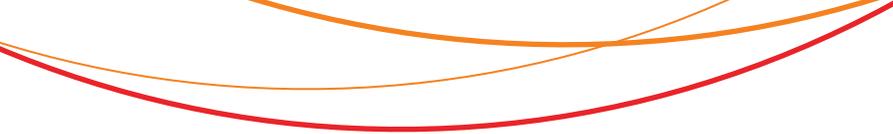


REPORT OF THE SAHRC INVESTIGATIVE HEARING

*Issues and Challenges in relation to Unregulated Artisanal
Underground and Surface Mining Activities in South Africa*





“South Africa is blessed with a special geological heritage. As such, the mining industry has been the bedrock of the South African economy for more than a century”

**President Nelson Mandela, 104th Annual General Meeting of
The Chamber of Mines of South Africa, 8 November 1994**

In an “Investigation of the South African Human Rights Commission”

and

The Chamber of Mines

First Respondent

The National Coordination Strategic Management Team on Illegal Mining

Second Respondent

The Department of Health

Third Respondent

The Department of Trade and Industry

Fourth Respondent

The Aggregate and Sand Producers Association of Southern Africa

Fifth Respondent

The South African Diamond and Precious Metals Regulator

Sixth Respondent

The Department of Labour

Seventh Respondent

The Department of Mineral Resources

Eighth Respondent

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A report prepared for the South African Human Rights Commission by the Office of Commissioner
Janet Love – Portfolio on Environment, Natural Resources, and Rural Development





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EXECUTIVE SUMMARY

Over the last few years, the work and interventions of the South African Human Rights Commission (the Commission) in the portfolio of *Environment, Natural Resources, and Rural Development* have focused increasingly on the impact of mining activities on the environment and human rights. The Commission has convened dialogues, workshops, meetings, hearings, and investigations into the environmental, social, and governance issues related to the management of Acid Mine Drainage; business and human rights in the context of extractive industries, particularly mining; public participation in local economic development planning in rural areas; and work related to land reform for improved livelihoods in rural South Africa.

Further, in line with its Constitutional and legislative mandate, the Commission convened an investigative hearing in light of growing reports, in both number and severity, of “illegal mining” activities across the country. This report documents the background, the legal context, and the proceedings of an *Investigative Hearing into Issues and Challenges in relation to Unregulated Surface and Underground Artisanal Mining in South Africa*.

The report draws on some existing literature on artisanal mining, and evaluates oral and written submissions made by the Respondents, who have varying roles and responsibilities in addressing the challenges and opportunities presented by unregulated artisanal mining in South Africa. In addition, the report documents the international and domestic regulatory framework for large- and small-scale mining and analyses the efficiency of such policies and legislation in providing for artisanal mining. Through an overview of the artisanal mining situation in Asia, South America, the Pacific, and closer to home in East and West Africa, the report provides insight into the social and legal systems that are working in those areas which have artisanal and small-scale mining sectors of varying sizes.

The hearing revealed that, in South Africa, artisanal mining is not legally recognised, despite its growth and the potential opportunities it offers, economically and socially. Further, these unregulated activities are synonymous with social, health and environmental ills, making it even more challenging to condone and manage. Following the adjournment of the proceedings, from the Respondents’ submissions it appears that the challenges related to unregulated artisanal mining in South Africa and the problematic implications of not dealing with them are acknowledged. The complexity is compounded by the lack of research and literature on the issue in South Africa. Furthermore, there is a poor understanding of the profile of the artisanal miner in South Africa. Not all of these individuals and groups are involved in or, if they are, began the activity with the intention of becoming involved in criminal syndicates. Not all host-mining communities have the same views around artisanal mining activity. Not all are non-nationals and neither are they all ‘illegal immigrants’. It is noted that the current socio-economic situation in many parts of Gauteng has pushed many people into illegal mining activities.

All respondents submitted that illegal mining practices happen outside of the South African legal framework, particularly the Mineral and Petroleum Resources Development Act (MPRDA). The MPRDA caters for medium-to-large scale mines and small-scale operators. However, the current mining enabling legislation does adequately provide for *artisanal* mining. Even though the national Department of Mineral Resources indicated that the MPRDA could provide permits, in practice regulation has *not* promoted the growth of legal artisanal mining. Furthermore, the MPRDA and various government departments have failed to prevent criminal and dangerous practices. Certain artisanal mining activities, such as the use of mercury and working in dangerous shafts, can and should not be tolerated. On the other hand, there are artisanal mining processes that have the potential to enable job creation and support informal trade and other local economic activities.

This report acts as a starting point and introduction for the Commission to some of the main issues and challenges around unregulated artisanal underground and surface mining in South Africa, while also reflecting the challenges faced by the relevant custodians and government role players in managing the growth and impacts of these activities to the present day. The first section of this report provides a background on the issue of unregulated artisanal mining in South Africa in relation to the mandate of the Commission. The report then sets out the legal framework of the large-scale mining sector, providing an overview of the international law impacting on the mining industry, and the national legal frameworks. Following that, the report explores the issues and challenges affecting artisanal and small-scale mining on the continent and elsewhere. The next sections then describe the procedures of the hearing, and submissions made by the respondents. An analysis of evidence and findings are made in the subsequent section, while the report concludes with recommendations in the final sections.

While the Commission found that some legislation and policy exists, a number of findings and recommendations were made with regard to gaps and contradictions. Some of those findings are around the extent to which illegality pervades the whole mining industry; and recommendations for the improvement of the situation, which include the need for future strategic research into artisanal mining in South Africa; the need for a holistic, collaborative approach by all role players – government, civil society, and mining houses – to addressing the opportunities and challenges posed by unregulated artisanal mining; the need for an appropriate, consistent, and transparent policy and regulatory framework that focuses on facilitation and management of artisanal mining in South Africa, and not just the criminalisation of the activities; the recognition of the potential value that lies in large scale miners' building relationships and partnerships with artisanal miners; and the urgent need for programmes for artisanal mining communities across South Africa to raise awareness about the human and environmental dangers of unsafe artisanal mining and, importantly, the dangers of mercury usage. Finally, the Commission also made findings and recommendations with regard to the problematic case of the Blyvooruitzicht Mine; and the 2012 De Beers/Bontekoe mine tunnel collapse in the Kleinsee area of the Northern Cape province.

The Commission believes that this investigation and its findings will be of assistance in resolving some of the issues and challenges in relation to unregulated artisanal and small-scale underground and surface mining in South Africa. The Commission will follow up with all parties in respect of whom recommendations were made, to facilitate their implementation. This report will also be sent to Parliament and made available to the public.

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and People's Rights
ACHR	American Convention on Human Rights
AM	Artisanal Mining
ASEAN	Association of Southeast Asian Nations
ASM	Artisanal and Small-Scale Mining
ASPASA	Aggregate and Sand Producers Association of Southern Africa
BEE	Black Economic Empowerment
CBD	Convention on Biological Diversity
CFC	Chlorofluorocarbon
CGS	Council for Geosciences
CoM	Chamber of Mines
DEA	Department of Environmental Affairs
DG	Director General
DHA	Department of Home Affairs
DME	Department of Minerals and Energy
DMR	Department of Mineral Resources
DoH	Department of Health
DoL	Department of Labour
DTI	Department of Trade and Industry
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
EU	European Union
GHG	Greenhouse Gas
ha	Hectare
HRC	Human Rights Commission
ICESCR	International Covenant on Economic Social and Cultural Rights
IDP	Integrated Development Plan
ILO	International Labour Organisation
KZN	KwaZulu Natal
LRA	Labour Relations Act
LRTAP	Convention on Long-Range Trans-boundary Air Pollution
LSM	Large Scale Mine/Mining
MARPOL	London International Convention for the Prevention of Pollution from Ships
MHSA	Mine Health and Safety Act
MHSC	Mine Health and Safety Council
MPRDA	Mineral and Petroleum Resources Development Act
MRA	Mine Residue Strategy
NCSMT	National Coordinating Strategic Management Team on Illegal Mining
NEMA	National Environmental Management Act
NEMWA	National Environmental Management Waste Act
NICOC	National Intelligence Coordinating Committee
PPE	Personal Protective Equipment
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
SAPS	South African Police Service
SAVE	Save the Vaal Environment
SEMA	Specific Environmental Management Act
SHE	Environmental Health and Safety

LIST OF ABBREVIATIONS (continued)

SLP	Social and Labour Plan
SMME	Small, Medium, and Micro-sized Enterprises
SSMB	Small-Scale Mining and Beneficiation
UIF	Unemployment Insurance Fund
UN	United Nations
UN/ECE	United Nations Economic Commission for Europe
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Convention on the Law of the Sea
UNESCO	United Nations Educational Scientific and Cultural Organisation
WC/DM	Water Conservation and Demand Management Plan
WUL	Water Use Licence

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1. INTRODUCTION

This document is the report on the proceedings of an investigation undertaken by the South African Human Rights Commission (Commission or SAHRC) into issues and challenges relating to unregulated artisanal underground and above ground mining activities in South Africa.

In order to investigate the issues and challenges relating to unregulated artisanal underground and above-ground mining in South Africa, the Commission convened a hearing in terms of section 15(1)(c) of the Human Rights Commission Act, 40 of 2013 (HRC Act).

The current report documents the process followed and, in its concluding section, presents findings and recommendations.

2. BACKGROUND

In February 2013, a roundtable discussion was held at the South African Human Rights Commission (Commission) Offices, Braamfontein. The roundtable discussion on illegal mining was one of the interventions in the work of the Commission, in this case the Commission's Gauteng Office, during the 2012-2013 financial year. The prevalence of "illegal mining"¹ has been part of the South African mining landscape for many years and it has become a flourishing business, one that appears almost impossible to contain. For the most part, the type of mining referred to as 'illegal' is mining undertaken by subsistence workers and which seems to be inadequately dealt with in South African laws. Experts and researchers working on the issue of illegal mining in South Africa have attempted to draw a distinction between informal mining and illegal mining – the difference being that the former choose who to sell their mined product to and 'pay royalties to a chief', and the latter operate in a manner that links to organised crime. However, as far as the Commission is aware, there is no formalised or agreed on distinction between these two types of mining in South Africa nor is there much information on informal/illegal miners paying dues or royalties to chiefs. Furthermore, the activity – be it 'illegal' or 'informal' – has similar characteristics to artisanal mining conducted in other parts of the world. Hence, this report will use the term 'unregulated artisanal mining (AM)' as synonymous and interchangeable with 'informal mining', 'illegal mining', 'unlawful mining', and '*zamazama*² activity.'

In South Africa, the activity involves artisanal/informal miners extracting minerals (including semi-precious and non-precious stones and sand) particularly from old, disused, unsafe, and abandoned mines. These people often operate in treacherous conditions in derelict and crumbling tunnels. According to research conducted by the South African Chamber of Mines in 2006, there is evidence of a direct link between the retrenchment of mine workers and informal mining where former mine workers having the requisite knowledge of not only of the process but also of the workings and underground infrastructure of the mines.

The purpose of the roundtable in 2013 was to engage with relevant stakeholders on the following:

- The human rights concerns associated with illegal mining;
- Possible areas for intervention;
- Appropriate procedures and processes to be followed in respect of handling complaints related to illegal mining;

¹ The terms "illegal mining", "unregulated AM", "unlawful mining", and "informal mining" will be used as synonymous and interchangeable in this report.

² "*Zamazama*" means "we are trying" and describes miners operating independently of the constraints of regulated gold and other precious metals mining.

- Possible gaps in legislation and/or problems with its implementation;
- Creating awareness about the issue of illegal mining in line with the Commission's advocacy objectives.

The following were some of the key issues emanating from the discussion session:

- Closure of mines is a process that, if formally pursued at all, in, and creates practice occurs only after long delays creating a situation conducive for illegal mining;³
- Permitting and regulatory processes for artisanal mining are needed;
- There needs to be health monitoring – this is costly. But the dangers from toxic material to not only to the artisanal miners themselves but to surrounding communities from mercury and radioactive materials, for example, are life-threatening and can be fatal, and there is a need for this type of study to be undertaken. Anecdotal evidence exists but there is a need for systematic/epidemiological studies to be undertaken to determine the health impact and these require government involvement and resources; and
- Partial closure of shafts and/or operations with retrenchments (whether in anticipation of selling or for purposes of 'warehousing' in the face of prevailing market conditions); absent or inconsistent post-closure remediation (that does not take place for years due to the cost); and failure to monitor Social and Labour Plans and Environmental Management Plans are major causes of problems which contribute to dangerous and illegal activity on and around mines.

Following receipt of a complaint, in March 2013 the Commission convened a provincial hearing in the mining community of Kommagas, Northern Cape to address and better understand the artisanal mining tragedy that happened at the Bontekoe mine. In 2012, a tunnel at the temporarily closed De Beers' Bontekoe mine site collapsed, resulting in the loss of lives of informal miners, or diggers, and injuring several others. The Kommagas community were (and still are) awaiting the report from the Department of Mineral Resources and were concerned about the manner in which the process has been carried out. While there was confirmation that an investigation had commenced, each time the community tried to establish how far it had gone, they were informed that their concerns needed to be reported to the South African Police Service (SAPS) as all the activity on the site was 'illegal mining'. In addition, De Beers was appearing to deny any responsibility or even involvement as the mine had since been sold; this apparent denial was notwithstanding the fact that one of the De Beers employees was directly involved in the events immediately following the partial collapse of the tunnel which the community believes led to further problems and are of the view that not all the deceased were removed from the tunnel thereafter.

This Kommagas hearing also revealed that while the issue of artisanal mining in the country continues to present challenges and uncertainties, this type of mining in relation to diamonds involves a process that appears significantly less environmentally dangerous than the chemicals involved in the extraction of, for example, gold. One of the resolutions of the hearing was to raise the issue with the Parliamentary Portfolio Committee on Mineral Resources to begin to discuss how artisanal diamond mining can be enabled and brought into a regularised legal mining system to not only provide a source of income and improve the quality of life for the miners and their families, but could contribute to rehabilitation efforts and development of the diamond mining areas.

³ Cessation of mining operations into decommissioning and closure operations may extend into years. There is still an economic value in the minerals, but not viable for a fully operational mining operator with significant overheads.

The Commission has since held a number of stakeholder engagements that have dealt with issues concerning unregulated artisanal mining. These engagements include meetings with expert stakeholders, meetings with mine security representatives, site visits in affected areas, engagements with informal miners, and attendance of external stakeholder engagements around work in this area such as the African Mine Security Summit in April 2014. This Summit provided an opportunity to gain insights into how other African states have addressed artisanal mining and the risks and opportunities presented by regulating the sector.

The mining industry has a direct bearing on and link to a number of human rights - including the rights to human dignity, a safe environment, occupation, fair labour practices, redress for past discrimination, health and access to information. Thus, the mining industry is one of the central focus areas for the Commission's work, as evidenced by previous work undertaken on the subject, including the 2008 mining-related observations in communities in and around the Anglo Platinum mine in Limpopo. As such, the challenges related to unregulated underground and surface artisanal mining activities have been of interest and concern to the Commission.

Following media reports highlighting the increased mine accidents and conflicts related to illegal mining - especially across the Gauteng province - and enquiries from the Commission's stakeholders on how the Commission intended to approach these incidents, the Commission decided to investigate the largely unknown situation in South Africa through a formal enquiry process.

A decision was taken that the Commission would convene a hearing in terms of section 15(1) (c) of the HRC Act to gather more information. The purpose of these proceedings was to obtain relevant information from public officials and other relevant bodies to determine the extent of the issue in South Africa and how the state is addressing the situation.

3. SUMMARY OF PROCEEDINGS

The SAHRC, acting in terms of its enabling legislation, undertook an investigative hearing into the issues and challenges relating to unregulated artisanal underground and above-ground mining in South Africa.

The hearing, which was inquisitorial in nature, requested the national Departments and other parties having a direct relationship to managing and addressing challenges related to unregulated artisanal and small scale mining activities in South Africa to make submissions to the SAHRC. The investigation also looked at exploring ways to reduce risks and maximise opportunities and in relation to the roles and responsibilities of state departments – with a view to putting forward recommendations for the improvement of the situation. The investigation was also aimed at broadly discussing what kinds of regulation could be in place to deal with ASM. The parties were also requested to present documentation to assist the SAHRC to establish the relevant issues and related challenges in so far as managing ASM in South Africa is concerned.

The content for the submissions requested from the parties was set out in an overview of the issues for discussion. These included, but were not limited to, the following questions:

1. Assumptions – Is there a real prospect and/or desirability to eliminate artisanal mining in South Africa; are there opportunities and prospects for artisanal mining to play a complementary role to larger mining operations?
2. Regulation – Would some of the problems of unregulated artisanal mining be addressed by improving the legal framework? What legislation needs to be in place so as not to miss the issues outlined above?

3. Mine rehabilitation – Can artisanal mining/*zamazamas* and mine workers that are being retrenched be integrated into and involved in the process of rehabilitation as a way to improve their quality of life and improve the dangerous situation currently confronting the population as a result of the impact of mine waste on environmental health?
4. Section 24 of the Constitution of South Africa – the right to an environment that is not harmful to health and wellbeing: What can and is being done by the government about mines who cease their operations without closure plans and without Social and Labour Plans?
5. Quality of life – How can the range of criminal elements and their involvement with the *zamazamas* be counteracted, and how can the livelihoods being taken away with the retrenchments of workers be re-installed with artisanal mining?

The panel received submissions and heard oral testimonies from representatives of the Chamber of Mines (CoM), the National Coordination Strategic Management Team on Illegal Mining (NCSMT), the Department of Health (DoH), the Department of Trade and Industry (DTI), the Aggregate and Sand Producers Association of Southern Africa (ASPASA), the South African Diamond and Precious Metals Regulator (SADPMR), the Department of Labour (DoL), and the Department of Mineral Resources (DMR).

The panel sought to understand the issues and challenges in relation to unregulated artisanal mining activities – underground and above-ground – in South Africa and to make recommendations where appropriate. The investigation was both retrospective in nature (that is, looking at past mistakes made in creating conditions conducive to such activities), and constructive, with a view to gaining a better understanding of the challenges and the steps that have been taken to overcome these challenges.

4. MANDATE OF THE SAHRC

The SAHRC is an institution established in terms of section 181 of the Constitution. The SAHRC and other institutions created under Chapter 9 of the Constitution are described as “*state institutions supporting constitutional democracy*.” In terms of section 184(1) of the Constitution, the SAHRC is specifically mandated to: promote the protection, development and attainment of human rights; and monitor and assess the observance of human rights in South Africa. Section 184(2)(a) of the Constitution empowers the SAHRC to investigate and report on the observance of human rights in the country.

The HRC Act (No.40 of 2013) further supplements the powers of the SAHRC. In addition to other powers, duties and functions, the Act confers powers on the SAHRC to carry out investigations concerning the observance of human rights in South Africa. The aforementioned proceedings were convened under the provisions of section 15(1)(c) and 15(1)(d) of the Act, which state:

15. (1) Pursuant to the provisions of section 13(3) the Commission may, in order to enable it to exercise its powers and perform its functions-
(c) require any person by notice in writing under the hand of a commissioner, addressed and delivered by a member of its staff or a sheriff, in relation to an investigation, to appear before it at a time and place specified in such notice and to produce to it all articles or documents in the possession or custody or under the control of any such person and which may be necessary in connection with that investigation: Provided that such notice must contain the reasons why such person’s presence is needed and why any such article or document should be produced; and

(d) through a commissioner, administer an oath to or take an affirmation from any person referred to in paragraph (c), or any person present at the place referred to in that paragraph, irrespective of whether or, not such person has been required under the said paragraph to appear before it, and question him or her under oath or affirmation in connection with any matter which may be necessary in connection with that investigation.

