

Section	Proposed Intervention in Draft ASM Policy 2021	Comment
<p>1. Introduction</p>	<p>Small Scale Miners are virtually treated the same as Large Scale Miners in terms of the requirement for environmental management, water use, land use, health and safety and financial provisioning requirements.</p>	<p>We submit that because of the significant impact that mining has on the environment, including on water and human health and the fact that it displaces other forms of livelihoods, particularly for example food production, it is appropriate that all forms of mining are only permitted once those impacts have been properly assessed and provision made for them to be addressed, whether through rehabilitation or otherwise to ensure that there is compliance with the polluter pays principle. If this principle is not protected and enforced, it is the most vulnerable in our society who pay – through loss of land, loss of access to water, contamination of water, polluted food gardens, ill health – that is, increased poverty and inequality.</p>
<p>Chapter IV: 7. Licencing regime and administration</p>	<p>e. Extent of permit area in hectares Considering the rudimentary nature of artisanal mining and particularities of small scale mining the extent and size of permits should be determined taking into consideration factors such as but not limited to the type of mineral being mined, technical and financial resources required and the environmental impacts associated with the extraction of that mineral.</p> <p>g. Power to demarcate areas as ASM areas The Minister will be empowered to designate or demarcate certain areas as artisanal or small-scale mining areas. The designation or demarcation will be informed and supported by geological data from the CGS and also by the prevalence of ASM activities in a given area. This approach will assist with optimisation and pooling of resources, sharing of risks and benefits amongst the players.</p> <p>The Minister may also collaborate with the departments responsible for Environment , Forestry and Fisheries and Water affairs to undertake feasibility studies on an identified area to determine the risks, potential impacts, water resources before a decision on reservation of an area for ASM is made.</p>	<p>We welcome this position however we would add that, considering the nature of mining activities, the Department should ensure that no mining permits are granted in environmentally sensitive areas, especially protected areas, as the protection of the ecological assets is generally not compatible with mining activities.</p> <p>While we understand the need to demarcate areas as ASM areas, this process should be carefully considered. For instance, while prevalence of ASM activities in a particular area can be an indicator for demarcation, it is also very important in the process to consider the existing environmental damage in that area and exercise caution before any designation/demarcation is done. This is so because the fact that mining is already taking place in a certain area does not mean that it should continue. In some cases it will be imperative to exercise caution and mitigate further environmental damage in the area.</p> <p>Further we submit that the policy needs to be more clear in terms of how ASM designated or demarcated areas will be regulated from an environmental management perspective especially when it comes to the “sharing of risks and benefits amongst players.” Compliance</p>

		<p>monitoring and compliance enforcement in environmental management is very important. However, the draft ASM policy has not made it clear on how this will be conducted and how will players be held accountable for environmental non-compliance, that is, will all licence holders be held accountable jointly and severally or will it be the main offenders and how will that be determined? Also, it is not clear from the policy how the ASM activities themselves will be conducted in a designated or demarcated area – how many licences will be granted per area and further, how will the issue of cumulative impacts be addressed in situations where environmental damage cannot be attributed to one player. A policy document should be clear and rational and thus important for these aspects to be clarified first in policy before they are legislated upon.</p> <p>If it is the proposed policy of the Department that once an area has been demarcated, environmental compliance will not be enforced, or will be less stringent, then we strongly object to this policy. Even with existing environmental regulation, the impacts of mining are not being addressed by the licence holders, rather they are borne in the first instance by mining affected communities and in the second by the state and therefore the tax payer.</p> <p>We are also concerned about the manner in which financial provision in these areas will be determined and require clarification on who will be responsible for setting aside the financial provision and for the rehabilitation of these ASM designated or demarcated areas. It is not clear from the policy if the licence holders bear the burden of providing financial provision for their activities and also if they are responsible for rehabilitation post-mining. Considering the financial constraints of ASM miners, it is important for this aspect to be properly considered and all role players identified. It is imperative for the State to play an active role in this instance.</p>
--	--	--

