or is no longer mined for any reason. This would include dealing with environmental and socio-economic issues (such as resettlement of communities).

Larger mining companies could, on a voluntary basis, explore how they could assist ASM miners. This could include identifying mineral holdings (or part thereof), which are uneconomical for them to mine; providing technical support to ASM miners; assisting with training of ASM miners; mentoring ASM miners; finding more permanent work opportunities for ASM miners; refining the product of ASM miners; assisting with onward disposal of the product; and, among others, incorporating ASM miners into existing workforces.

There should be a clear written demarcation of roles, responsibilities, accountabilities and liabilities of each of the relevant role players, including the ASM miners, the mining company concerned, organs of state, NGOs, communities and local government, among others.

Having regard to the above principles, larger mining companies that have identified mineral holdings (or part thereof), which are uneconomical for them to mine, could consider co-operation with ASM miners on the following basis:

- The mining company concerned will, in its sole and absolute discretion, decide which area/right/part of a right is to be transferred to the ASM transferee who will, in conjunction with the Department of Mineral Resources, ensure that the local communities are the ultimate beneficiaries of any transfer.

“Addressing the issue should be done in such a way as not to encourage further illegal mining activities.”



- The area (or area on which the right/part of a right is situated) is abandoned and removed from the mining area of a particular company's existing mining right.
- A mining company's environmental management programme is amended to remove the area from the environmental management programme/environmental authorisation (in terms of Section 102 of the MPRDA read with the environmental impact assessment regulations) and NEMA.
- All environmental liabilities associated with the area are transferred from the mining company to the transferee in terms of NEMA's environmental impact assessment regulations and/or Regulation 58 and Form O of the MPRDA.
- The transferee must obtain all requisite authorisations in terms of NEMA, the National Water Act 36 of 1998 and any other applicable environmental legislation.
- The transferee shall not interfere with or infringe upon a company's rights and entitlements in relation to its water resources.
- A closure certificate is issued to the mining company in terms of Section 43 of the MPRDA in respect of the area and Section 24R of NEMA.
- Any applicable portion of financial provision held in trust by the mining company in relation to the area is returned to the company.
- The transfer of the area to the transferee is recognised for the purposes of the mining company's historically disadvantaged South African ownership requirements in terms of the Mining Charter and/or its obligations in terms of its social and labour plan.
- Appropriate measures are in place (involving all relevant role players) to ensure that environmental degradation is minimised, and the safety, health and security of personnel, property and assets of other people (the public and the company concerned) are not jeopardised.
- There is also the option for mining companies to incorporate ASM miners into existing workforces. However, this is a complicated option and would depend on numerous factors. The Minerals Council's view is that this option should be left for individual companies to decide with regard to their individual circumstances and those of the ASM miners concerned.



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