The Act further provides for criminal sanctions in the event that a party to such a proceeding refuses to co-operate with an investigation of the SAHRC. This provision is located in section 22, which states:

22. A person who-
(a) without just cause refuses or fails to comply with a notice under section 15(1)(c) or refuses to take the oath or to make an affirmation at the request of the Commission in terms of section 15(1)(d) or refuses to answer any question put to him or her under section 15(1)(d) or refuses or fails to furnish particulars or information required from him or her under that section; ...shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

The SAHRC is further empowered by its Gazetted Complaints Handling Procedures which prescribe that the SAHRC is entitled, *inter alia*, to conduct hearings under a variety of circumstances.

5. LEGAL FRAMEWORK OF THE LARGE-SCALE MINING SECTOR IN SOUTH AFRICA

South Africa's mining industry is regulated by a number of laws that deal *inter alia*, with its social and environmental performance, its labour practices, and its connection to local development and trade regimes with companies having to uphold stringent standards. In some cases, these standards contained in domestic legislation go beyond the requirements of some international good practice guidelines.

All these laws and policies must be developed in line with the country's Constitution, the supreme law of the land. The constitutional environmental right contained in Section 24 of the Bill of Rights, for example, states the following: "Everyone has the right to an environment that is not harmful to their health or well-being; and to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and environmental degradation, promote conservation and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."⁴

This section provides a summary of the international and regional regulatory framework - particularly in relation to environmental law - that relates to mining. The section also gives an overview of the current legislative framework regulating mining activities in South Africa with respect to mining safety, environmental preservation, and socio-economic development. It is not the intention of this section to provide a detailed analysis or critique of the legislation and/or current deliberations around the amendments and review of South Africa's mining and related legislation. The section concludes with a summary of the ASM sector on the continent.

⁴ Section 24, Chapter 2 on the Bill of Rights, Constitution of the Republic of South Africa, Act 108 of 1996.

5.1. Overview of International Law Impacting on the Mining Industry

The United Nations (UN) Charter, the basis of international law, strongly emphasises the rights (and obligations) of individual countries. The right of a sovereign state to legislate and regulate activities within its borders identifies mineral development as a domestic responsibility. Environmental concerns have emerged as critical issues in international law only in recent decades. After adopting traditional approaches to a number of international conventions, the nations of the world determined the need for urgent shifts in the enforcement and compliance of these treaties. The UN Security Council declared in January 1992 that, 'non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security.'⁵ The UN Conference on Environment and Development (UNCED) became the watershed for the linkage of environmental protection and human security. Before this agreement, only three international human rights treaties expressly provided a link between the environment and human rights. These are the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR), the 1969 American Convention on Human Rights (ACHR), and the 1981 African Charter on Human and Peoples' Rights (ACHPR). However, environmental rights were not specifically categorised for specific rules of protection although they established a conceptual framework and approach, which would allow for the introduction of environmental concerns.

The 1989 San Salvador Protocol to the ACHR declares in Article 11, that:

1. *Everyone shall have the right to live in a healthy environment and to have access to basic public services.*
2. *The State Parties shall promote the protection, preservation and improvement of the environment.*

The ACHR and its San Salvador Protocol presented a clearer statement of the linkage between the environment and human rights by distinguishing between the extent of the right of the individual and the obligation of the state.

While few specific references to mineral exploration and exploitation appear in international law, treaties, conventions, and declarations on subjects peripheral to the development of natural resources have implications for mining-related activities. International obligations have been defined in the past through participatory processes under the aegis of the UN and have addressed issues of common concern for both developing and developed countries. They relate to the global impacts of mining activities and include human rights, environment and waste management issues, and emerging priority concerns such as climate change. Measures to alleviate and eradicate disease and provide adequate living conditions for individuals are reflected in obligations directed towards, among many, the mining industry.

Laws regulating mining are increasing in scope and stringency, based on the international paradigm of "sustainable development" – development that meets the needs of the present without compromising the ability of future generations to meet their own needs.⁶ For mining, this means focusing not only on traditional economic concerns, but also on new social, economic, and environmental concerns, particularly in developing nations with resource-based economies such as South Africa.

⁵ Sands, P. 1993. 'Enforcing Environmental Security: The Challenges of Compliance with International Obligations,' *Journal of International Affairs* 46(2), pp. 367-390.
⁶ World Commission on Environment and Development's (the Brundtland Commission) report *Our Common Future*, Oxford: Oxford University Press, 1987, <http://www.un-documents.net/our-common-future.pdf>.

Sustainable development has also been defined as “improving the quality of human life while living within the carrying capacity of supporting ecosystems.”⁷ While at first this may seem a difficult concept to apply to non-renewable resources like minerals, sustainability nevertheless applies to mining, as it encourages the preservation of all aspects of a country’s environmental, cultural and socio-economic heritage, including the rational extraction and use of non-renewable resources.⁸

For development in general, sustainability mandates three things: preservation of options for future generations, nurturing of social and community stability and inclusion, and maintenance and restoration of environmental quality.⁹ For mining in particular, this requires poverty alleviation, meeting of basic human needs, environmental impact assessment, and pollution abatement, minimisation of environmental impact, resource conservation, adequate worker health and safety standards, community betterment, and protection and restoration of the environment.¹⁰

Traditionally, international law has taken a “hands-off” approach to mining. It is a general principle of international law that nation-States have sovereignty – that is, supreme, independent political and legal control – over their own natural resources,¹¹ just as they do over persons, companies and other entities within their borders. Perhaps the most famous expression of this sovereignty doctrine is in Principle 21 of the Stockholm Declaration:

“States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

While there is no comprehensive international law of mining,¹² still a number of treaties or conventions have provisions regulating the industry. Typically, these mining-related treaties use very general language, and lack adequate enforcement regimes.

5.1.1. Nature preservation laws

The 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage (the World Heritage Convention) is the foremost example of a nature preservation law. It provides for the preservation of outstanding natural and cultural sites by listing them as part of “the world heritage.”

Similarly, the 1971 Ramsar Convention on Wetlands of International Importance protects wetlands, including marshes, peatlands, and marine water less than six metres deep at low tide, with particular emphasis on wildfowl habitat.

7 IUCN/UNEP/WWF, *Caring for the Earth: A Strategy for Sustainable Living*, Gland, Switzerland, 1991, p.10.

8 Pring, G. R., “Sustainable Development: Historical Perspectives and Challenges for the 21st Century”, in United Nations Development Programme and United Nations Revolving Fund for Natural Resources Exploration, 1999. Proceedings of the Workshop on the Sustainable Development of Non-renewable resources towards the 21st Century 13-29 (Oct. 15-16, 1999); United Nations Economic and Social Commission for Asia and Pacific & United Nations Development Programme (ESCAP & UNEP), *Mineral Resources Development and the Environment* (1992); United Nations Economic and Social Council, Committee on Natural Resources, *Integration of the Issue of Sustainable Supply of Minerals into the United Nations Processes for Addressing Agenda 21: Towards the Sustainable Supply of Minerals in the Context of Agenda 21: Inter-sessional Strategy Paper of the Committee on Natural Resources*, United Nations Doc. UNESC/CNR 3d Sess., Agenda Item 11, E/C.7/1996/11 (1996).

9 UNESCAP & UNEP 55; United Nations Economic and Social Commission for Asia and Pacific & United Nations Development Programme [ESCAP & UNEP], *Mineral Resources Development and the Environment* (1992);

10 *Ibid.*

11 Wälde, Thomas, *Environmental Policies towards Mining in Developing Countries*, 10 *Journal of Energy and Natural Resources Law* 327 (1992); reprinted in 30 *Public Land and Resources Law Digest* 41 (1993), 49.

12 Eggert, 4-11; Eggert, Roderick G, *Mining and the Environment: An Introduction and Overview*, Mining and the Environment: International Perspectives on Public Policy 1 (Roderick G Eggert ed. 1994).

In addition, there are a number of similar regional nature treaties for the Americas, Africa, Europe and Asia. These include the 1940 Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, the 1968 African Convention on the Conservation of Nature and Natural Resources, the 1979 Berne Convention (Europe) and subsequent European Union (EU) Council Directives, and the 1985 Association of Southeast Asian Nations (ASEAN) Agreement on the Conservation of Nature and Natural Resources.

5.1.2. Biodiversity

One of the major accomplishments of the 1992 “Earth Summit” in Rio de Janeiro, Brazil - the Convention on Biological Diversity (CBD) - has implications for the mining industry. Its core concept is that nations are “responsible for conserving their biological diversity and for using their biological resources in a sustainable manner.” While the CBD has many important provisions affecting development in general - including funding, technical assistance, and technology transfers - it is its preservation provisions that have the most immediate relevance to mining.

5.1.3. The United Nations Convention on the Law of the Sea

The 1982 United Nations Convention on the Law of the Sea (UNCLOS), which entered into force 12 November 1994, is a comprehensive framework for regulating the use, development and preservation of these vast marine areas, including mining and other mineral development in the ocean.

The treaty establishes two different mining regimes depending on the location of the minerals. Mineral resources generally within 200 miles of shore (within territorial seas, “exclusive economic zones” and continental shelf areas) are under the exclusive sovereignty of the coastal State. In these areas (which constitute about 35 percent of the ocean), national laws control mining access, environmental protection and other requirements. The other two-thirds of the ocean (termed the “International Seabed Area”) are beyond this national jurisdiction and are governed by this treaty under a unique “global commons” regime. Influenced by strong lobbying from developing countries, the treaty declares the Area’s resources to be “the common heritage of mankind” and stipulates that the benefits of mining and other development are to be shared among all nations.

5.1.4. Environmental impact assessments

Environmental impact assessments or studies (EIAs) are now becoming an international standard for major developments such as mines. So far, treaties are only a small part of this, as most EIA requirements are coming from multilateral development banks and development assistance agencies and United Nations soft law.

In hard law, the United Nations Economic Commission for Europe (UN/ECE), a grouping of over 50 northern hemisphere Governments, has negotiated the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) (covering nations in the northern hemisphere). It only applies to developments in one country that will have “significant adverse impacts” across national borders in another country and sets up a regime of notification, EIA preparation, consultation, dispute settlement and research.

5.1.5. Mining process control

As mentioned, there is no comprehensive treaty governing land-based mining activities. Exploration, development, mining, beneficiation, closure, rehabilitation and liability are still primarily under the jurisdiction and laws of the individual States, which vary in requirements and enforcement.¹³

The international instruments discussed above can create international law requirements that carry over into the mining process. With respect to deep seabed mining, the Convention on the Law of the Sea sets up the framework for developing a complete regime of operational law. With respect to terrestrial mining, the nature/biodiversity treaties can also increase the controls on mining. Similarly, when EIA laws apply, the findings of the study can reveal the need to condition the permits with special environmental requirements controlling the operation.

5.1.6. Water quality treaties

Other examples of international hard-law standards intruding on the mining process are the various international and regional treaties governing water quality. These include a number of treaties respecting marine pollution from land-based sources, vessels, and dumping and pollution of fresh water resources.¹⁴

Some examples include the 1974 Paris Convention for the Prevention of Marine Pollution from Land-Based Sources (applicable to parts of the North Atlantic, Arctic Ocean and North Sea), the 1972 Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft and the 1973 London International Convention for the Prevention of Pollution from Ships (MARPOL) and its 1978 Protocol.

A number of freshwater systems are also the subject of pollution treaties with implications for mining, particularly trans-boundary pollution.¹⁵

Other treaties cover international watercourses and water bodies, groundwater and multistate and regional waters in Africa, the Americas, Europe and the Middle East. For example, the 1978 United States-Canada Great Lakes Water Quality Agreement could be applied to mining in one country which causes pollution effects in the other.

5.1.7. Air pollution and Climate Change

Air pollution from mining, smelting and related operations is still regulated chiefly by national laws. However, there are several international air laws that have potential implications for the future of the mining industry. Foremost is the growing body of regional treaties governing trans-boundary air pollution, emissions originating in one country that cross national borders into another country.¹⁶

The 1979 Convention on Long-Range Trans-boundary Air Pollution (LRTAP) with its four protocols setting specific emissions limitations on sulphur dioxide (1985, 1994), nitrogen oxides (1988, 1998) and volatile organic compounds (1991) - provides very substantive restrictions on some of the basic mineral beneficiation pollutants in northern hemisphere countries (EU, United States, Canada, Russia, etc.).

13 Cohen, 150; Cohen, Madeline, A New Menu for the Hard-Rock Cafe: International Mining Ventures and Environmental Cooperation in Developing Countries, 15 *Stanford Environmental Law Journal* 130 (1996).

14 Guruswamy and Hendricks 227; Guruswamy, Lakshman and Brent Hendricks, *International Environmental Law in a Nutshell* (1997).

15 *Ibid.*, p. 314.

16 *Ibid.*, p. 297

Two notable global treaty regimes - governing ozone and climate change - have long term implications for the mining industry. The 1985 Vienna Convention for the Protection of the Ozone Layer, as amended by its 1987 Montreal Protocol on Substances That Deplete the Ozone Layer (Montreal Ozone Protocol) and other subsequent Adjustments and Amendments, requires a rapid phase-out of use and emissions of stratospheric ozone depleting chemicals, chiefly chlorofluorocarbons (CFCs), halons, and carbon tetrachloride, of relevance to some mining endeavours.

Even more significantly, the 1992 United Nations Framework Convention on Climate Change and 1997 Kyoto Protocol provide a comprehensive approach for controlling greenhouse gases (GHGs), those chemicals which form a heat-trapping layer in the upper atmosphere and contribute to global warming, chiefly carbon dioxide and methane.

South Africa is committed to reduce GHG emissions as compared to Business as Usual scenario by 34% by 2020 and by 42% in 2025. Within South Africa, there have been major concerns relating to degradation of air quality consequent to pollution by mining dust from unrehabilitated mine dumps which has resulted in chronic illnesses such as asbestosis and silicosis affecting miners and surrounding community members.

5.1.8. Mineral hazardous waste and recovery

About 95% of all toxic and hazardous chemicals fall into the four industry groupings of toxic metals, petrochemicals, pesticides and radioactive materials.¹⁷ The strictest treaties include outright bans on imports-exports of hazardous wastes, not even exempting metals and other substances destined for recovery/recycling. The 1991 Bamako Convention bans imports into Africa but permits States in each region to trade with each other, subject to certain controls. The 1989 Lomé Convention bans exports from the EU to the African, Caribbean, and Pacific States parties, except if the importing country has adequate facilities.

Another approach has been to allow hazardous waste transfers, subject to protective requirements like notification, informed consent, manifesting, and facility adequacy. This has been the approach of the most comprehensive of these treaties, the 1989 Basel Convention on the Trans-boundary Movement of Hazardous Wastes and Their Disposal.

A myriad of new legal, financial and institutional rules are emerging at the international level, in addition to proliferating national laws, to promote sustainable development in mining. This growth in hard and soft international law standards reaches all aspects of mineral development, from access, through production, to product controls. And the new rules are especially focused on protecting and reinforcing sustainable development in the resource based economies of developing countries.

5.2. National Frameworks on the Mining Sector

The central current legislation in South Africa is the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) enacted by the post-1994 government. It applies to minerals and petroleum; while gas is dealt with under the Gas Act 48 of 2001. The MPRDA encompasses the control and mitigation of four broad categories of mining: surface mining, shallow underground mining, deep underground mining, and offshore mining.

¹⁷ UNEP/Guidance, Louka, Murphy 193; Louka, Elli, Overcoming National Barriers to International Waste Trade: A New Perspective on the Transnational Movements of Hazardous and Radioactive Wastes (1994).

From a historical perspective, the MPRDA can be seen in the context of the Mines and Works Act 12 of 1911, which was succeeded by the Mines and Works Act 27 of 1956, which in turn was replaced by the Minerals Act of 1991, before being replaced by the MPRDA. Other relevant legislation includes the Mining Titles Registration Act 16 of 1967, the Mine Health and Safety Act 29 of 1996, the National Water Act 36 of 1998, the National Environmental Management Act 107 of 1998, the National Heritage Resources Act 25 of 1999 and the Air Quality Act of 2004. All this legislation must also be seen in the context of the “Broad-based Socio Economic Empowerment Charter of the Mining Industry” as well as the “Minerals Mining and Sustainable Development” initiative.

The MPRDA sets out its objectives at the outset. Of relevance are provisions dealing directly and indirectly with the environment and sustainable development. It states, *inter alia*:
The objects of this Act are to:

*Give effect to section 24 of the Constitution (the environmental right) by ensuring that the nation’s mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development.*¹⁸

Give effect to the principle of the state’s custodianship of the nation’s mineral and petroleum resources, elaborated on in the next paragraph

Recognise the internationally accepted right of the State to exercise sovereignty over all the mineral and petroleum resources within the republic.

Promote equitable access to the nation’s mineral and petroleum resources. Substantially and meaningfully expand opportunities for historically disadvantaged persons, including women, to enter the mineral and petroleum industries and to benefit from the exploitation of the nation’s mineral and petroleum resources.

5.2.1. The Constitutional Element

5.2.1.1. The Bill of Rights

The rights to life, dignity and security, environmental rights, property rights, and the right of access to information all have particular bearing on the mining industry. In addition, the importance of the right to just administrative action was illustrated in *Director: Mineral Development Gauteng region and another v Save the Vaal Environment and others*,¹⁹ here the Director of Mineral Development in the Gauteng Province had granted the appellant a licence to carry out opencast mining,²⁰ without first allowing the environmental NGO (SAVE) to make representations.

The Supreme Court of Appeal questioned whether parties wishing to oppose application for a mining licence on the grounds of environmental concerns were entitled to be heard by the Director. The Court decided that they were and held that:

*Our Constitution, by including environmental rights as fundamental justiciable human rights, by necessary implication requires that environmental considerations be accorded appropriate recognition and respect in the administrative process in our country.*²¹

18 Section 2.

19 1999 (2) SA 709 (SCA).

20 In terms of s9 of the now repealed Minerals Act 50 of 1991.

21 *Director: Mineral Development, Gauteng region and another v Save the Vaal Environment and others* 1999 (2) SA 709F-G (SCA).

The Court found it was appropriate for the respondent to be granted a hearing during the licence decision process, rather than when an environmental management plan was being considered, as suggested by the appellant.

5.2.1.2. Administration of mining matters

The Constitution does not mention minerals or mining in either Schedule 4 or 5 so that administration of mineral matters is thus a national competence with the Department of Mineral Resources being the lead agency. While this Department administers the MPRDA, as well as other mining legislation, it should be noted that, in terms of recent amendments to the legislation, the Minister of this Department is to be regarded as the competent authority for environmental authorisations under the National Environmental Management Act 107 of 1998 (NEMA) where a listed activity is directly related to prospecting of a mineral resource, or extraction and primary processing of a mineral resource, while the Minister of Environmental Affairs is to hear appeals in terms of NEMA against the Minister of Mineral Resources. However, related considerations around property, planning, security and so on clearly relate to a range of other competencies and spheres of government.