		<p>We also note that collaboration between relevant departments in this regard is anticipated. Our only comment here is that, where the policy says:</p> <p><i>“The Minister <u>may</u> also collaborate with the departments responsible for Environment, Forestry and Fisheries and Water affairs to undertake feasibility studies on an identified area to determine the risks, potential impacts, water resources before a decision on reservation of an area for ASM is made.”</i></p> <p>we propose the substitution of the word “may” by “must” so that this becomes a mandatory obligation on the Minister. Collaboration between these departments is crucial and it is also important that there is equal effort on the implementation of agreed measures. Further, the roles of these departments should be clarified so that there is no confusion as to who the competent authority on particular matters should be.</p> <p>Feasibility studies, including strategic environmental impact assessments (SEIAs), are very important especially where areas are going to be designated or demarcated for environmentally intrusive activities such as mining. It is very important to identify the risks and potential environmental impacts including any possible mitigation measures before a designation or demarcation is pronounced. These feasibility studies and SEIAs should be detailed and comprehensive and take into account cumulative impacts and also climate change impacts depending on the mineral being mined.</p>
	<p>k. Transferability and encumbrance A holder of an Artisanal Mining Permit and a Small-Scale Mining Permit should be afforded a right to transfer or encumber in part or whole the permit subject to the Ministers consent. This will assist permit holders in raising capital for the sustainability of operation.</p>	<p>It is important to ensure that where rights are transferred, the new owner is capable of performing their environmental responsibilities and adequate financial provisioning is secured in order to avoid the problem of abandoned mines. The framework should ensure that these agreements are not used as a way to avoid environmental liability. Such transfers of rights should be subject to public scrutiny through a public participation process.</p>

	<p>m. Co-existence with large operators Co-existence between large scale operators and artisanal and small-scale operators should be enabled in the form of Tributating Agreements. These may include shedding and identifying land for ASM activities within the large scale operator’s 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.</p> <p>Very important is that co-existence must only take place where the large operator still operates. This will ensure and protect the ASM operators against inheriting environmental liability which may have been incurred by the large operator. The framework should also provide for incentives and off-sets to encourage large scale operators to co-exist with artisanal and small-scale miners.</p>	<p>It is important for the regulatory framework to specify how environmental liability will be shared in this instance.</p>
	<p>n. Mining tailings and mine dumps A framework for ASM to have access to the mining of tailings dumps and historic residue deposits and stockpiles should be developed in line with existing jurisprudence as outlined by judicial decision on the matter. Owners of these tailings and dumps should be encouraged to work with artisanal and small-scale miners considering the applicable environmental management and water related legal instruments.</p>	<p>Tailing and mine dumps often contain potential contaminants and pose danger to human lives. It is therefore important that such mining activities are properly regulated especially from an environmental and water perspective.</p>
	<p>o. Access to land Access to land remains a contentious issue which requires collaboration with responsible Government departments. The process to obtain access to land from the landowners and lawful occupiers including holders of informal land rights must be clarified in line with the prevailing regulatory framework. Provision for access not to be unreasonably denied should be incorporated. In this regard the framework must provide for safeguards in the form of meaningful consultation requirements,</p>	<p>Meaningful consultation with landowners, lawful occupiers, interested and affected parties, holders of informal and communal land rights, mine communities and host communities should be <i>bona fide</i>. By no means should these requirements be watered down in the context of ASM. We submit on the contrary that free, prior and informed consent by land owners and lawful occupiers should be the benchmark in this policy. Mining, even short-term mining under a permit, can permanently transform land, rendering it unfit for human habitation, food crop generation and in many instances, even grazing. Therefore</p>

