

MEDIA STATEMENT

MINERALS COUNCIL COMMENTS ON GOVERNMENT'S DRAFT ARTISANAL AND SMALL-SCALE MINING POLICY

Johannesburg, 24 June 2021: The Minerals Council has submitted comments to the Department of Mineral Resources and Energy (DMRE) in respect of its draft artisanal and small-scale mining (ASM) policy

https://www.gov.za/sites/default/files/gcis_document/202105/44538gen258.pdf

The following is a summary of key points contained in the submission.

General approach

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 persons, including at other 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 large-scale mining in South Africa.

The Minerals Council is of the view that the DMRE must ensure that ASM activities and operations are performed according to all existing legal and other requirements, including mining legislation such as the MPRDA (including the obligation to obtain a closure certificate), the MHPA, financial legislation (including royalties), environmental legislation, labour legislation, and international conventions ratified by South Africa (such as the use of mercury).

Rather than a complete overhaul of the current system, the DMRE should investigate how these processes could be simplified for ASM applicants and how the time for processing of these applications could be shortened.

Penalties and other sanctions for illegal mining and/or unlawful disposal of minerals must be severe and serve as a worthy deterrent to discourage such criminal activities.

Principles to follow



- ASM should be limited to surface mining. If a small-scale miner believes it has the capacity to mine underground, the normal mining permit application should be followed.
- Given the nature of ASM, the Government enforcement agencies will require extensive additional resources and training to monitor and enforce adherence to all the applicable legislation.
- There should be local community involvement, and the establishment of co-operatives should be considered.
- Large scale miners should be incentivised through recognition of the social contribution as an element of broad-based empowerment.
- There should be formal channels for sale/dispatching and beneficiation and refining of the products of artisanal miners to avoid disposal into illicit markets.
- There should be a legally valid transfer of environmental and health and safety liabilities to artisanal miners where an existing rights holder transfers part of their right to artisanal miners. Should an ASM miner be unable to meet those responsibilities, the law should provide that the DMRE will bear those liabilities. This could be funded through a ringfencing of a portion of royalties paid by ASM miners.
- Strong safeguards are required to ensure that responsibility for regulating ASM remains with the State with no potential for legal or reputational liabilities to be attracted by large-scale mining (LSM) operators due to ASM activities with which LSM operators have assisted and/or which occur on their land and/or mining right areas.

Legislative requirements

Currently, it is not possible in terms of the MPRDA to subdivide existing mining rights and to transfer subdivided portions of mining rights to other persons, unless the subdivided right is consolidated with an existing mining right. This issue should be addressed and resolved to enable holders of mining rights to subdivide and transfer subdivided rights to small-scale miners.

Closure

There should be proper planning to deal with closure of an ASM operation. This would include dealing with environmental and community issues.

Assistance for ASM

LSM operators could explore how they could assist ASM miners. This could include identifying mineral holdings which are uneconomical for the LSM operators to mine;

providing technical support to ASM miners; assisting with training and 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 incorporating ASM miners into existing workforces etc.

Further assistance by government in the form of capacity building programmes is required in order to assist ASM operators to undertake assessment of and comply with the necessary environmental, financial management, health and safety requirements.

Tributing agreements

The Minerals Council is uncomfortable with the policy's idea that relationships between LSMs and ASMs be dealt with through tributing agreements. The reason for this concern is that, because these are akin to a lease agreement, the LSM would remain responsible for any liabilities accrued by the ASM miner.

The Minerals Council has proposed that any such agreements be defined in the Act in terms of section 11 of the MPRDA, that is, as a transfer of the mining right, including all responsibilities for the right.

Reservation of ASM areas

The Draft Policy makes provision for the reservation of areas for the ASM industry. The Minerals Council recommends that the reservation of any areas should be made subject to a public consultation process. Given that different ore bodies require different mining techniques and mechanisms, the Draft Policy must provide for the creation of a register of surface level ore-bodies that are to be made available for ASM operations.

Considering that the intention is for ASM permits to be obtained quickly, cost effectively and with fewer regulatory requirements, there are likely to be hundreds if not thousands of applications for ASM permits. If the ASM permits are not confined to specific designated areas or reserved areas, these permits are likely to be spread across the country making the monitoring of these operations extremely difficult for the DMRE which already has capacity constraints.

Management of ASM operators

The Draft Policy is silent on how foreign nationals will be managed despite the majority of persons currently involved in informal ASM being foreign nationals. The Draft Policy should address the topic of foreign nationals in order to curb the probable influx of illegal immigrants

as this will inflate the current problem with illegal miners and immigrants. This should be coupled with efforts to curb xenophobic outbreaks.

Illegal mining

It is widely known that illegal mining activities in South Africa have resulted in unprecedented levels of violence, forced labour and ancillary criminal activity. The work which has been 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 issue of illegal mining activities. The Minerals Council welcomes the creation of a separate unit within the South African Police Service to combat illegal mining.

Local community development and housing

The Draft Policy refers rather obliquely to incentives and off-sets to encourage LSM operators to co-exist with ASM operators. These should be more clearly set out in the Draft Policy, to detail, for example, how support and contributions by LSM operators for ASM operations can be recognised for purposes of LSM commitments in the Mining Charter and in Social and Labour Plans.

Processing and Refining Facilities

The Draft Policy refers to exploring the potential for tribute and buy-back arrangements, technical support, equipment leasing schemes, and opportunities for ASM to process and refine their ores. It should be added that any material received to the processing or refining facilities from ASM operators will be subject to due diligence on the ASM operations to obtain assurance that they conform to the applicable ethical and responsible mining and responsible sourcing standards as well as any requirements imposed on LSM operators listed on stock exchanges.

A full version of the submission can be found at <https://www.mineralscouncil.org.za/industry-news/publications/other-resources/send/70-other-resources/1615-representations-on-the-draft-artisanal-and-small-scale-mining-policy-2021>

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