5.2.2. Mining and the common law

The common law principle applicable to mineral rights (expressed in the maxim *cuius est solum eius est usque ad caelum ut usque ad inferos* meaning the owner of the land is also the owner of the space above and below the surface of the land)²² was modified over the decades as licensing was introduced prior to 1994. However, through the MPRDA the custodianship of all minerals and petroleum resources vests in the State for the benefit of all South Africans. This custodianship needs to be exercised in a manner that takes account of other rights and constitutional obligations.

5.3. Artisanal and Small-Scale Mining in Africa – Issues and Challenges

This section provides an overview of the artisanal and small-scale mining sector in Africa and some of the issues and challenges faced by this sector on the continent, and concludes with an overview of the South African position on artisanal and small-scale mining. Artisanal and small-scale mining (ASM) is widespread in Africa and goes beyond the borders of countries endowed with high-value minerals. ASM miners also mine and process industrial minerals, such as lime for agriculture. Few would dispute that ASM makes a positive contribution to African economies and, more particularly, to sustaining rural livelihoods. Yet it faces many challenges that prevent it from attaining its full potential as a potent force in socio-economic development.

There is no consensus on what constitutes a small-scale mining operation; neither is the boundary between ASM and formal or medium to large-scale operations clearly defined. This is partly because definitions vary by country and in relation to the different resources. Analysts use a combination of criteria to arrive at a working definition of ASM. In production terms, the United Nations places an “upper boundary” on ASM of 50,000 tons a year for underground mines and 100,000 tons a year for open-pit mines.²³ Most small-scale mining operations have a limit on project finance of US\$ 5 million, while such operations are not expected to have more than 50 workers. These parameters are much lower for artisanal operations, which are more labour intensive and employ hand tools and very basic processing techniques.

²² Glazewski, J., 'Environmental Law in South Africa', 2005, p.464.
²³ UNECA, 2002.

These artisanal methods are wasteful and result in poor mineral recovery. The mechanised form of ASM has higher throughput and better recovery, but in turn is more labour intensive than medium to large-scale operations. Despite differences in definition, common attributes stand out: most miners are seriously under-capitalised, rarely operate as proper business enterprises, and lack appropriate and modern technology.

ASM activities in Africa employ a large number of people directly in mining and associated services, as well as support large numbers of dependants. The large numbers of miners are partly attributable to high unemployment in many countries and the low barriers to entry for artisanal extraction such as very low start-up capital, low levels of skills and limited infrastructure required. In addition, despite efforts to contain, remove and outlaw ASM in a number of jurisdictions, entry and relative returns from this informal employment have seen it continue - with fluctuating numbers.

Country	ASM	Estimated dependants
Angola	150,000	900,000
Burkina Faso	200,000	1,000,000
Central African Republic	400,000	2,400,000
Chad	100,000	600,000
Côte d'Ivoire	100,000	600,000
Democratic Republic of the Congo	200,000	1,200,000
Eritrea	400,000	2,400,000
Ethiopia	500,000	3,000,000
Ghana	1,100,000	4,400,000
Guinea	300,000	1,500,000
Liberia	100,000	600,000
Madagascar	500,000	2,500,000
Mali	400,000	2,400,000
Mozambique	100,000	1,200,000
Niger	450,000	2,700,000
Nigeria	500,000	2,500,000
Sierra Leone	300,000	1,800,000
Sudan	200,000	1,200,000
Tanzania	1,500,000	9,000,000
Uganda	150,000	900,000
Zimbabwe	500,000	3,000,000

Source: Estimates based on CASM, ASM statistics for Africa, 2008.²⁴

Owing to its high labour intensity, ASM is commonly acknowledged to create far more jobs per invested dollar than large-scale mining (LSM). The profile of jobs, however, is largely that of poorly remunerated, unskilled labourers who have gone into mining to avoid destitution and poverty. The working environment generally has poor conditions. Employment in the sector is highly cyclical, especially reflecting harsh economic conditions, such as those induced by drought and economic restructuring. During periods of stable economic activity in other sectors, the pull of ASM falls and the sector shrinks.

Many workers sell their minerals at lower than market prices to middlemen, some of whom sponsor their operations. The incomes of such miners are usually below the poverty line and ASM operators are generally migratory.

24 Hayes, K., "2008 Regional Workshop: Small-scale Mining in Africa – A Case for Sustainable Livelihood", Common Fund for Commodities, November 2008.

They move from site to site searching for easy to extract minerals and abandon sites once they find the ore difficult to extract. A combination of practical, economic, and social factors accounts for this migratory behaviour, such as the life of the mine, the lure of high-value mineral strikes in other areas, displacement from mining areas (perhaps after their allocation to LSM companies) and the need to follow agricultural seasons. Since artisanal miners' capital investment is low, the opportunity cost of moving is not a deterrent. ASM operations are often caught between various forms of illegality ranging from organised crime and forces geared at political destabilisation to operations that seek to evade taxation and ignore environmental health considerations.

The multitude of challenges faced by ASM in Africa is well documented in the literature.²⁵ They include inadequate policy and regulatory frameworks; limited technical capacity and access to appropriate technology (and consequent environmental degradation); lack of finance; inadequate access to exploration and mining areas; difficulties in accessing the market; issues associated with conflict minerals; and women and child labour concerns. The opportunity for ASM to be transformed into a tool for sustainable development, particularly in rural areas, can thus be realised only if these challenges are considered holistically.

The absence of specific policy frameworks facilitating the emergence or growth of sustainable ASM operations is a major constraint in most African countries. In some countries, small-scale mining policy and regulations fall under general mining policy, which makes no distinction between LSM and ASM. Thus the peculiar challenges in small-scale mining do not receive the attention that they deserve. Even in countries with a separate small-scale mining policy, the procedures for acquiring licences are generally cumbersome, which becomes a barrier to formalisation. Without specific frameworks, ASM operators face challenges in getting mining rights.

The lack of appropriate institutional, financial and technical support mechanisms curtails ASM's sustainability. The ASM policy and regulatory environment in most African countries is seldom adequately supportive in vital areas such as access to appropriate financing mechanisms, provision of geological information and services, technical and marketing support or facilities for upgrading miners' skill levels. Even when there is such state support, its physical location may present problems for the mining communities.

The private sector could potentially provide some form of support with proper incentives, but LSM and ASM often have an acrimonious relationship. Trespassing by ASM operators on concessions and the eviction of informal indigenous miners by LSM companies lead to confrontation.

The informal nature of much ASM makes it amenable to illegal dealings, especially in high-value minerals such as diamonds, gold and coltan (columbite-tantalite). As an informal activity with weak or non-existent legal protection, artisanal miners are easy victims of organised crime and paramilitary organisations.

The challenges faced by ASM operators form a vicious circle and have a self-reinforcing effect on ASM activities. For example, the lack of business and market knowledge, and lack of finance, can force them to sell to middlemen at low prices, perpetuating their poverty.

Artisanal miners are therefore kept in a poverty trap where their operations rarely graduate above subsistence and remain economically and environmentally-unsustainable. Hence there is a need for government support.

²⁵ For example, Hentschel et al., 2003; Hinton et al., 2003; Mondlane et al., 2005; UNECA, 2002, 2009a.

5.3.1. Unregulated Artisanal Mining in South Africa

In South Africa, the number of miners involved in ASM is estimated to be anywhere from 8,000²⁶ to in excess of 30,000.²⁷ The main commodities mined by ASM in South Africa are diamonds and gold.²⁸

The Department of Mineral Resources (DMR) refers to the ASM sector collectively as “small-scale mining” and defines the following subcategories:

- Artisanal or subsistence mining operations (new entrants);
- Sub-optimal formal mining operations; and
- Entrepreneurs with upfront capital.²⁹

On its website, the department claims it is “working to legalise the small-scale mining operations that currently exist, and find ways to help make them economically viable in a way that is relevant, understandable and affordable to small-scale miners.”³⁰

It further asserts that “the Directorate of Small-Scale Mining assists aspiring small-scale miners in the following ways:

- Establishment of a legal entity;
- Guidance towards the identification of mineral deposits;
- EIA;
- Legal and contractual arrangements, mineral rights etcetera;
- Reserve estimation of the selected deposits;
- Mining feasibility study;
- Market study; and
- Development of the mining equipment.”³¹

However, as of 2003, it was reported in the media that the small-miner programme was underutilised, with few programmes being established.³² Moreover, mining operations conducted outside of the legal framework have been criminalised by the government, without addressing how to bring informal ASM miners into the formal sector. Further progress on its efforts could not be found on their website or in any parliamentary reports.

Other sections of the government have actively engaged in the mining sector, but not to develop and/or redirect ASM activities but rather to devise schemes aimed at its elimination. For example, in 2009, the Select Committee on Economic Development prepared a report regarding its visit to Harmony Gold’s Eland Shaft, where an accident similar to Bontekoe (mentioned in section 2 of this report) resulted in the deaths of 86 informal miners.³³ It was the intent of the Committee to see how Parliament and mining companies could take measures to prevent unauthorised access to abandoned mines and prevent future accidents.³⁴ Suggestions discussed mostly pertained to enforcing penalties against illegal miners, including conducting “hostel raids” by the state and “clamp[ing] down on food supply to underground workers” by Harmony Gold.³⁵

26 Buxton, 2013.

27 Hoadly M. and Limpitlaw D. “The artisanal and small scale mining sector & sustainable livelihoods. ”A paper presented at the Mintek Small Scale Mining Conference, 2004, 9 September, Nasrec, Johannesburg, Book of Proceedings pp1-9.

28 Hoadly.

29 Department of Minerals and Resources website <www.dmr.gov.za/small-scale-mining.html>.

30 Ibid.

31 Ibid.

32 Botha, Zonika, “Small-miner support programme underutilized,” Mining Weekly, 8 Aug. 2003.

33 PMG, “Harmony Gold Mine (illegal mining activities) Committee Oversight Report; Oversight of Mining Industry Corporate Social Responsibility,” 17 Aug. 2009, <<http://www.pmg.org.za/report/20090818-economic-development-select-committee-oversight-report-harmony-gold-m>>.

34 Ibid.

35 Ibid.

At the same time, Parliament received submissions from the Bench Marks Foundation³⁶ providing research on mining houses failure to comply with their social obligations at mining sites.³⁷ The Select Committee on Economic Development decided to postpone making any decisions on the report, and no further follow-up from that Committee could be found.

In November 2009 the Portfolio Committee on Mineral Resources conducted public hearings to investigate the deaths of the informal miners at Harmony Gold's mine.³⁸ The report highlighted extensive organised criminal activity, such as beatings of employees by informal miners and organised syndicates with kingpins. Submissions also included negative societal impacts on surrounding communities as a result of mining houses failing to meet their social, safety, and environmental obligations. The recommendations that followed included legislative reform which dealt solely with the illegal miners and primarily included ways to increase penalties against them.

The above highlights a fragmented approach to administering and regulating the ASM sector. While a Directorate of Small-Scale Mining exists to promote development of the sector and provide support to artisanal and small-scale miners, in practice, the response of the Executive and Legislature to the activities of these miners has been to further penalise.

Legislation setting out guidelines for regulating the mining industry, the Mineral and Resources Petroleum Act 28 of 2002 (MPRDA) focuses mainly on LSM, with a few exceptions. Section 23 of the MPRDA Amendment 2013³⁹ describes a permitting process for allowing small-scale mining on an area not exceeding 5 hectares, which can be mined optimally within a period of two years. Unlike the mining right requirement for LSM, obtaining a mining permit does not require an economic or social and labour plan. Yet, this process can still be quite onerous as it requires submitting technical applications and environmental management plans and applications of environmental authorisations, which may not be clear or doable for small-scale miners, and certainly out of reach for artisanal miners.

Section 12 of the MPRDA provides that the Minister may facilitate assistance to historically disadvantaged persons to conduct prospecting or mining operations. Finally, in section 74 (which amended section 104 of the principal Act) the Act provides that communities who wish to obtain the preferent right to prospect or mine in respect of any mineral and land which is registered or to be registered in the name of the community concerned, must in terms of section 16 or 22 lodge such application to the Minister. The Minister must then grant such preferent right if the provisions of section 17 or 23 have been complied with: Provided that (a) the right shall be used to contribute towards the development and the social upliftment of the community; (b) the community submits a development plan, indicating the manner in which such right is going to be exercised; and (c) the benefits of the prospecting or mining project will accrue to the community in question.

The MPRDA also provides that companies applying for mining rights must submit a social and labour plan. However, the requirements for these plans are broad, generic in nature, and generally relate to situations of job losses or mine closure.⁴⁰

36 Benchmarks Foundation website, "The Benchmarks Foundation is a non-profit, faith-based organisation owned by the churches in South Africa. It is a unique organisation in the area of corporate social responsibility and monitors corporate performance against an international measuring instrument, the Principles for Global Corporate Responsibility; Bench Marks for Measuring Business Performance."

37 Ibid.

38 PMG, "Mine Health and Safety Council Annual Report 2008/09, Adoption Committee Report: illegal mining," 17 Nov 2009, <<http://www.pmg.org.za/report/20091118-mine-health-safety-council-annual-report-20089-and-adoption-oversight>>.

39 This version of the MPRDA was passed by Parliament at the end of March 2014 and sent to the president for assent. The President subsequently referred it back to the National Assembly for reconsideration in January 2015. In a statement, the presidency declares that the bill has been returned to parliament due to doubts over whether, once signed, it would pass constitutional muster. Section 79(1) of the Constitution empowers the president to return a bill to parliament for reconsideration if reservations about the constitutionality of the bill prevail. The proposed legislation was first published for comment in December 2012.

40 See MPRDA ss. 41, 42, 43 and 46.

No mention is made of the potential role of ASM for providing employment opportunities for the local community in the decommissioning and closure phase.

5.3.2. 1998 White Paper on Minerals and Mining Policy

The White Paper on Minerals and Mining Policy of 1998 dedicates an entire section to policy statements meant to encourage and facilitate the development of the small-scale mining sector. In this paper, the government establishes its responsibility to help support the development of the small-scale mining sector through various means, including:

“Information on mineral rights and mineral deposits available for development will be made accessible, particularly for the benefit of small-scale miners.”⁴¹

“Access to funding for small-scale mining will be encouraged and facilitated through appropriate and targeted institutions.”⁴²

“The Department of Minerals and Energy (DME) will co-ordinate needs-driven research by the Science Councils and ensure that this information and technology is accessible to the small-scale mining sector.”⁴³

“Information on all aspects relating to mineral development and exploitation will be made available by the DME by means of a “one-stop shop” approach.”⁴⁴

“Health and safety standards will be maintained in small-scale mining operations.”⁴⁵

Through this policy document, the government outlines clear areas where it can help to develop and support artisanal and small-scale miners. However, nearly 17 years have passed since the publishing of the document and the government has achieved very few of its aspirational policy goals.

5.3.3. Large Scale Mining Companies (LSM)

LSM and ASM have historically experienced conflictual relations in South Africa. Reports of police and private security actions against artisanal miners, especially using legislation dealing with trespassing onto LSM property, is common. However, there have been some recent shifts in policy towards promoting integration in the mining sector.

Mintek,⁴⁶ for example, established a Small-scale Mining and Beneficiation (SSMB) Division. According to Mintek’s website, the SSMB Division is involved in numerous projects supporting small-scale miners, including:

- “Extractive technologies in mining for small-scale mining and related sectors;
- Beneficiation of resources;
- Techniques to ensure that ASM’s operate more efficiently and economically to ensure sustainability;
- Methods to improve the informal and environmentally unsafe practices that frequently prevail in this sector;
- Training and skills development; and,
- Marketing of products.”⁴⁷

41 Department of Minerals and Energy, “White Paper – A Minerals and Mining Policy for South Africa,” October 1998, s. 1.4.4.1.

42 Ibid. at s. 1.4.4.2.

43 Ibid.

44 Ibid.

45 Ibid. at s. 1.4.4.3.

46 Mintek website, “Mintek is South Africa’s national mineral research organisation and is one of the world’s leading technology organisations specialising in mineral processing, extractive metallurgy and related areas. Mintek works closely with industry and other R&D institutions and provides service test work, process development and optimisation, consulting and innovative products to clients worldwide. Mintek is a state owned science council which reports to the Minister of Mineral Resources. Mintek’s mandate is to serve the national interest through research, development and technology transfer, to promote mineral technology and to foster the establishment and expansion of industries in the field of minerals and products derived therefrom.”

47 Mintek website, “Support for Small-Scale Miners”

Mintek further describes numerous alternative employment opportunities it has helped to foster in mining communities, including: ceramics, beading, and brick making.⁴⁸ However, little to no information is reported on the success of its programmes. It is thus difficult to assess the impact and the role companies like Mintek have played in the development of the ASM sector in South Africa.

The social, health, and environmental impacts of unregulated ASM activities in South Africa, particularly artisanal mining, have serious consequences for the rights to life and security. The absence of policy indicates missed opportunities to:

1. Enable artisanal mining/self-employment activities and to explore how AM in general can be more inclusive;
2. Create partnerships between artisanal miners, on the one hand, and LSM and AM, on the other;
3. Introduce systems that enable integration particularly through potential, additional methods of and facilities for rehabilitation;
4. Reduce/remove organised crime and tax evasion; and
5. Further, the absence of policy undermines environmental health, tenure security, local safety and redistribution.

It is for this reason that the Commission resolved to undertake an investigation into the issues and challenges in relation to artisanal mining in the country.

48 Ibid.



6. PROCEDURES OF THE SAHRC HEARING

6.1. Composition of the Panel

- Commissioner Janet Love, responsible for environment, natural resource management, and rural development rights portfolio at the SAHRC: Chairperson
- Commissioner Mohamed Shafie Ameerma, responsible for the right to adequate housing and access to justice portfolio at the SAHRC: Panellist
- Dr. Koos Pretorius – Federation for a Sustainable Environment: Panellist
- Ms. Rina Taviv – Gauteng Department of Agriculture and Rural Development: Panellist

6.2. Terms of Reference

- To receive information and to hear evidence from the respondents and other relevant parties relating to the systemic challenges affecting the land restitution process in South Africa;
- To analyse evidence brought before the panel;
- To make appropriate findings; and
- To enable the Commission to make recommendations.

6.3. Nature and Structure of the Proceedings

As indicated, the proceedings were inquisitorial in nature. Representatives were invited to assist the panel with the provision of relevant information to arrive at a fair reflection of the issues and challenges in relation to unregulated artisanal underground and above-ground mining activities in South Africa. The respondents were obliged to make written submissions as well as oral presentations. Each respondent was given a time-slot in which to address the issues for discussion. The panel could then pose a series of questions, seek clarity or further information arising from the submissions. Before making submissions, respondents were invited to take an oath or affirmation in the manner of their choosing.

7. SUBMISSIONS FROM RESPONDENTS

The Commission posed a series of questions to the Respondents. Depending on the nature of the service provided, not all of the Respondents were necessarily asked the same questions, although, where more than one Respondent was identified as a duty-bearer in relation to the service provided, the same question was posed to more than one Respondent. The following comprises a sequential overview of the proceedings and the responses provided in the form of written and oral submissions. It is not necessarily reflective of the views of the Commission or the Panel appointed in this matter.