	<p>negotiation of compensation to landowners and lawful occupiers, resettlement or relocation and dispute resolution mechanisms. This also include compliance with requirements for zoning of identified land for mining purposes as the case may be.</p>	<p>there is as much need with ASM, as with any other forms of mining, that the socio-economic losses (often long-term or permanent losses) that will be sustained if mining goes ahead are taken into account and assessed before mining is permitted with its short-term economic benefit for the few.</p>
<p>Chapter VII: 10. Environmental Management, Health, Safety and Water Use Considerations</p>	<p>Government policy proposal Government acknowledges the necessity for the ASM industry to operate in an orderly and sustainable manner and comply with the environmental, water use and health and safety prescripts. In this regard the ASM policy and legislative framework must be aligned and cross referenced to the principal legislation governing environment, water use and health and safety.</p> <p>a) Government working together with industry stakeholders (MHSC, MQA & Organised business), will devise interventions to train, empower and educate artisanal miners and small-scale miners on aspects of compliance with environmental management, water use and health and safety requirements.</p> <p>b) The responsible departments to design accessible policy tools and guidelines that are tailored for the ASM industry including advocacy programmes targeting the artisanal and small-scale miners. The dedicated MHS Guidelines from the MHSC will be further reviewed to fully address the health and safety requirements for the ASM Industry.</p> <p>c) Government to strengthen monitoring capacity and adopt an integrated approach to monitoring (joint interdepartmental or multi-stakeholder monitoring of compliance by the ASM industry).</p> <p>d) Government to provide mechanisms for incentives and disincentives to ASM operators to encourage compliance with</p>	<p>We welcome government’s proposed policy to ensure that the ASM policy and legislative framework is aligned with the principal legislation governing environment.</p> <p>We submit that in acknowledging that “[m]ost ASM operations are not in position to comply with the environmental, water use and health and safety requirements” the policy should be unequivocal that non-compliance in these areas cannot and will not be permitted, tolerated or condoned. Given the significant nature of the impacts that environmental, water and health and safety regulations seek to avoid, manage and mitigate, there can be no doubt that these are crucial to sustainability.</p> <p>As pointed out in the draft ASM policy itself, most ASM miners struggle with environmental compliance and fail to comply with the requirements for rehabilitation and mine closure. Proper environmental governance and compliance is thus required in the ASM sector and should be clarified from a policy level. We are concerned that the draft ASM policy glosses over this requirement and fails to adequately consider and deal with environmental management issues of ASM activities from a policy perspective. On the face of it, it looks like the Department itself is not certain as to how this will be undertaken, which is concerning. As mentioned above, it is very important for a policy to be clear and rational as that will pave way for a clearer and proper legislative framework.</p>

	the environmental, health and safety and water use requirements.	
Chapter VIII: 11. Government's Policy Stance on Illegal Mining	<p>Government policy proposal:</p> <p>a) The policy and legal framework must clearly distinguish illegal mining from ASM.</p> <p>b) Government should strengthen the laws relating to criminalisation of illegal mining including the MPRDA, the Criminal Procedure Act, 1977, Precious Metals Act, 2005, Second Hand Goods Act, 2009, and the Prevention of Organised Crime Act, 1998 in terms of offences and penalties to deter illegal mining activities.</p> <p>c) Government should establish a dedicated Minerals and Precious Metals Theft Unit (MPMTU) within the South Africa Police Service (SAPS).</p> <p>d) The MPMTU should be a fully capacitated and trained detective unit to deal with mineral and precious theft related matters.</p> <p>e) There is a need to further explore the creation of dedicated prosecutorial expertise in respect of illegal mining matters.</p> <p>The Policing Act is being amended by the SAPS which presents an opportunity to make inputs for integration and alignment on illegal mining activities.</p>	<p>We welcome government's proposal to take action on illegal mining activities. However, we note that a definition for illegal mining itself has not been provided in the draft ASM policy. It is important for these terms to be clearly defined so that they are distinguishable.</p> <p>In addition to the prosecution of illegal miners, we also propose that government should establish a dedicated detective and prosecutorial unit that will focus on environmental crimes committed by miners of all kinds. Action on illegal mining should not focus on criminal syndicates and theft of precious metals but should also include the criminalisation of non-compliances with the environmental and water laws. This will also act as a deterrent and encourage all miners to comply with these laws. It is also imperative for the whole prosecution and criminal justice system to be fully capacitated and trained to deal with environmental crimes.</p>
General Comments		<p>We note that the policy does not include an obligation on either ASM miners or government to contribute to the improvement and development of the mining-affected communities. While financial capacity can be an issue, ASM affected communities must also benefit from the mining activities and such provision should be made in the policy given the considerable negative impacts that mining, including ASM has on communities. Large-scale miners are required to have a Social and Labour Plan (SLP) which represents a mining company's obligation to benefit the affected community. A similar requirement should be made for ASM activities and the legislative framework should clearly stipulate the role of both the government and ASM miners in</p>

		ensuring that ASM affected communities also benefit from the mining activities.
--	--	---