7.1. Submissions made by the Chamber of Mines

The Chamber of Mines (CoM) was the first respondent to present to the Commission, and was represented by Mr. Nikisi Lesufi.

The oral submission was in response to the broad questions that the Commission had put to the CoM in its Notice to Appear and Terms of Reference.

1. **Is there a real prospect and/or desirability to eliminate artisanal mining in South Africa? Are there opportunities and prospects for artisanal mining to play a complementary role to larger mining operations?**

The following points were made:

- Potential for poverty alleviation/opportunity for criminality
- Absent regulatory framework
- Inadequate definition – ASM, *zamazamas* versus community development
- A one size fits all approach may not be appropriate
- There may be opportunity for a framework for partnership with those sites under the control of the majors (they have a vast amount of sites that they are not using – these can be used)
- Framework for direct access to historically mined sites under the control of the state (abandoned sites) are a potential win-win situation and should be opened up for artisanal miners to be able to provide a work plan of what they are going to do, to improve economic wellbeing
- Framework for access to green field sites (this is only possible if the Council for Geosciences or another state entity that has knowledge of deposits; those ore deposits could be fruitful)
- These activities require state assistance from an Environmental Health and Safety (SHE) perspective; these people may not have the know-how or resources to undertake the protective environmental measures necessary to sustainably conduct their activity
- There should be the establishment of a state organ (separate state agency) to look at the wide range of issues confronting this part of the mining sector.

As another way of combating illegal mining activities, there is a need to address the negative legacies of mining:

- Prevent future repetition and further legacies
- Alignment of government mandates, i.e. the balance between development and protection: the various government departments need an integrated approach to managing and regulating the sector
- Regardless of the size of the mine, they are entrepreneurial in nature; if there is a gap for non-compliance, majors and minors will take that gap. Fatal flaws exist but the right decision needs to be made – if a mine cannot live up to its environmental and social obligations, then a licence should not be issued
- Compliance Monitoring and enforcement are needed
- Environmental Management Plan (EMP) and the Social and Labour Plan (SLP), Water Conservation and Water Demand Management Plan (WC/DM) and Pollution Prevention: EMPs and SLPs adequately provide a good regulatory framework for mines to live up to their social and environmental obligations
- Concurrent rehabilitation should be encouraged; i.e. if rehabilitation during mine operations is possible, then this should happen
- Financial provision for rehabilitation needs to be made up-front
- Regional approaches to ASM: there are jurisdictions where regulation has been put in place to bring illegal miners into the formal economy
- Cooperation of stakeholders (including the State) is necessary to address this issue
- Mine closure: No mine can close independently of its neighbours – there is a need to rethink the kind of tools that we use to manage impacts. If a mine closes prematurely, that mine has impacts on its neighbours; mines cannot have a stand-alone closure plan. The CoM thus proposes for regulated integrated closure processes; the closure plan should be for the region – this will require the cooperation of the state.



2. Regulation – Would some of the problems of unregulated artisanal mining be addressed by improving the legal framework? What legislation needs to be in place so as not to miss the issues outlined above?

The following points were made:

- Mining that is not conducted within prescripts in MPRDA is illegal
- The CoM approach is the following: *zamazamas* may not be considered as a group on their own; but we need to consider how the communities in their entirety can be involved; substitute *zamazamas* with local communities⁴⁹
- The current regulatory framework offers opportunities to address illegal mining challenges.

Discussion

The discussion following the CoM presentation follows below.

The panel’s first query was around the need for a framework for communities to benefit once a mine has reached its economic end. Mining rights have a timeframe and terminate at mine closure. The reserves have not been completely depleted – it has just become less profitable to extract; thus, a closure application is not made in many instances. When that happens, *zamazamas* arrive and begin their ASM operations.

The panel requested clarity from the CoM on the point regarding communities and rehabilitation – i.e. should communities be involved only in the rehabilitation process or are there also opportunities for further mining for their own pockets on a site that still has a mining permit? The CoM clarified that rehabilitation and further mining should happen within a framework and that rehabilitation should not be transferred to the community at mine closure.

⁴⁹ In the Northern Limb of the Bushveld complex (Limpopo Province), many of the platinum mines gave the chrome they mined to the communities. Whilst this is good as some of the dumps are quite large, the companies did not equip the communities with knowledge or with tools. To this day many of the dumps remain unexploited or they are exploited only to the benefit of the Royal families.

A further point of clarification was around gold mines at the decommissioning stage – if the community is brought in to mine in that area, who will bear the costs and responsibilities for the Mine Health and Safety regulations, water use licence, further liability, and other safety issues? Where does the CoM see the mine's responsibility ending and that of the state beginning? The CoM responded that this type of scenario does not take place in a vacuum. The mine is responsible for the costing of the mine closure plan; if what is in the plan has been achieved, and there are still further obligations, then those costs should be borne by the state. If there are obligations that fall within the closure plan, then these should be borne by the mine.

The next concern was on accessing SLPs and the difficulties faced by mining affected communities and other interested parties in this undertaking. The CoM responded that there is no problem in that regard. The EMP is a result of a participatory process and that these are public documents. Communities cannot understand the impacts of the mine if they do not have the EMP. So where are the bottlenecks? SLPs are not stand-alone documents – they are a contribution to municipal Integrated Development Plans and should be public documents. There is a need for further engagement on identifying these bottlenecks.

On the issue of the CoM's monitoring of the illegal mining of gold and precious metals, *zamazamas* present a complex situation. The CoM had initiated monitoring activities in so far as gold mining (as part of the theft of precious metals) is concerned. A national Precious Metals Forum was established in 2003 to address these problems. The nature of the problem has changed over time. The nature of the risk has also changed significantly – even in existing mine operations, illegal mining is happening.

The kind of challenge the CoM has seen has really escalated. There is a formal agreement between the CoM, the state, and the SAPS on how to deal with the issue. Some of the solutions include fingerprinting (gold and platinum sector) but this is also not completely effective as it is not easy to trace the material back to the mine and the source. There is currently no initiative regarding iron ore or other minerals.

Furthermore, the CoM submitted that with regard to properties under state control i.e. mine dumps dating back to the 1950s and 1960s, it is of the view that those dumps can be successfully re-mined to create a win-win situation. Especially when it comes to surface operations, the CoM sees no reason why the state cannot be able to re-mine those dumps – there is a template to undertake this activity. The CoM does not have the kind of resources available to the state i.e. there are bodies such as the Council for Scientific and Industrial Research, the Council for Geosciences, the Mine Health and Safety Council, and Mintek that have more resources than the CoM. However, the CoM is ready and willing to partner with the state around illegal mining issues and challenges.

The CoM responded to the panellists' further questions on:

- Blyvooruitzicht: The panel's position was that the situation at the Blyvooruitzicht mine outside of Carletonville can be used as an example of a mine that is not moving to closure. Instead, it is being warehoused, and this presents an opportunity for *zamazamas* to exploit. The CoM's view is that there is no single approach that can be used as a *one size fits all* – once the ore body is depleted, that is it. At the Blyvooruitzicht site, there is no opportunity for ASM because there may well be ore bodies that could be mined at a minor level, but the risks to be managed for these ASM to access ore body, requires a lot of resources – resources that would far exceed benefits of re-mining. Opportunities ideally are where the LSM keeps the infrastructure going so that ASM can be able to carry out activities. Where a mining company is responsible for taking rehabilitation action, that problem should be localised to that particular company to be held accountable;

- Mine Residue Areas (MRA) Strategy: The Gauteng Department of Agriculture and Rural Development has found that in the Gauteng Province, there are no mine dumps that the state can take over; dumps are not considered to be mining waste; in that case, who do they belong to? The CoM submitted that whoever is in charge of a mine dump that is negatively (or in any way) impacting on communities, has a responsibility to take remedial action. The Chairperson of the Hearing Panel requested the CoM to take this issue back and respond at a later stage with further information, and to further consider the issue of property rights on the mine dumps.

7.2. Submissions made by the National Coordination Strategic Management Team (NCSMT) on Illegal Mining

The NCSMT was represented by the convenor of the Team, Major General Jan Mabula, Brigadier Van Graan, and Lieutenant-Colonel Flynn.

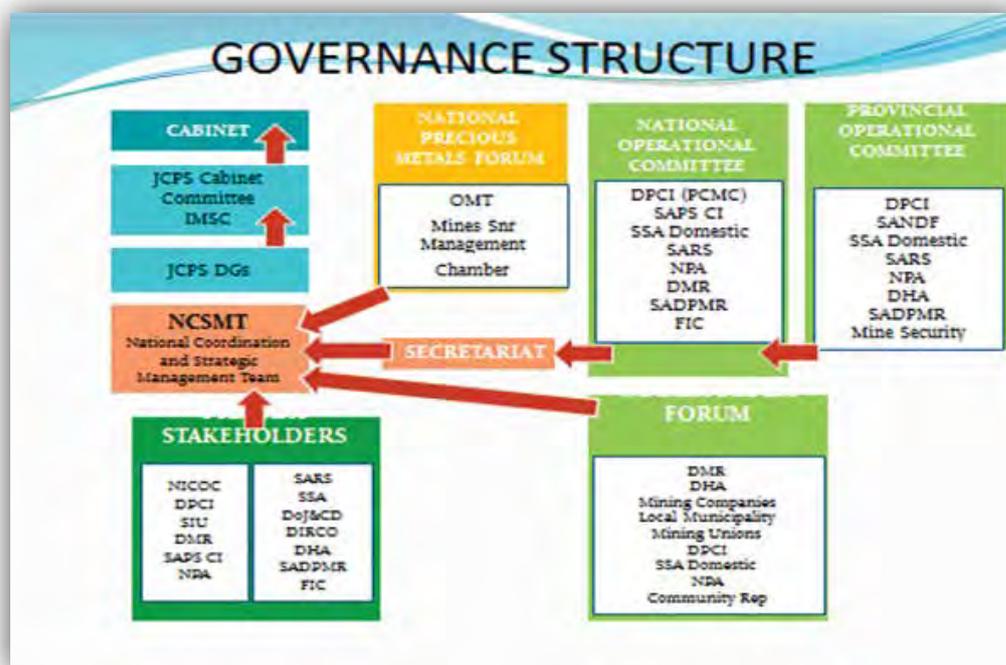
Presentation by NCSMT

In 2009, following the Free State incident fire where *zamazamas* lost their lives in an informal mine tunnel accident, the SAPS, National Intelligence Coordinating Committee (NICOC) and other parties got together to establish a structure to manage the problem on all levels.

A provincial operational committee was put together in 2013 to address the issue of precious metals and diamond mining in the Northern Cape.

The governance structure appears in the image below.

Figure 1: NCSMT Governance Structure



With regard to illegal mining of gold, Gauteng is the most affected province, followed by the Free State and then Mpumalanga (see Figure 3 and Figure 4 below). As opposed to underground illegal mining activities, surface illegal mining is more to do with turf wars amongst factions of *zamazamas*, which then, in certain circumstances, results in violence and killings. With proper mine rehabilitation prior to mine closure, these problems would be limited.

Figure 2: Occurrences of illegal mining across South Africa

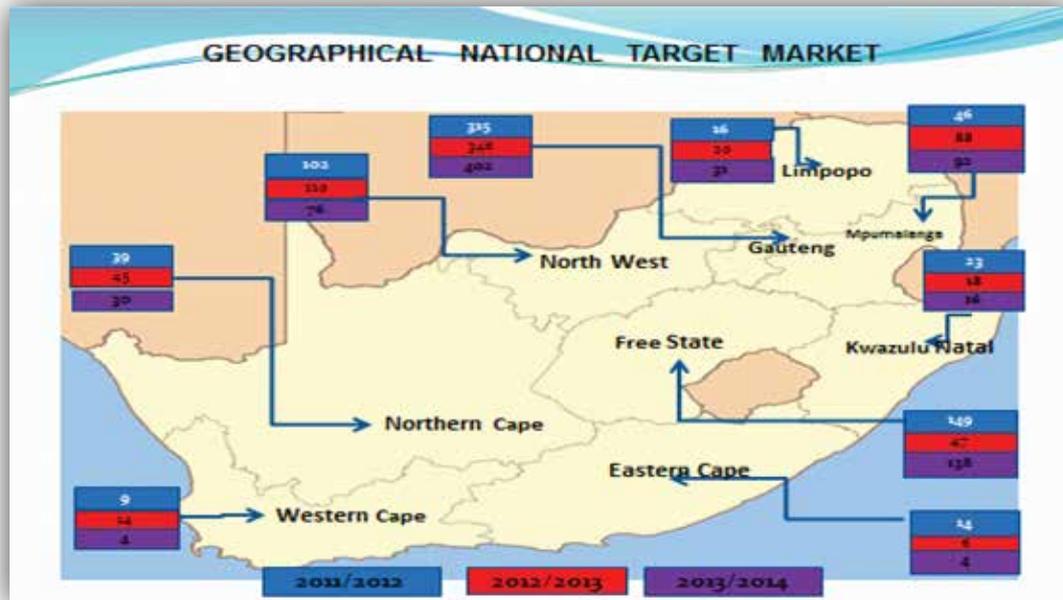
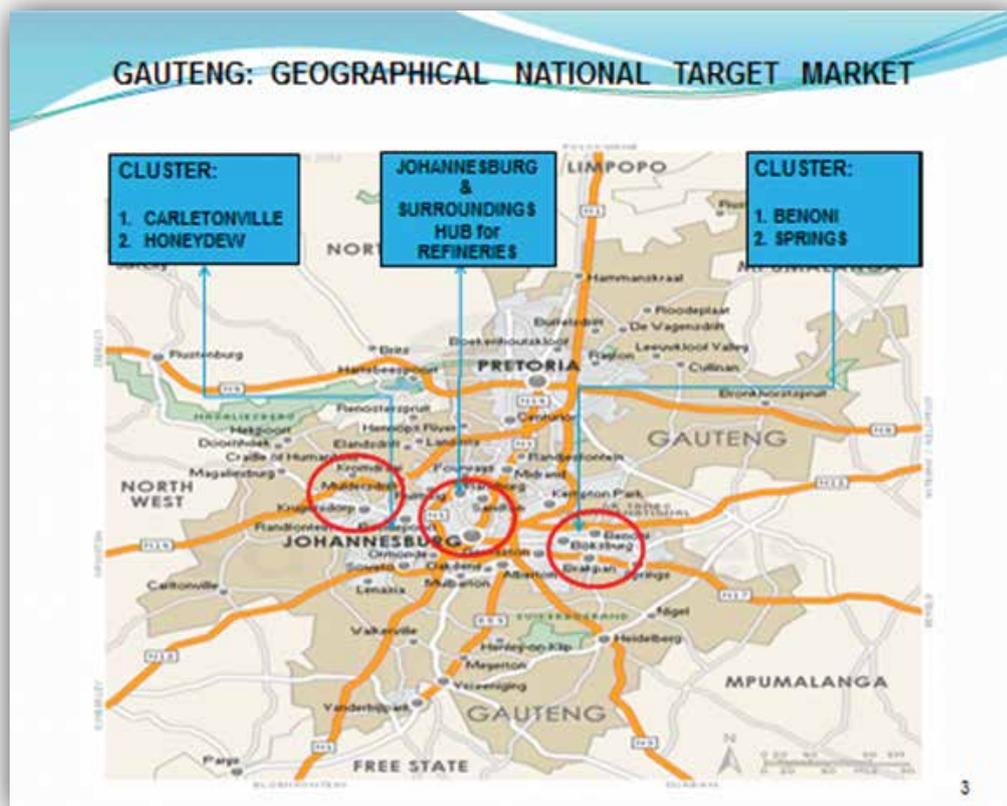


Figure 3: The scope of the problem in Gauteng



In the Free State goldfields, murders, and robberies have been happening underground since 2009. Turf wars pose a challenge for law enforcement. Illicit (and hyper-inflated) economies are created underground.

The different tiers of illegal mining are indicated in the value chain below (Figure 4). The investigative hearing was concerned with the bottom tier – the informal miners, diggers, or *zamazamas*.

Figure 4: Value chain/Complexity - Tiers of Illegal Mining



When it comes to illegal mining in the Limpopo and North West platinum belt, there is a propensity for the theft of mine infrastructure. Such unlawful activities include the theft of copper wires and cables. This type of theft ultimately impacts on the productivity of legitimately licensed mining.

Figure 5: Copper wires confiscated from illegal miners by the SAPS and mine security



Discussion

The first query from the panellists was whether the NCSMT engages on the issue of sand mining, given that sand is not a precious metal. The NCSMT does not currently address the issue of sand mining – unless it is brought to their attention and poses a threat in terms of the NCSMT's threat assessment. The NCSMT's scope is limited to organised crime relating to theft of gold and other precious metals.

A follow-up query from the panel was that, in terms of the threat to safety of communities, there is a concern that the government is not necessarily looking at the issue in an integrated way. To the extent that it is possible to create the space to make a significant component of this activity legal or regulated, would this make the NCSMT, as law enforcers, focus its attention more effectively?

The NCSMT referred to the West Rand and the Blyvooruitzicht example – the mine is currently under curatorship and private security was called in to secure the premises. During that time, 500 *zamazamas* entered the mine, violence broke out, and security guards were killed; there continue to be regular robberies between the groups, and escalated incidences of violence.

The panel agreed that there is no single solution to the issues and challenges posed by illegal mining; however, with the example of Blyvooruitzicht, this is a mine that was being warehoused (i.e. the owner was no longer mining for whatever reasons; the company was warehousing it and not doing the proper closure) and, as such, a closure plan was not being implemented. There is thus ambiguity around the life of the mine and it appears difficult to focus its enforcement strategies effectively.

Is there any scope for regulating or legalising the ASM sector at all? The NCSMT is of the opinion that to introduce such a regulatory environment would bring even more problems because it is not clear who will monitor and enforce these instruments.

The extent to which this situation is happening seems to be growing – the panel sought to establish:

- To what extent the NCSMT feels that there is a strategy that is adequately involving the company side of all of this;
- To what extent is the DMR involved; are any of the refinery people being brought to book?; and
- To what extent is industry involved?

In terms of the level 3 players in the value chain pyramid (see figure 5 above), the South African Diamond and Precious Metals Regulator (SADPMR) is an active role-player within the NCSMT. The SADPMR assists in terms of covert operations. In addition, the NCSMT asserted that mine security and the industry are doing everything in their power to curb illegal mining. It is also the primary responsibility of the mine company to prevent thefts.

On the issue of rehabilitation, if mine dumps could be rehabilitated, it would reduce surface illegal mining significantly. Rehabilitation includes vegetating the mine dump – but *zamazamas* could easily remove the grass and vegetation – there is a need for full and sustainable rehabilitation to be done. The NCSMT believes that whole areas could be rehabilitated – all the gold could be extracted from those mine dumps/soil so as to remove the prospect of people going there to harvest gold. If there is no gold left there for them to reap, there will be no problem of illegal miners. The NCSMT is unable to quantify the percentage value of theft and crime in operational mines versus reclamation.

The panel queried as to the extent of the work that the NCSMT is doing relating to some of the other issues – for example, South Africa allows the export of recycled metals including the cable theft that is so pervasive on the platinum mines – produced, sold, and then bought (thereby creating a situation where theft can occur), and then sold again. The Department of Trade and Industry (DTI) is not outlawing this practice. Does the NCSMT collaborate with the DTI on this issue? Also, in terms of issues relating to customs, is there space for multilateral collaboration? The NCSMT submitted that it does not focus on non-ferrous metals and does not engage with the DTI in any of the forums.

There are some other issues that need streamlining. In a situation where a shaft is still under the control of a major, that major is responsible for security and risk mitigation. If an accident happens at that site, it becomes the liability of that major; so when ASM takes place in an active mine, when families want to get the enquiry taken on, they are told that this is a criminal matter. The Commission received a specific complaint regarding the Northern Cape diamond fields – the De Beers/Bontekoe and Kleinzee matter. The community seeks closure and for a formal enquiry to be done. The enquiry has been regarded as a criminal activity. The NCSMT submitted to the panel that this enquiry is not something that the NCSMT is prioritising – the NCSMT and SAPS are primarily looking at illegal flows. However, in a further submission the convenor of the NCSMT, Major General Mabula, confirmed that a provincial operational committee has been established to monitor operational responses to the threat of illegal diamond mining in the Northern Cape. In this instance, it appears as though the NCSMT is addressing the whole value chain and not only illegal flows. However, on the issue of prioritising the De Beers/Bontekoe and Kleinzee matter, uncertainty in terms of who should address such situations and how they should be addressed continues to persist.

The panel and the representatives of the NCSMT all confirmed that there is indeed a gap in that situations such as the Bontekoe incident are inadequately addressed by relevant role-players. The panel's view is that there is a lack of acknowledgement of the particular roles that stakeholders have in ensuring that these issues are confronted in a holistic manner.

In terms of cooperation in relation to majors and the CoM the panel queried if there is a way in which an assessment is made about whether the problem is growing; the involvement of children; the involvement of women, especially with regard to prostitution and human trafficking. Has a study or assessment been done? Is this something that is increasing? Are there are other forms of this happening elsewhere? The NCSMT submitted that it is a Priority Crimes Unit of the Hawks and cannot say whether or not there is an increase in the involvement of children and women (sex work/prostitution). However, since the escalation of these crimes, the National Police Commissioner has instructed the provincial commissioners to step up monitoring of the influx of level 1 miners and the role of foreign nationals. There is currently no data or academic research that has been undertaken on these people that has been released/published. In a further submission, the NCSMT explained that it is a multi-disciplinary body comprising of, inter alia, members of the DPCI. Despite this, the panel's view is that there remain gaps in how the entire illegal mining situation is dealt with – little is known about collaborative/multi-disciplinary efforts (such as collaboration amongst several key national departments and bodies within the NCSMT) that are being pursued by the various role-players.

7.3. Submission made by the Department of Health

The Department of Health (DoH) delegation was led by the Compensation Commissioner for Occupational Diseases, Dr. Barry Kistnasamy.

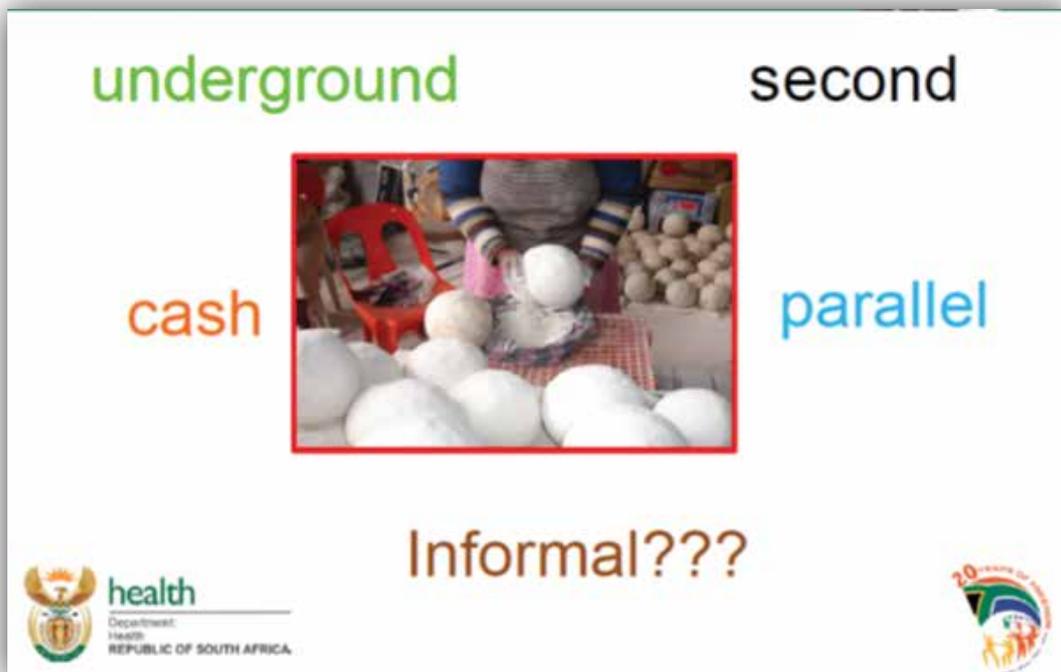
Presentation

Context

- 17 million workers (4 million in informal economy)
- Hierarchy of workers (informal economy)
- Migrant and cross-border
- Multiple policy and legal frameworks covering health & social protection for formal economy
- Abandoned mines and quarries (6,000)
- Externalised Social, Environmental & Health consequences (Compensation)

The informal economy includes mini-bus taxi drivers; and activities relating to mining calcium carbonate in KwaZulu Natal just outside Verulam (see image below).

Figure 6: Mining calcium carbonate in KZN



The informal economy further creates a situation characterised by:

- The livelihood of millions (especially the poor and marginalised)
- Fight for survival
- Uncertainty of work and income
- Insecurity of work
- Tough and risky conditions
- Value chain

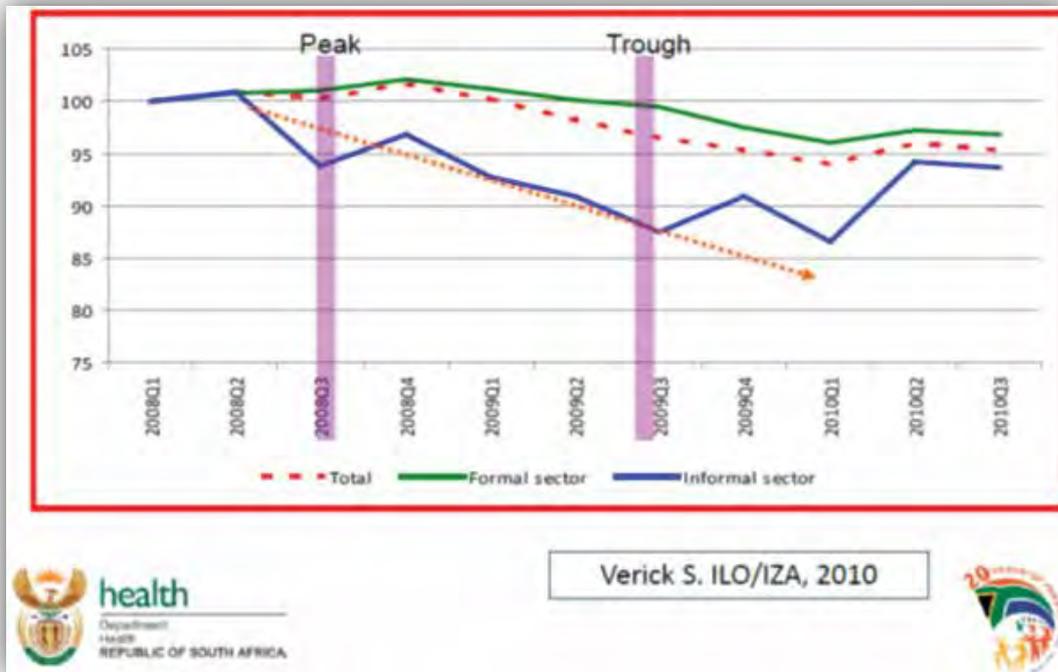
According to the International Labour Organisation (ILO) figures of 2011, the informal economy consists of:

- Unregistered, small, unincorporated private enterprises
- Production of goods and services
- Low level of organisation
- Little or no differentiation between capital and labour

Furthermore, labour relations are ones of casual employment, kinship, personal or social relationships.

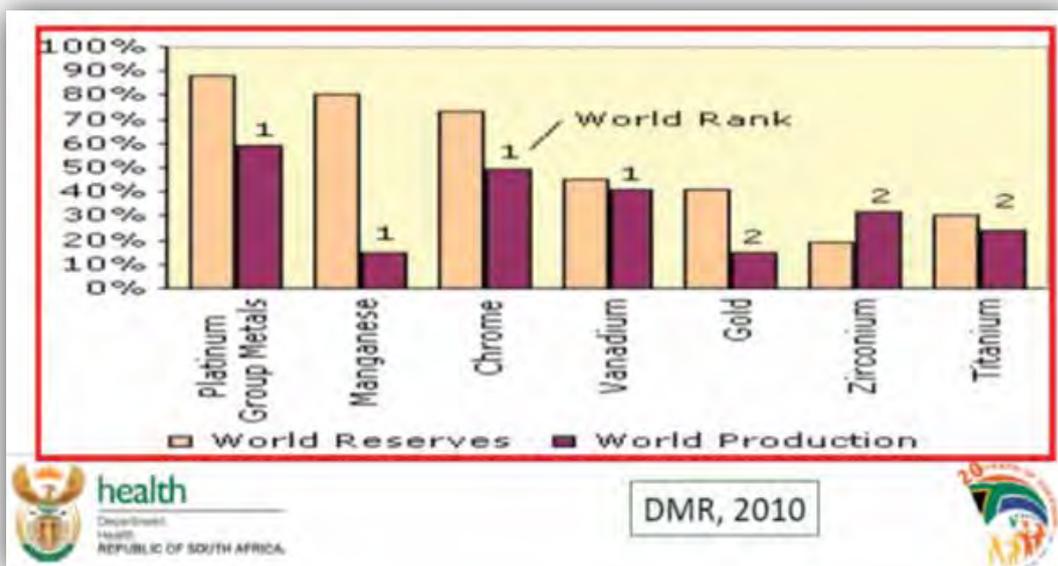
The impact of the financial crisis created a situation where the informal economy was able to adjust more rapidly (see Figure 8 below).

Figure 7: Formal versus Informal Sector – Impact of the financial crisis of 2008/2009



The mining sector has a net asset value of ZAR 18 trillion and makes up 7.7% of the annual Gross Domestic Product (GDP).

Figure 8: South Africa's performance: World Reserves versus World Production



There is a significant percentage of migrant workers in the formal (and possibly informal) mining sector.

Figure 9: Migrant workers involved in the formal mining sector

Year	RSA	Mozambique	Lesotho	Swaziland	% Non-RSA
1920	74 452	77 921	10 439	3 449	57
1940	178 708	74 883	52 044	7 152	49
1960	141 406	101 733	48 824	6 623	62
1980	233 055	39 636	96 308	5 050	44
1995	122 562	55 140	87 935	15 304	58
2000	99 575	57 034	58 224	9 360	57
2010*	152 486	35 782	35 179	5 009	34

World Bank / * Data from TEBA

Meanwhile, the numbers of ex-mineworkers in South Africa is also significant compared to other countries in the region.

Figure 10: Numbers of ex-mineworkers in South Africa versus in the region

Country	Gold	Platinum	Coal	Contractors	Unknown	Total	%
South Africa	507 256	115805	37358	231288	31181	922888	74
Lesotho	111281	7933	1519	16204	6358	143295	11
Mozambique	75324	8465	1402	13722	5619	104532	8
Malawi	24392	4076	116	33	237	28854	2
Botswana	20822	3241	1	572	307	24943	2
Swaziland	20406	1572	146	1657	647	24428	2
Other	173	30	31	323	36	593	
Total	759654	141122	40573	263799	44385	1249533	

TEBA, 2013

The DoH submitted that the current mining legislation criminalises *zamazama* activity; however, there is a need to strike a balance – legality and enabling legislation. There is a need to take an inclusive approach, any policy and legislative changes should take constitutional rights into account, and align health and social protection to the ILO’s *Decent Work-Safe Work* agenda. Organisations representing the informal economy workers and affected communities should also be included. Lastly, there is a need to move towards “building the evidence base.”

Building the evidence base in this case entails looking into building trust and networks in this sector and to remove the suspicion that shrouds such activities. This means identifying the size, shape, and scope of artisanal mining. What is the contribution to work/revenue? What are the hazards and risks (these can be different in terms of psycho-social considerations). What different types of interventions could be considered? Capacity-building is an important component of addressing the sector. South Africa should partner with technical experts and champions, given that the country leads the world in terms of its informal sector. How do we take a new approach to the informal economy – one that is enabling, supportive, and inclusive? What do we need to do in terms of macroeconomics towards understanding this area of work?

The panel queried whether the DoH had any statistics on hazards – i.e. being able to identify the number of people ending up in hospitals as a direct result of illegal mining, and how the DoH deals with the influx of *zamazamas*?

The DoH does not have a surveillance system for injuries and disease in workers – it is pushing to get a baseline study done. Sustainability reports of companies listed on the Johannesburg Stock Exchange have been helpful. People working in the informal sector and in the margins do not seek help until the very last minute, because “time is money”. There is a need to look at new services; to analyse the hierarchy of hazards. At the moment, there is no training or understanding on the part of informal miners of the impacts of their activities on their health.

The DoH has not engaged with Cabinet yet on this issue and welcomes the Commission’s initiative around the problem. Health is currently seen as consumptive expenditure; and the Department has not yet adopted a position on unregulated AM.

The panel posed that the nature of AM is widespread – studies have been undertaken in other parts of the world from a health perspective. Such studies have not been too costly and are quite practical – for example, training on the impact of the use of mercury on health and the usage of personal protective equipment. From a regulatory point of view, there are gaps and we need to see how these very necessary health and social statistics can be pulled together. Significant risks are posed by tailings dams such as the Tudor Shaft in the West Rand, Gauteng – where people are exposed to radiation, and where AM is also taking place. These risks are serious and present an inherent cost to the DoH at the end of the day. No risk assessment has been done regarding the potential cost. There is a fairly wide understanding that the dust from the mine dumps will have an impact on the community; artisanal mining poses an additional challenge. Costs are incurred simply by not providing information to communities regarding these impacts.

The DoH submitted that the Mine Health and Safety Council had set up a project to see whether there is a causal relationship between the exposure to mine dust and health; the project is in its third and final year. Once completed, the Department will need to workshop the results. There is a problem of financial resources to carry out any further studies – such tests require a lot of resources. The DoH has multiple priorities and without additional funds, and it will be a challenge to carry out these health studies.

The panel recommended that the DoH liaise with its contacts through the ILO and various regional and international Working Groups who may be in a position to assist with funding for example; the panel also requested to form part of the final meeting regarding the health study project.

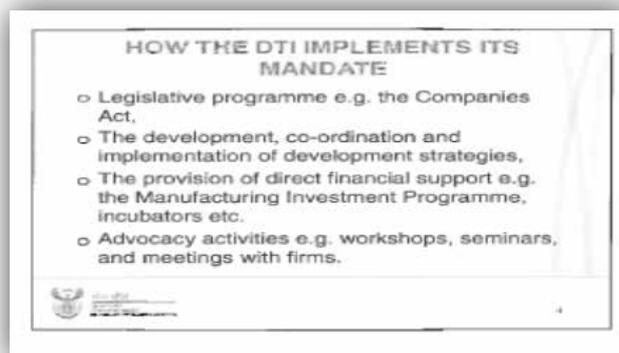
The DoH further emphasised that doing these studies is labour and resource intensive; but welcomed suggestions, highlighting that the DoH would first have to go through the correct avenues and authorities.

7.4. Submission made by the Department of Trade and Industry

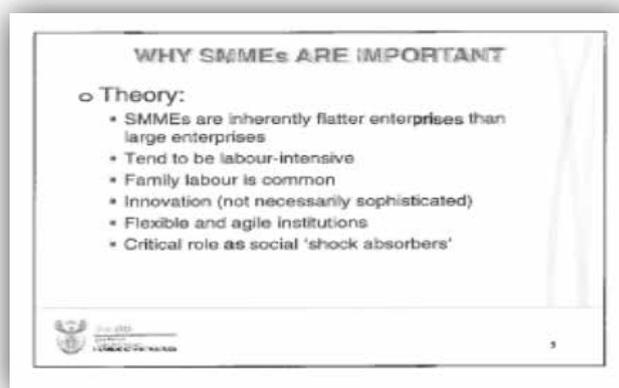
The DTI team consisted of Mr. Steven Hanival, the Deputy Director General (DDG) of Economic Research, and Mr. Marco Voller of the Legal Unit.

Presentation

Mandate of the DTI and Implementation of Mandate



Why SMMEs are important



WHY SMMEs ARE IMPORTANT

- o South Africa:
 - SA's particular history has systematically limited the potential for SMMEs in the pre-democratic era
 - Barriers to entry, bans, market access, anti-competitive behaviour of incumbent firms
 - Many SMME research institutions point to relatively low levels of SMME activity in SA compared to other developing countries
 - This is not per se the case...



4

Regulation versus no Regulation

REGULATION VS NO REGULATION

- o Need to distinguish between regulation and 'red tape'
- o Self-styled 'free market' views are dangerous and are based on a misdiagnosis of the challenges facing SA
- o Market and conduct regulation is not unique to SA – every country in the world does this
- o Regulation protects workers, domestic capital, consumers and citizens



5

REGULATION VS NO REGULATION

- o Workers
- o Domestic capital
- o Consumers
- o Citizens
- o Regulation reflects SA's values, economic policy priorities and Government's commitments to the electorate
- o Of course, not all regulation is effective, efficient and without unintended consequences!



6

REGULATION VS NO REGULATION

- o 'Over-regulation' stifles innovation, entrepreneurial activity and imposes additional costs on local firms with impacts on international competitiveness
- o Similarly red-tape implies economic costs with little economic benefits
- o Over-regulation and red-tape are focus areas for Government and Business



7

Responses to broad issues for discussion

1. Is there a real prospect and/or desirability to eliminate artisanal mining in South Africa? Are there opportunities and prospects for artisanal mining to play a complementary role to larger mining operations?

RESPONSES - 1

- o Freedom Charter
 - 'All other industry and trade shall be controlled to assist the wellbeing of the people; All people shall have equal rights to trade where they choose..'
- o Constitution
 - Every person shall have the right freely to engage in economic activity and to pursue a livelihood anywhere in the national territory.
 - shall not preclude measures designed to promote the protection or the improvement of the quality of life, economic growth, human development, social justice, basic conditions of employment, fair labour practices or equal opportunity for all, provided such measures are justifiable in an open and democratic society based on freedom and equality.

 11

RESPONSES - 1

- o **These** are thus not unfettered rights
- o But critical question is whether ASM can be eradicated at this stage of SA's development?
- o Probably unlikely for as long as you have significant poverty, unemployment, high and rising inequality, and uneven enforcement of legislation, laws and regulations
- o Need to create conditions for *sustainable livelihoods* while ameliorating negative impacts on workers and society as a whole

 12

2. Regulation – Would some of the problems of unregulated artisanal mining be addressed by improving the legal framework? What legislation needs to be in place so as not to miss the issues outlined above?

RESPONSES - 2

- o Legislation already exists but enforcement cuts across range of Departments and tiers of Government
- o Not all problems can be solved by more legislation or regulation
- o Capacity building, Occupational Health & Safety training and provision of economic and social infrastructure are equally important
- o But measures need to be carefully calibrated to avoid 'over-regulation' and 'red-tape'

 13

3. Mine rehabilitation - How can *zamazamas* be integrated into and involved in the process of rehabilitation as a way to improve their quality of life and improve the dangerous situation currently confronting the population as a result of the impact of mine waste on environmental health?

RESPONSES - 1

- o The question is perhaps too narrowly posed – what are the range of economic activities in ASM where the balance between the right to economic freedom can be better balanced with other core rights?
- o ASM is practised across the globe – Hinton, J. (2005) *Communities and Small Scale Mining: An Integrated Review For Development Planning*



10

RESPONSES - 2

- o Coal, diamonds, non-precious minerals
- o These activities have important downstream economic and social impacts
- o And, as technology develops, safer and more efficient ASM techniques may/will emerge..



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Some conclusions

SOME CONCLUSIONS - 1

- o ASM will be very difficult to eradicate, nor should it be eradicated
- o ASM provides economic benefits to the very poor and can be an important form of sustainable livelihoods development
- o It is not clear that SA can afford to try to eradicate ASM considering the levels of poverty, unemployment and deep inequalities
- o As with all economic activities a degree of regulation is critical



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SOME CONCLUSIONS - 2

- o But regulations must be carefully calibrated or we risk unduly restricting economic activity or creating unenforceable/unenforced regulations
- o Our starting point however needs to how we protect the rights of poor people to engage in economic activity, support their families, pay school fees and the like without unduly exposing them as workers to health and other dangers.



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Discussion

A number of concerns were raised: The contradictory responses to the problem of unregulated AM; a concern that regulatory frameworks are often crafted on assumptions of transparency and access to information whereas some of the documents that are created through legislation and are a product of consultations in the public domain and need to be in the public domain, for example, mine closure plans, are not easily accessible. Furthermore, there is no integrated approach to the issue – the relevant role-players are not talking to each other and do not seem to be on the same page e.g. law enforcement agencies are looking at the issues strictly in terms of crimes. Some *zamazama* activities allegedly take place in collusion with operational LSM.

There are inputs that are used in ASM activities and little or no attention is being paid to the impacts of such activities. Depending on the product, the input that used is different - e.g. mercury in gold mining which is highly toxic and not meant to be traded. The panel sought to understand the extent to which the DTI is engaging with the South African Customs and Excise Administration to assist with the monitoring of transactions and trade of such inputs (mercury etc.) so as to help them locate the sources of illegal operations. In terms of the exporting of second hand copper metals, why is the DTI allowing this repeated circle?

The DTI submitted that taking an integrated approach is not always easy but that it has been employed for example in interactions with the Department of Agriculture, Fisheries, and Forestry, and the Department of Environmental Affairs in terms of food labelling. This kind of coordination needs a very focused objective. A survey was introduced on entrepreneurship – some industries prevent Small, Medium, and Micro-sized Enterprises (SMMEs) from entering the market. The challenge is not a lack of entrepreneurial people, but rather that survival rates are low. Competition drives margins down – the issue is around how to ensure that entrepreneurs survive and grow their businesses. There are systemic problems with the way the economy operates. The idea of cutting social grants and telling people to be more entrepreneurial is not economic policy.

The DTI has attempted to restrict the scrap metal sale circle – the difficulty is in convincing other government bodies that this is a real issue. The panel concluded that the scrap metal industry in South Africa is lucrative; but that the source of those scrap metals (which includes cables) reinforces illegal activity. There is a need to outlaw the re-export of scrap metal. The panel asked the DTI to provide the Commission with feedback and reasoning behind why this is not being done. The DTI committed to discussing the issue with the DG and providing the Commission with a report around this question.

7.5. Submissions made by the Aggregate and Sand Producers Association of Southern Africa

The CEO of the Aggregate and Sand Producers Association of Southern Africa (ASPASA/the Association), Nico Pienaar, represented his organisation and made the presentation.

ASPASA deals with cement, aggregate, and sand as well as ready-mix concrete. ASPASA is a member of the CoM and falls under the DMR, and the two pieces of legislation applying to the Association are the MPRDA and the Mine Health and Safety Act 29 of 1996 (MHSA).

Illegal mining affects the precious metals industry, aggregate, sand, coal, and clay. Illegal mining in the precious metals industry gets more coverage than aggregate and sand illegal mining. The biggest culprits that drive the problems of illegality in this industry are road-builders

(including those working on South African National Roads Agency roads and freeways) and municipalities that do not comply with the MPRDA. These same culprits, bully farmers by taking their land to build roads; while nearby, there is a quarry that is licensed, pays taxes, employs people and that complies with health and safety regulations. This is an issue for the Competition Commission of South Africa to also address as it ultimately takes away people's rights to their land. ASPASA's position is that mining and rehabilitation go hand-in-hand.

Illegal mining can be divided into gold and precious metals mining; and then aggregate and sand illegal mining – undertaken by people who should know better. There is a lot more damage done in the aggregate and sand illegal mining sector.

Discussion

The panel posed the following: on the Highveld a lot of illegal sand mining is taking place; every town needs sand for economic activity – the biggest cost associated with this activity is that of transportation. How does one go about hiding such illegal operations, or what changes to legislation are needed?

ASPASA submitted that until recently, aggregate and sand were not defined as a mineral; it is now defined as such in the law. If you sell sand, you shall pay VAT on it, as per the legislation. A lot of these people do not pay VAT. The problem is that the sand producers industry cannot do anything about that. If a person is killed on these sites, the DMR then appears and pays a fine to the Mine Health and Safety Council (MHSC).

The panel was sought ASPASA's views on how artisanal miners could be integrated into a legal system of sand mining – the example of the costs involved in transporting large amounts of sand in Belfast was used. All sand mining in Belfast is illegal.

ASPASA submitted that there are two ways of mining legally – through a complicated mining licence application process, and a mining permit through the MPRDA. The law has now increased the mining permit limitations from 2ha to 5ha on the recommendation of the CoM. If a purely sand operation exists, there is a need for a less complicated mining licence – for example a borrow pit. A borrow pit has a licence system that allows people to get authorisation to open a borrow pit in a much easier and quicker process. There are certain issues that still need to be complied with – the most important of which is the funding for rehabilitation. Australian Courts heard a case where a family had a car accident where they drove into a borrow pit and people died – the builders of that borrow pit had to pay compensation.

The next query was on the need for monitoring – to what extent monitoring could be enabled for the illegal sand mining sector. There are currently no proper statistics or monitoring of the illegal sand mining sector in South Africa. The DMR has a list of registered sand mines. ASPASA requested the list from the DMR and was informed that they would receive such list by the end of 2014 (at the time of the hearing, such list had not been received). ASPASA committed to sharing this information with the Commission when it becomes available. ASPASA submitted that there are power plays between the DMR and the DEA; and between the DMR and the DoL. Such power play is as a result of, *inter alia*, the need for one set of health and safety regulations in South Africa, and for these to be captured in one law. In addition, NEMA is the law that looks after environmental issues and should be the overarching legislation in all environmental matters.

ASPASA further shared some information about the committee on which it sits, the Gauteng Illegal Mining Stakeholders Forum.

7.6. Submission made by the South African Diamond and Precious Metals Regulator (SADPMR)

Mr. Simon Sikhosana, the General Manager – Regulatory Compliance, represented the SADPMR and presented to the hearing panel on behalf of the body.

The SADPMR registers mines and minerals once they are licensed by the DMR. The current challenge the SADPMR is facing as a regulator is around the requisite information– the information received from the DMR is different to the reality on the ground. Gaps in information are brought about mainly by illegal mining. There is about a 10 percent difference in the figures received from DMR and the reality – diamonds equal 1 million carats; in gold, this figure is maybe 1 or 2 tons.

The panel asked whether an audit on chemicals used for a gold smelting operation was ever undertaken; it was suggested that this could indicate that official smelting capacity was exceeded by the volumes that are being sold. The SADPMR indicated that it was not aware of such audit and suggested that perhaps the industry had conducted a study in that regard. The panel was concerned that the regulator relies on figures it receives from producers. However, the SADPMR indicated that it also looks at the waste to determine these figures and identify gaps. The SADPMR committed to sending the Commission a list of registered, alluvial, and dumps – such list is appended to the end of this document.

7.7. Submission made by the Department of Labour

The Department of Labour (DoL) participated in the re-convened hearing held on 15 August 2014. Mr. Thembinkosi Mkalipi, Acting DDG – Labour Markets, and the DDG Mr. Thobile Lamati attended on behalf of the DoL.

Initially, the DoL submitted that it cannot apply the relevant labour legislation if no employer-employee relationship exists, and that with illegal mining there is an absence of the employer-employee relationship. The issue of safety is paramount; but people who are self-employed do not have recourse in terms of some of the legislation. The issue about safety in the mines is not dealt with by the DoL – this is a DMR issue. The only time the DoL goes to the mines is to check compliance with the Basic Conditions of Employment Act of 1997; or where workers are being treated unfairly in terms of the Labour Relations Act 66 of 1995. The DMR has its processes in terms of occupational health and safety.

Even though there are provisions in the Occupational Health and Safety Act 85 of 1993 (OHSA) which relates to self-employed people, there is a challenge in terms of the scope of the legislation; because if a person is operating within the mining environment, this becomes the responsibility of the DMR. The DoL is constrained by the exclusions in its legislation regarding the mining environment.

The panel posed a few questions to the DoL: How do we get around the issue of health and safety and the cost of jobs that are lost once the mine ceases to exist? It has been suggested that there will be around 145,000 job losses in the mining industry over the coming years. In relation to Social and Labour Plans – the idea of an SLP is to enable people who are working on the mines to recognise that beyond that employment there needs to be something else; to what extent is the DoL engaging with SLPs? The term *zamazama* is used to describe a group of people who are not only regarded as working illegally, but also people who are in South Africa illegally; the reality is that currently when mines recruit, they use labour brokers. Two-fifths of people working in mines are actually from outside the country.

The DoL's role with regard to labour broking: it is not a simple issue, but even when it is practiced, it still goes with responsibility. So when bringing people from outside the country, it is too convenient to refer to them as *zamazama*.

On unemployment insurance and unpaid benefits that people in the Southern African Development Community (SADC) countries are owed in terms of mining operations: what role does the DoL have in overseeing people that have worked hard, especially those in neighbouring countries? The DoL admitted that the issue was indeed a difficult one to address and is a matter that needs to be dealt with by all the stakeholders. Some former mineworkers do not return to where they originated from, when a mine ceases to exist; they stick around to re-mine and seek other income. There are issues that need to be addressed e.g. living conditions. The DoL indicated that it experiences difficulty in terms of policy fragmentation. In 1999, there was a Cabinet decision to integrate competencies, including the Compensation Fund competencies. The DoL was asked to lead the process; but was then asked to temporarily stop the process so as to give other departments the time to catch up. Had the integration happened, all the departments involved would be moving in sync as government agencies to address the problems in the mining sector – rather than palming it off as another department's problem.

The high cost of rehabilitation is one reason why some of the mines do not take up rehabilitation responsibilities. This means that both the DMR and DEA need to ensure compliance.

Ideally, the DoL should consider issues relating to occupational health in the mining environment and would like to do so, but there is fragmentation in the arrangements of the government. The DoL shares experiences and participates in programmes of the DMR; for example on the issue of silicosis where the DoL ran an awareness campaign in the factories, as well as a campaign in the mining environment.

Some of the challenges the unregulated AM sector faces may be addressed by policy. The DoL submitted that once government deals with the fragmentation of roles and responsibilities, it may be possible to arrive at a collective decision on how to address challenges.

When it comes to the Unemployment Insurance Fund (UIF), every worker who contributes has a right to claim, when that worker is no longer working. There is a challenge when it comes to non-national workers. They are part of the group of former miners that petitioned the DoL on the issue – and subsequently the UIF dealt with this and there are currently processes in place to deal with the issue. The DoL suggested that the Commission also speaks with the Commission for Occupational Health and Safety for further elaboration.

When a mine ceases operations due to it no longer being profitable – artisanal mining could be explored as a complementary activity. If people are going to be mining, they need to ensure that they are safe. This then raises the issue of how best to structure AM in order to enable benefits to flow. As it is, artisanal miners are not getting much benefit and the risk is too large. The DoL suggested that the DMR looks at best practice to see where and how this activity can take place in a way that is safe and beneficial for all.

The panel enquired as to whether the DoL gets to peruse SLPs before they are finalised. The SLP is meant to be considered when the mining licence is deliberated, and it dictates what should happen **after** mining operations cease – it is about the workers, and not the mine. The DoL submitted that it does not get to see those SLPs – this document lies solely with the DMR. SLPs need to cater for migrant workers, both local and regional; but when they lose their jobs they end up staying in the mining area. There needs to be a project that looks at the whole situation in the mining sector – migrant labour system, working conditions, the townships around the mines, and how to improve them.

The DoL has now introduced recruitment legislation, the Employment Services Act 4 of 2014, which regulates those employment services. This legislation deals with the conditions under which people should be brought into the country to do work, given that there are already people within the country who are available to work. The solution to the problem does not lie in closing the borders; it lies in looking at what can be done to advance development in poor communities, and within the rest of the SADC region. If there is no development in neighbouring countries, there is no way you can prevent people from entering South Africa to seek better opportunities.

With regard to scarce and critical skills: applications for permits go through the Department of Home Affairs (DHA), then the DoL. The DHA does two things: companies that are requiring workers from outside the country have to comply with all the legislation – however, this does not include mines, because the recruitment of mine workers is the responsibility of the DMR. If it is a mine, the DMR will have to do necessary assessments. Once the assessments have been completed, the DoL then looks at salary benchmarking because the requirement is that they should earn an equivalent salary. The DoL then makes a recommendation to the DHA on whether to allow the applicants to enter the country or not. Thereafter, the DHA follows its own processes.

The panel asked for more information on the “streamlining and integration of mandates project” that had been halted in 1999. The DoL submitted that it had been asked by the Minister for Mineral Resources to hold this process back. What the DoL then did was to develop a national policy framework and contracted Deloitte to develop a business case to put to other departments and stakeholders. At that point, the DoL was asked to not continue with the process. The DoL’s view is that the government should form an agency that would be constituted by all the occupational health components with inspectorates working with different departments.

On the SLP issue and the lack of inputs on the part of the DoL: the panel sought the DoL’s views on whether or not it would be helpful if these provisions of the SLP that deal specifically with labour, as listed in Regulation 46, fall under the DoL for monitoring and auditing. The DoL agreed that there was a need for DoL involvement in the SLPs. However, currently mines follow s189 of the Labour Relations Act (LRA) 66 of 1995 regarding consultation and the Minister of Mineral Resources has the authority to deal with all the issues mentioned by the panel.

7.8. Submission made by the Department of Mineral Resources

The Department of Mineral Resources (DMR) was represented by the Director General, Dr. Thibedi Ramontja, and his delegation. While this Department failed to honour the Commission’s Notice to Appear on two occasions, it ultimately participated in the formal enquiry on 1 September 2014.

The DMR flagged the issue of confidentiality of some of the documents that it submitted to the Commission and the sensitivity of some of those documents, and enquired as to how the information would be used. The Chairperson of the Hearing Panel responded to the issue indicating that it would be necessary to understand what constitutes sensitive information. She explained that the Commission has been in a situation, for example, where it had required copies of Social and Labour Plans (SLPs) of particular mines. The Commission had to go to extraordinary lengths to obtain these documents which are meant to inform all sorts of stakeholders on what is going to happen during the course of the mining operation to ensure that interests of those affected during mining - particularly people who work at the mine – are addressed. As such, the Hearing Panel, and ultimately the Commission, would need to be convinced as to why information is sensitive and why some information is confidential.

The DMR's submitted the following, in response to the broad issues for discussion:

Is there a real prospect and/or desirability to eliminate artisanal mining in South Africa? Are there opportunities and prospects for artisanal mining to play a complementary role to larger mining operations?

- ASM does not have to be illegal mining;
- Illegal mining is the situation that is created when ASM activities and operations take place outside of the law;
- The DMR wants to see ASM operating in a legal manner;
- The Mineral and Petroleum Resources Development Act (MPRDA) caters for medium to large scale mines; however, it also caters, through specific requirements and provisions, small-scale operators; thereby addressing both types of mines in the law;
- Opportunities exist for ASM operations to complement the LSM sector, and the DMR is determined to ensure that this happens. This will help to address issues of poverty, and to create jobs. However, people have to operate within the law – this means that the DMR will not tolerate a situation where people do not operate within the law. The DMR is sympathetic to the socio-economic conditions driving the activity of illegal mining, but its view is that if it is socially unacceptable for someone to steal from a shop, why should illegal mining activities be allowed?
- Criminal activities need to be treated as they are – criminal;
- The DMR is willing to support ASM; but when it comes to a criminal activity, it cannot be promoted – this is the principle by which the DMR looks at this matter. There are people who need help, but the DMR cannot promote criminal activities;
- There are opportunities for ASM operations to partner with LSM. For example, they can be involved in terms of collecting ore in some of the dams. However, at the end of it, someone must be the right-holder. Someone has to be responsible for the health and safety of those people. The situation is extremely dangerous – people who go underground can attest to the dangers of working in those gold mines. In illegal mining operations, people are injured – who will take responsibility for that?
- The issue of safety is extremely important: operational mines must internalise issues of safety. There cannot be a situation where a mining operation does not internalise health, environment, and economic issues. Mining operations need to consider sustainable development – when you externalise these issues, someone has to pay for that. Once these issues are externalised, they reach a limit where they cannot be profitable; this is an important concept that needs to be looked at.

Regulation – Would some of the problems of unregulated artisanal mining be addressed by improving the legal framework? What legislation needs to be in place so as not to miss the issues outlined above?

- The DMR submitted that there is always room to review legislation, to strengthen it. The current MPRDA has already taken cognisance of the fact that there are bound to be small operators. When the word 'artisanal' is used, people tend to think that they should be allowed to operate in an unsafe manner; the MPRDA has catered for them, they apply for mining permits, not a mining right;
- *Zamazamas* are linked to (in most, or even 100% of cases) criminal elements;
- Particularly in the Gauteng Province, ASM is linked to criminality. This is something bigger than survivalist mining – even innovative suggestions will not solve this problem.

Integrating *zamazamas* into rehabilitation efforts:

- There are rehabilitation programmes driven by the Council for Geosciences (CGS) and Mintek;
- CGS focuses largely in the Gauteng area where there are unsealed shafts, ownerless and derelict mines. The CGS has sealed several holes – but after that, *zamazamas* blast open those holes or dig on the sides to get inside – closing the shafts seems to attract them more;
- Communities in the area are involved in rehabilitation efforts. There is a process of community involvement so that they can ultimately own the project; but everything including the employment of community members, must be done legally – diggers cannot simply be employed. There are certain processes involved.

Section 24: what can and is being done by the government about mines who cease their operations without closure plans and without SLPs?

- The holder of a right is at all times accountable for the environmental management of the site; but in events where the right lapses, the holder must apply for a closure certificate in terms of section 43 of the MPRDA. If an offence is committed, there are penalties prescribed;
- Some operational mines reach what is called a “pay limit” – below that you are no longer profitable because of various circumstances, for example the drop in prices of the mineral. Those mines can then stop their operations and move to certain areas where the pay limit is favourable e.g. in dams etc. In that case, they will not be given a closure certificate until such time as they apply for it and adhere to all the conditions. It is in this type of situation that illegal miners are most likely to encroach; those people are trespassers who go there with the intention of committing a crime.

Quality of life

- There is a need to differentiate between criminal activity and survivalist mining;
- In 2009, there was a well-publicised illegal mining incident in the Free State region. Since that incident, the *modus operandi* has changed. In the Free State at that time, the activity involved people forcing their way into underground workings with the assistance of active miners for a certain fee (ZAR 5,000 per person). Once inside, they would stay there for 3 months or more at a time. The mining industry at that time spent millions of Rand to improve security – they used biometrics, scanners, and a vetting process that included the employment of security personnel;
- There is now the involvement of crime and big business criminal syndicates. The *modus operandi* always changes;
- 221 holes and open shafts have been identified in Gauteng (working together with the CGS). The government has closed between 130 and 150 of these shafts so far. Closing involves sealing the hole with concrete slabs, covering them with rubble, and pumping concrete down the hole. The biggest challenge is that illegal miners will still find another hole to enter;
- The illegally mined gold is exported to Britain, China, and Japan (amongst others) through a system known as the “*hawala* system.”

The DMR gave the Hearing Panel a progress update on its Strategy on Derelict and Ownerless Mines. The DMR uses Mintek and CGS to assist in terms of addressing these issues. The issue is one of legacy – the DMR had to identify all the ownerless mines using all kinds of techniques including looking at old databases. The CGS now needs to go and do ground-inspection of each and every mine/site. The DMR has been finding that some of the old workings have

naturally rehabilitated themselves. For example, in the Northern Cape a small open cast mine has naturally rehabilitated itself to the point where there is no longer a need to put resources into it.

The DMR has a system whereby it prioritises sites that pose dangers to communities e.g. asbestos sites. A programme has been put in place to rehabilitate those sites. Mintek has been assisting in this regard. So far, 17 asbestos sites have been rehabilitated. Once someone applies for a right, the dynamics change – the DMR issues the right and cannot regard it as ownerless. It thus has to be removed from the database.

In terms of closure and section 43 of the MPRDA: upon closure and upon cessation or relinquishment of the right to the operation, there is a need to be sure that operations have indeed closed down. While someone still holds the right, this cannot be regarded as a cessation. When the operation ceases, then the DMR would insist on this closure application. Closure is then applied for, a process is followed and closure is granted. Sometimes there will still be residual impacts – the state needs to be sure before issuing a closure certificate that there will not be any further impacts. This involves consultation with the Inspector of Mines and with the Department of Water Affairs⁵⁰ – if they give the go-ahead then the DMR will issue the certificate.

The DMR is open to extending mining permits for the purposes of ASM. In Barberton, the DMR had kick-started a process of bringing ASM miners and LSM companies to work together. However, the initiative did not work out because when you internalise certain costs, people do not make the type of profits they are used to. It is thus no longer a business when profits decrease. Mintek also has a project looking into using household chemicals instead of mercury to extract gold. This is a much slower process of extracting gold and has not really taken off as ASM miners prefer using mercury.

Discussion

Mintails

On 13 August 2014, the Commission received a complaint relating to a “Notification of commencement with rehabilitation activities of the mining area GP 30/5/1/2/3/2/1 133 EM – East Champ D’or Area” issued by Mintails Mining Pty Ltd. In the notification, Mintails Mining Pty Ltd. CEO, Mr. Anthony Ehlers, states that Mintails has been issued with a directive by the Inspector of Mines to rehabilitate the East Champ d’Or mining right area. This directive was issued to “curtail the current illegal mining activities being undertaken within the area... The rehabilitation and mining of the area will be conducted through mining out the surface pillars and open holings which are being exploited by the illegal miners within the area.”⁵¹ The hearing panel sought further information from the DMR on this directive and the rehabilitation plans as set out in the letter from Mintails.

The DMR submitted that it had issued Mintails with an order to stop operations until the EMP was fixed and finalised. The matter then went to court. The court’s directive to the DMR was that certain areas should be allowed to open for mining and others could remain closed. The DMR has attempted to ensure that Mintails operates legally in a manner that is not harmful to the environment or surrounding communities. The DMR submitted that once the court gives a directive, it has to abide by it. The DMR has tried to apply section 54, but mining companies have taken them to court where the court orders in favour of the mine and the DMR has no choice but to abide by such decisions. The Mintails court order allowed them to open sites that were not nearby the area where complaints from Kagiso residents were emanating.

⁵⁰ Now the Department of Water and Sanitation.
⁵¹ See letter appended at the end of this report.



Mintails Mining in Mindalore



The DMR's order still stands and will stand until the new EMP is revised to the Department's satisfaction.

The Commission's concern with this (and the Blyvooruitzicht issue) is that the directive was issued in terms of which it stipulated the areas which can and which cannot be mined, and where open pits are permissible; and the EMP states that this is a small underground operation. The problem lies within the reality that while the mine is operating, there is no concurrent rehabilitation taking place, and only much later is it issued with a directive from the DMR to seal the shafts and make sure there is access control. This mine lies in the middle of Johannesburg, with the residential settlement Kagiso situated within the mining rights area. There is no fencing in the area and yet the mine is now authorised to conduct opencast mining in certain areas. This is a nuisance and a hazard for the residents of Kagiso living only a few metres from the open-cast operations. Furthermore, several areas are left un-rehabilitated while new areas are exposed and this creates a situation where illegal miners are simply moving around because there is access to the area. In addition, the DMR issued the directive without engaging the community – no transparency and no consultation with the community took place – the community did not understand what and why it was happening. The processes around decisions of the DMR are extremely important as well.

The DMR submitted that it has, through the councillors and municipality, involved the communities. However, the Commission provided information about the experiences of affected communities and municipalities who indicate that they are not involved in those consultations: for example, complaints received from communities in Mpumalanga and Limpopo. Traditional authorities seem to be the first point of contact for consultations. The complaints are sharpest when mining operations being planned on are impacting on communal land, and this then appears to lead to the DMR exclusively liaising with traditional authorities regardless of community views and municipal development plans.

The DMR provided clarity regarding the directive issued to Mintails. The DMR received complaints from residents in Kagiso and subsequently issued a directive to the mining company stop blasting in close proximity to people's homes. The DMR acknowledged that it had at no point issued a directive regarding rehabilitation and would address this issue with the relevant parties. The instruction the department gave was to rehabilitate in terms of the EMP.

Blyvooruitzicht

The hearing panel sought clarity on a number of issues for discussion relating to the volatile situation at the Blyvooruitzicht mine near Carletonville, Johannesburg. This mine is neither ownerless nor abandoned but it is not being controlled for access; it is not monitored and not effectively managed. The panel requested the DMR to provide a list of all directives issued in relation to Blyvooruitzicht mine subsequent to their application for provisional winding up on 9 August 2013.

The DMR's submission was that the MPRDA applies to operating mines: once a mine becomes insolvent, it gets liquidated and the Insolvency Act applies and everything thereafter is governed by that Act. The DMR further submitted that cessation cannot be directed whilst the mine is still operating elsewhere within the area of the mining right. Such submission does not provide much clarity for the Commission.

Cessation of mining operations in one area ideally should immediately be enforced with the requisite rehabilitation and closure processes (not the closure certificate itself) in order to make it safe. In the Blyvooruitzicht case, there is an abandonment of the mining right and therefore a closure certificate should be applied for by the liquidator before asset disposal can be effected.

Without such certificate or any rehabilitation efforts, the situation at that mine has become a “free-for-all” for *zamazamas* whereby even the SAPS cannot intervene.

The hearing panel used the term “warehousing” in place of “temporary cessation” as it is not clear how long that cessation will be, given economic conditions, and fluctuating commodity prices; and so the extent to which there is an investment case to continue mining could change. The way in which the DMR regulates matters does not cope with this fluctuating situation. Warehousing could last less than a year or it could continue for several years. This means, depending on the length of cessation or warehousing, there will be different consequences. There is no adequate provision for the notion of warehousing even though this is something that is happening, and when it happens for longer periods of time, it causes significant degradation. There is a need to make the distinction between warehousing and cessation because if not, there is a risk that when a mine needs to ensure that steps for proper closure are undertaken, it will instead rely on this grey area of temporary cessation to avoid this and ultimately abandon its responsibilities. Currently, there is a problematic situation whereby either a mine ceases all operations and will apply for a closure certificate; or it can continue operating indefinitely without such a certificate citing maintenance, warehousing, or similar reasoning. The law and the processes of the department do not provide for the grey area in between; the problem with this in relation to illegal mining is that it creates an open situation where *zamazamas* will be free to come and go as they please. A related problem is that of unmanaged mine tailings dumps – which in terms of the law are considered part of the mining operations. In practice, *zamazamas* utilise these dumps and reclaim them using dangerous materials which run off into the river systems. Illegal mining on the surface also needs to be addressed.

The DMR acknowledged that the current MPRDA does not deal with partial closure of mines and there are issues to do with ensuring that the necessary actions are taken in relation to the issuing of licences and termination of licences. In particular, ensuring that there are certain conditions that must be met and that, in this regard, the necessary consultations with other departments such as Department of Water and Sanitation and the Environmental Inspectorate take place. The Department acknowledged that it needs to monitor that these conditions are put in place in practice.

The Hearing Panel expressed concern with regards to the seemingly small number of staff which is tasked with dealing with the monitoring and enforcement processes, as this constitutes a considerable undertaking.

There was some discussion around the challenges relating to access to information particularly of documents which should be in the public domain – SLPs and the conditions that attach to closure including the general EMP. The public could assist, and complement the Department’s small staff, in terms of monitoring if those documents were made available. A further issue is the apparent underestimation in the costing process and thus in making inadequate financial provision for closure plans. Such costing seems to be based on short-term measures and very often does not include any costs associated with monitoring and corrective measures, particularly as some latent environmental problems from underground operations could take decades and even centuries to address.

One environmental system: Concurrent rehabilitation

There is currently a transition where the environmental provisions of the MPRDA are being removed and, going forward, the NEMA provisions will be applied by the DMR (not the Department of Environmental Affairs), which is responsible for the implementation of NEMA). Concurrent rehabilitation is the ideal situation as it is also valuable in terms of job creation. The panel was informed that when the DMR implements NEMA, the regulations will accommodate

the concept of concurrent rehabilitation. There is a need to understand the situation where there is no finite closure and there are dumps associated with the mine: what is in the dumps is the rightful property of the mine owner and is part of what their mining right is about. There is a lot of re-mining of dumps going on at the moment and there is a need to monitor this, and to ensure that companies address those areas that they can rehabilitate now. (It was accepted that there are things they will not be able to rehabilitate) The panel was informed that the amended MPRDA will be implemented and will make provision for these issues.

Consultation and participation

The Commission is concerned that mining companies may consult (on SLPs and EMPs) with local government and traditional authorities but communities who are directly affected are not consulted. The hearing panel sought to understand what the DMR's essential points of reference in relation to consultation and community consent are; how potential problems that crop up can be identified – e.g. issues of inter-governmental responsibilities; and how to avoid losing the participation of the most closely affected communities when consultation happens at the district municipality level.

In terms of the SLP, the problem arises when those miners who should be catered for in the SLP and in the decommissioning phase of the EMP are not being catered for. The Commission has heard that the genesis of *zamazama* activities is during the ill-defined cessation of mining operations, and when miners find themselves without any alternatives because the SLP that they had been involved drafting is not being implemented; they are thus forced into illegal mining activities.⁵²

Related to the above is the issue of the recruitment process. The panel previously heard that there is a process of consciously recruiting a percentage of miners from neighbouring countries particularly where there is underground mining being undertaken and experienced teams are needed. However, when the mine then closes, those workers become part of the group of miners who become redundant, and the SLPs often do not cater for that group. The DMR submitted in response that it would look at catering for non-national miners in the SLPs, which are documents primarily aiming to cater for local communities. An example of this can be seen in the Eastern Cape where non-national miners are catered for in terms of the SLP, through the building of schools and clinics in those areas.

In terms of processes involved in obtaining licences, the DMR submitted that these processes are currently in transition. Currently the situation is that when someone applies for a mining right there is a procedure and granting criteria spelled out in section 23 of the MPRDA and this gets adjudicated accordingly. In terms of the EMP, the applicant must conduct an EIA and submit a proposed EMP. With regard to the SLP, this must be submitted on application. The documents are then adjudicated. The proposed EMP is circulated to other departments for 60 days – these responses and recommendations are then factored in. The application is then either recommended for granting or refusal.

In terms of the SLP, the consultation happens with communities and municipalities, but this consultation is left to the mining company to carry out. The mining company puts forward development projects and ideas which are then factored into the Integrated Development Plans (IDP) of the region. This process is also something that is being looked at in this transition period.

⁵² SLP's are designed to be gradually implemented. The initial implementation is slow and gathers pace towards the end of the life of mine. But mining companies need to be so well-prepared and phase in SLPs earlier as they never know what could happen to cause the mine to have to close early – such as mineral price collapse, regional or global economic collapse, and safety issues. This is especially important for periods when mines are placed under care and maintenance.

Lastly, there is what is known as a Special Presidential Package: through this, the DMR is working on how to better integrate its processes into the district level and the greater municipal environment; as well as how to integrate housing and living conditions. On a broader level, the DMR is also looking at wider consultation process. The idea is that there needs to be a strong cooperation not only between the DMR and the municipality, but others as well who are involved in the development of the local economy. The third element is the regeneration of local economies. The regulation says that one must ameliorate the consequences of downscaling and closure on individuals, regions, and economies. There is provision for community consultation – this happens at a forum. At the moment, consultations are happening with communities and municipalities themselves.

The panel was also informed that there is an ongoing review - alluded to above - of the regulations. In this regard, the SLP and how it is envisaged in the new process is that it needs to be coordinated at district municipality level. Mines in a district need to align their plans with the IDPs of that district. There is thus a need for a holistic approach with mines' mining plans, SLPs, and IDPs of the districts in which they operate or are in close proximity to.

8. ANALYSIS OF EVIDENCE AND FINDINGS

This section presents key issues from the evidence and the findings of the hearings.

Following the adjournment of the proceedings, from the respondents' submissions it appears that the challenges related to unregulated artisanal mining in South Africa and the problematic implications of not dealing with it are acknowledged. The complexity is compounded by the lack of research and literature on the issue in South Africa. There is literature relating to ASM in other regions in Africa and the rest of the world but this has not been drawn upon. Furthermore, there is a poor understanding of the profile of the '*zamazama*'. Not all *zamazamas* are involved in or, if they are, began the activity with the intention of becoming involved in criminal syndicates. Not all host-mining communities have the same views around *zamazama* mining activity. Not all are non-nationals and neither are they all 'illegal immigrants'. It is noted that the current socio-economic situation in many parts of Gauteng has pushed many people into illegal mining activities.

All respondents submitted that illegal mining practices happen outside of the framework of South African legislation, particularly the MPRDA. Even though the DMR indicated that the MPRDA could provide permits, in practice regulation has not promoted the growth of legal artisanal mining. Furthermore, MPRDA and various government departments have failed to prevent criminal and dangerous practices. The smuggling into the country of mercury is a particularly concerning breach of law given its dangerous health implications. However, a number of illegal activities – cannot be exclusively equated with the AM activities. In the Gauteng Province particularly, ASM is linked to other forms of criminality: for example the thieving of cables from within mine shafts that are sold into the second-hand metal trade; and the tax evasion that accompanies the absorption of gold extracted through AM activities into the refineries without declaration. Certain AM activities can and should not be tolerated: such as using mercury and working in dangerous shafts. On the other hand, there are AM processes that have the potential to enable job creation and support informal trade and other local economic activities.

The DMR's objective to work with the Council for Geosciences to seal all open shafts to prevent entry; and the NCSMT's focus on tackling ASM as organised crime through arrests and investigations into the value chain of organised criminal activity appear unlikely to have the effect of eliminating or reducing ASM. In fact, across the board, it was agreed that AM cannot be ignored particularly in the context of current socio-economic conditions that include:

- Widespread poverty;
- Unemployment;
- High and rising inequality; and
- Uneven enforcement of legislation, policies, and regulations.

The respondents indicated their views that as long as these socio-economic conditions exist, it is unlikely that unregulated AM in South Africa can be eradicated. The DMR submitted that AM exists beyond survivalist mining; therefore it needs to be integrated fully into the sector.

Thus, despite the DMR's plan to fight illegal AM, policy gaps and contradictions exist. On the issue of whether some of the problems of unregulated artisanal mining might be addressed by improving the legal framework and introducing regulation, responses were mixed. The general consensus is that not enough is known about the ASM situation in South Africa. Compounding this lack of information is a set of confusing definitions and descriptions. In South Africa, there is no single understood definition of 'ASM' or '*zamazama*'. The CoM suggested distinguishing between ASM/*zamazama* and community development. This distinction highlights the difference between the opportunities for criminality versus poverty alleviation.

The DMR submitted that the MPRDA caters for medium-to-large scale mines and small-scale operators; thereby addressing both types of mines in the law. However, the current mining enabling legislation does not properly provide for *artisanal* mining, and instead 'small-scale' mining as provided for in the Act is usually conflated with small-scale BEE mining initiatives.

As indicated, some laws exist but the panel made findings with regard to a number of gaps and contradictions:

With regard to addressing unregulated AM issues and challenges, there are a number of relevant rights from the South African Constitutional Bill of Rights. In particular: the South African Rights framework asserts the vertical and horizontal application of rights and duties (s8); for equality (s9) and dignity (s10); to life (s11) and an environment not harmful to health and well-being (s24); to choose their trade (s22) and to be subject to fair labour practices (s23); to secure tenure and equitable access to land (25); and to information (s32) – all of which can and must be governed and limited by laws of general application.

There are a number of gaps and contradictions with regard to ASM that undermine these rights. In particular:

1. While it accepted that miners – whether locally sourced, internal migrants or workers recruited from neighbouring countries – are not there to be 'discarded' once the operation does not fetch the commodity price that makes it profitable, the DoL cannot apply the relevant labour legislation as a way of addressing unregulated AM issues because technically, no employer-employee relationship exists. Instead as a form of 'self-employment' and because it concerns mining, it therefore falls under DMR.
2. Even though there are provisions in the Occupational Health and Safety Act 85 of 1993 which relate to self-employed people, there is a challenge in terms of the scope of the legislation: namely, if a person is operating within the mining environment, this becomes the responsibility of the DMR. The DoL is constrained by the exclusions in its legislation regarding the mining environment.
3. The absence of enforcement around mine closures and the ambiguous regulation that prevails with regard to 'warehoused' operations has created a gap within which unregulated AM will flourish regardless of any attempts to eliminate these activities.

4. Without any comprehensive framework for improving the practices of AM, current characterisation simply as “illegal”, will have the effect, in terms of the panel’s prediction, of making AM become more dangerous rather than causing it to disappear.
5. When there is a mining accident, there is an obligation on the DMR to ensure that an investigation is undertaken and a report issued. However, in the case of an accident where illegal mining may be involved, uncertainty as to the responsible authority for reporting purposes is allowed to arise: is it DMR or the SAPS? This can allow mining companies to evade their responsibilities with regard to environmental management and safety considerations of their mining operations. A clear example of the problem relates to the mine tunnel collapse in an illegal mining operation that took place at a closed De Beers site in the Northern Cape in 2012, and which has been described earlier in this report. Due to a lack of regulation or guiding policy, the situation left the community in that area without a formal enquiry having been concluded and reported on. Because the incident appears to have been re-categorised from being a mining accident to a criminal activity, all questions from the community about the causes of the accident and information about people who died were met with the response that they should ask the Springbok SAPS, who have no mandate to conduct an enquiry. This Northern Cape community have not found emotional closure following the mishandling of the tragedy. They want to know whether the then owner of the mine (which has since disposed of this asset) was asked to provide any indication of its adherence to the safety and environmental management requirements and also to determine what happened on that day. They raised concern that there are no other opportunities for income generation by people in the area and the site and area will continue to see activities.
6. The hearing sought to obtain the respondents’ inputs and ideas on how the necessary processes of mine rehabilitation could be used as another way of dealing with illegal mining activities while simultaneously promoting improvements in environmental safety and enabling the inclusion of AM. The panel was of the view that through this hearing, it would be possible to address some of the negative environmental legacies of mining while preventing the continuation of damaging AM practices at the same time. The CoM proposed looking at regional approaches where regulation has been put in place to bring illegal miners into the formal economy. The panel supports a proposal to integrate illegal miners into a system of mine waste rehabilitation and that, for this, cooperation between stakeholders (including the State) is necessary.
7. The general consensus was that fatal flaws exist in the ASM sector, in relation to ensuring compliance with the MPRDA and environmental regulations. This is also made more difficult because the Environmental Management Plan (EMP) is not made easily and widely available to directly affected communities and stakeholders.
8. Rehabilitation programmes driven by the Council for GeoSciences (CGS) and Mintek already exist, but have their own challenges and have not directly related to enabling the safe inclusion of *zamazamas*. The CGS focuses largely in the Gauteng area where there are open shafts/holings and derelict mines that are ownerless. The organization has sealed several holes, but this has happened in the absence of any dialogue with *zamazamas*. Without the input and participation of all stakeholders while considering the development of programmes and policies, there can be no sustainable solution to these issues.

9. Several mining communities are involved in the mine-waste rehabilitation processes with outside organisations, resulting in a sense of ownership for the community. In order to enable this collaboration and ensure that processes are done within the framework of the law, everything including the employment of community members, implementation of safety procedures, evaluation of where miner's efforts fit into the full value chain, and appointment of a person, who is responsible for the rehabilitation process must be monitored. Piecemeal solutions will not assist with dismantlement of the dangerous and criminal practices.
10. As mentioned above, unregulated AM primarily takes place at mine sites that no longer see active operations by the formal mining sector. Sometimes these closures occur because of the fluctuations in the commodity prices and thus the owners terminate operations for a period in order to wait for prices to change making sale or operations more viable. This temporary cessation – warehousing - can go on for a significant period of time. The DMR submitted that the holder of a right is at all times accountable for the environmental management of the site but where the right lapses or mining is terminated, the holder must apply for a closure certificate in terms of section 43. It is the Commission's view that this is the ideal situation, but the lived experience is rather different. Mines that are no longer profitable close their operations without following proper procedures. Thus, a situation is created which is not only environmentally destructive, but also conducive to dangerous and criminal activities associated with AM. This often results in social disharmony, injury and loss of lives. The assertion by DMR that if an offence is committed, there are penalties prescribed simply does not accord with reality. There are no significant consequences for breaches and a completely inadequate approach to penalties.
11. The issue of warehousing is not taken into account at all and neither is the situation whereby cessation happens in one area of the mine, while other areas within the mining right are still operational adequately catered for. For example, the Blyvooruitzicht mine in Johannesburg is not ownerless or abandoned, but has ceased operations without closure processes taking place. The fact that there is no clarity on what care and maintenance is required during temporary cessation and there is no provision in law for the notion of warehousing, creates the conditions conducive to illegal mining activities which manifest the most dangerous and negative aspects of AM.
12. The unnecessary withholding of information which is supposed to have been compiled on the basis of public consultations is very problematic and was completely unexplained by DMR. There appeared to be consensus of all those who presented at the hearing that these documents need to be in the public domain: because this is an important basis for their compilation and the source of their supposed legitimacy; because it contains information relevant to a wide range of stakeholders impacting directly on the health and safety of thousands; and because accountability of those responsible for adhering to these plans (SLPs, EMPs and so on) can only be enhanced by making the obligations open to easy scrutiny. The withholding of information was not explained or justified by a number of the presenters, who come from institutions that are guilty of making this information unnecessarily cumbersome to obtain – for example, requiring a PAIA application. This withholding of information results in creating inequity and disadvantages for poorer people by obliging them to engage in lengthy, legal processes unnecessarily. The lack of information disempowers them from being able to monitor compliance with legal obligations and various undertakings. For example, the panel

discussed the directive and court order issued to Mintails. They concluded that there needs to be greater transparency particularly with regard to consultation with local communities. The DMR clarified in the hearings that this directive was in relation to rehabilitation within the prescripts of the existing EMP as well as to cease blasting in areas that are in close proximity to residential units in Kagiso.

13. The panel heard submissions on the transition to an environmental system, which is supposed to see the aligning of the laws on mining and environment. In this new scheme, the Minister of the DMR becomes the authority for NEMA authorisations for the listed activities directly related to prospecting and primary processing of a mineral resource. The Minister of the DMR will also implement under NEMWA waste management activity that is directly related to primary processing and extraction. The Minister of the DEA will hear appeals in terms of NEMA/SEMA against decisions made by the Minister of the DMR, while WUL appeals will be lodged with the Minister of DWA. The effectiveness of this scheme needs to be monitored, so that intended solutions do not create unintended consequences.
14. The Panel raised on a number of occasions the importance of concurrent rehabilitation. Initially, this proposal appeared to be a novel concept in a number of the engagements. However, after a review of the documents, the panel found that collaboration across different authorities is a condition that would be necessary for this to become a reality.
15. As indicated above, the Panel also did not hear any justification for the DMR to withhold SLPs, annual SLP implementation reports and EMPs from the public. Consequently, the DMR should actively ensure this information is available to the public domain. Such access would assist the DMR in terms of monitoring, given that the DMR's policy staff capacity is relatively small in comparison to its onerous policing taskforce.

The Commission makes recommendations on the basis of the above findings in the subsequent section.

9. RECOMMENDATIONS

In terms of the Human Rights Commission Act, the Commission is entitled to:

“Make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law and the Constitution.”

Accordingly, and in light of all available evidence, the Commission makes the following recommendations:

1. The need for further studies

The Commission finds that there are limited initiatives in place to deal with challenges related to unregulated AM in South Africa. However, the Commission recommends improved communication and sharing of information around AM initiatives, plans, and projects.

There is a need to build the evidence base around South Africa's unregulated AM sector and to build trust and networks in this sector. Illegal AM will not go away of its own accord or through brute force. Lawlessness will mount, if the issue of illegal mining is not confronted. To pursue

a path of economic inclusion means that there is a need for further research that identifies the size, shape, and scope of artisanal mining in the country. The Commission recommends further research that will:

- a. Consider its links to the wider aspects of the informal and formal economy;
- b. Build the profiles of *zamazamas*, illegal gold trading syndicates, and corrupt SAPS and security officials;
- c. Addressing the gaps and contradictions in legislation identified above particularly in relation to worker safeguards and the environment as well as extra-legal government regulation;
- d. Look at opportunities that AM can offer for marginalised people to live off a hard day's work where other forms of employment do not exist and unpack the issues around formal versus informal ASM;
- e. Address the potential contribution of AM to production, rehabilitation, personal income and state revenues;
- f. Begin to unearth the hazards and risks - including in relation to health and also considering psycho-social factors - connected to AM activities while recognising that different minerals involve different processes and will have different opportunities and risk profiles;
- g. Ultimately propose a more inclusive approach, in consultation with good practices identified elsewhere on the continent and globally, to address the issues and challenges related to unregulated AM in South Africa.; and
- h. Address derelict mines and their rehabilitation closure plans, possibly including undercapitalised, inefficient, and unviable operations.

In addition, further studies need to be conducted around reports of children and women who have been taken underground for prolonged periods. Such reports raise additional human rights concerns for the Commission, given the issues pertaining to trafficking and children's rights.

2. Social- economic conditions

The hearings revealed that in the absence of regulation properly governing ASM activity, the measures the state is taking to address unregulated AM primarily involve security interventions and enforcement – i.e. considering all individuals involved in this activity as criminals and arresting them, as well as sealing shafts and imposing security measures that attempt to prevent access to illegal mining sites. However, security measures alone will not sustainably address the situation. In addition, the Commission has received information and complaints directly from community policing forums and affected communities relating to corruption, incapacity, and abuse by the SAPS during illegal mining sting operations. There have been complaints that SAPS officers do not declare as evidence the product that they confiscate from *zamazamas*; that some officers receive payment to supply *zamazamas* with weapons; and that the SAPS do not have adequate manpower to address *zamazama* activity. The Commission understands the challenges related to capacity and constraints – both human and financial resources – and recommends that those police officers tasked with illegal mining 'sting operations' should undergo proper training in order to safely (for both the officers, *zamazamas* and local communities) deal with illegal mining activities.

Security measures cannot be divorced from the socio-economic conditions. The Commission acknowledges that systemic, institutionalised inequality also cannot be reversed overnight. However, the recommendation is that social conditions such as poverty and unemployment be addressed also by way of monitoring the implementation of the SLPs and other development plans in mining areas, ensuring that they are closely linked to local development plans, and

monitor their implementation. There must be processes in place for monitoring the adherence to the undertakings and obligations that exist in plans and there must be consequences for non-fulfilment of these.

3. Public health education

The informal sector provides livelihoods for hundreds of thousands of South Africans. This sector is plagued by several challenges including insecurity relating to sporadic incomes, and a lack of social and health safety nets. The burden of toxic environmental health falls on an already pressurised public health sector. The Commission acknowledges that while there are rather high costs involved in undertaking health and toxicology studies in the mining sector, these are needed. The Commission recommends that their need to be health studies and campaigns initiated in areas where *zamazama* activity is taking place. This could include the dissemination of information on the impact of mercury usage on human health and the environment; the health and social impacts of infiltrating shafts and holings not only in abandoned mine shafts but also alongside operational mines; and the need for personal protective equipment (PPE) usage in unregulated AM activities.

4. The need for a stronger government stance towards LSM

The Commission is aware that the DMR (and other relevant departments) at times encounter challenges when enforcing compliance of regulations and directives including with regard to LSM operations. The Commission also appreciates that mining, environmental, and other regulations are created in order to ensure tighter control over mining activities with the ultimate objective of ensuring that mineral wealth is not generated for only a few, at the expense of the majority of the population. To this end, the Commission recommends that the State take a firm stance in addressing the extent to which illegality pervades the entire mining industry, causing negative environmental and health impacts, and not just AM.

5. Value chain

The Commission recommends that further studies be undertaken to trace the value chain that involves illegally mined precious metals. There is a very thin line between legal and illegal when it comes to moving, processing and selling illegally mined gold. The Commission has heard that *zamazamas* are sometimes approached to collude with legal operations (including by mining licence holders and refineries) in order for the illegally mined product to be moved - including beyond South Africa's borders - in a manner that enables tax evasion. There is a need for formal research to be undertaken to trace whom the illegally mined precious metals are sold to and how they are moved within and outside of the country. The Commission also proposes that tests be done sporadically to establish whether illegally mined gold is going into the legal market by testing for residual mercury, and using gold fingerprinting technology.

The Commission heard that in 1999 a Cabinet decision was taken to integrate processes with regards to workers compensation, including dealing with mine workers and looking at the functioning of the Compensation Fund. The DoL was asked to lead the process but was then asked to temporarily stop the process so as to give other departments the time to catch up. It is not clear how these issues and challenges will be taken forward after a very long gap in time. But this matter should be speedily considered and open for comment and also for resolution by the DMR and then finalised as soon as possible.

The Commission recommends that the government form an agency that would be constituted by all the occupational health components; with inspectorates in different departments, and that the alignment and streamlining decision be resumed, to include all departments that have

a role to play in mining and related activities. This would include pulling together a legislative framework for the administration of ASM.

6. Northern Cape: Bontekoe incident 2012

The Commission is aware that mining community in the Northern Cape is not yet in receipt of any conclusive information regarding the mine tunnel collapse at a closed De Beers site in 2012 which resulted in the injury and loss of lives of informal diggers – including friends and family. The Commission recommends that a final and comprehensive report into this incident be made available to those communities, and a plan be put in place to deal with similar incidents that may occur elsewhere in the country. It is not acceptable for the DMR to shirk their responsibilities in terms of carrying out this enquiry simply because the incident related to ‘unlawful mining activities’ and the community cannot continue to be fobbed off by being told that because illegal mining is involved, all enquiries should be directed to SAPS. Whether legal or not, a mining accident requires a report into the mining related issues.

7. Need for clarity regarding temporary cessation, partial closure, ‘warehousing’: care and maintenance obligations

The case of the Blyvooruitzicht mine discussed during the hearing highlighted the need for clarity around the situation where mines that are not ownerless or abandoned, but are nonetheless not operational. In these situations, there is no access control, they are not being monitored, nor are effectively managed. The hearing panel used the term “warehousing” to describe this “temporary cessation” as it is not clear how long that cessation will be. Given the economic conditions and fluctuating commodity prices, the extent to which there is an investment case to continue mining could change – and the panel recognises this situation. However, it was noted that there are also companies that sometimes use ‘warehousing’ as a way to entice *zamazamas* into their closed sites to mine for product that is no longer financially viable to mine through formal operations and then collude with *zamazamas* to sell that product through legal channels thereby evading tax. In addition, when ‘warehousing’ happens for longer periods of time, significant degradation of the environment is likely to take place and the way in which the DMR regulates matters does not address this situation. There is a risk – and it has occurred - that when a mine needs to undertake the steps to comply with the proper closure procedures it will allow this ‘grey area’ of temporary cessation to slide into a situation where it ultimately abandons its responsibilities.

The problem with ‘warehousing’ in relation to illegal mining is that it also creates an open situation where *zamazamas* will be free to come and go as they please.

A further related issue is that of disused shafts and the failure to deal with waste from the mines - whether in the form of slimes dams or dust. Complaints have arisen because of concerns about way in which the DMR is failing to deal with these issues. The Commission recommends that the DMR looks at what must be in place in relation to partial closures - including around retrenchments, environmental management and post closure remediation and ensures a clear set of processes are enacted. The Commission further recommends that steps are urgently put in place to secure the necessary financial resources for proper closure requirements and rehabilitation. These resources could be taken are held in trust or secured in advance in some other manner and some discussions with companies in this regard should take place which should also cover the drafting of policy prohibiting mine owners from selling off mine equipment before total closure and the relevant certificates are sought. Concurrent rehabilitation should be promoted: to the extent that rehabilitation during mine operations is possible, then this should happen.

In terms of formal mine closures, no mine's closure can realistically be considered independently of its neighbours. There is a need to rethink the kind of tools that are used to manage impacts across a mining area. If a mine closes prematurely, that mine has impacts on its neighbours; a mine cannot have a stand-alone closure plan. The Commission recommends regulated integrated closure processes including closure plans that extend across a wider geographic region are necessary and would require the intervention of the DMR to secure this coordination.

8. Process: Access to information, consultation, and participation

Through the Commission's own experience as well as from information received in the form of complaints and representations, it is clear that affected mining host communities do not have proper access to information to enable them to engage meaningfully in plans and decisions pertaining to mining issues. Such information includes EIAs and underlying documents, SLPs and EMPs and their respective annual performance plans, and more broadly, how the mining operations link to IDPs.

The Commission recommends that SLPs and EMPs and their respective implementation reports be made publically available and easily accessible including at public libraries and through an openly available website. These crucial documents are supposed to be based on, informed by and to enable community participation; and the Commission sees no reason why they are treated as if confidential. Furthermore, placing these documents in the public domain will assist the relevant departments in terms of monitoring, enforcing and policing the provisions and requirements set out in those plans. Affected communities, stakeholders, interested parties, researchers, and experts need to be involved in the life of the mine, in order to ensure that the mine meets its obligations in implementing social and labour objectives; that financial provision is made (and constantly revised and topped up as need be) for mine closure; and that mines which abandon their operations are made instead to close down in the properly prescribed manner.

The Commission also recommends that more rigorous and consistent monitoring of environmental health issues such as air quality and water quality is undertaken. There is a need to secure the resources necessary to finance the conducting of health studies and monitoring in mining areas. In the past, the Commission has received complaints that information on air quality is not publically accessible and, despite several requests, is still not released by the relevant authorities. The Commission recommends that the relevant departments conclude interdepartmental agreements around the release and dissemination of information that relates to environmental health in areas affected by mining. Information around issues such as health, water and air quality is as important as the information contained SLPs, EMPs and EIAs: – the public needs to know what they are being exposed to including how to mitigate the risks to themselves.

9. Recruitment

The Commission heard that the recruitment process in LSM operations very consciously recruits a percentage of miners from neighbouring countries particularly where there are people experienced in underground mining. However, when some of these mines close – even if only on a temporary basis – and these miners from neighbouring countries are made redundant, the SLPs rarely cater for such people. The DMR submitted that it could look into catering for non-national miners in the SLP. The Commission recommends that the relevant departments and mining companies look into adopting such a model in terms of SLPs as a matter of urgency.

10. Other

There is a need to explore opportunities for a framework for partnership between *zamazamas* and LSM, particularly on those sites under the control of major mining houses that are no longer being used.

The Commission recommends further engagement into the development of a framework for direct access to historically mined sites under the control of the State (the abandoned sites). These sites may be able to be opened up for artisanal miners; they could be required to provide a work plan of what they are going to do and how they are going to do it, in a bid to improve economic wellbeing. These activities would require State assistance from an Environmental Health and Safety (SHE) perspective as these miners may not have the know-how or resources to undertake the protective environmental measures necessary to sustainably conduct their activity.

The Commissions believes that there is a need to take such an inclusive approach and that any policy and legislative changes should align health and social protection to the ILO's Decent Work-Safe Work agenda.

10. CONCLUSION

In terms of Articles 26(1)(3) of the Commission's Complaints Handling Procedures the panel must:

- “(1) (a) consider the evidence submitted at the hearing in conjunction with all other available information and evidence obtained otherwise;*
- (b) make a finding on the facts and giving full reasons for the decision reached; and*
- (c) make a finding regarding remedial action, if necessary.*
- (2) The Chairperson of the Panel must, at the conclusion of the hearing, summarise the evidence contemplated in (1)(a) and state the finding, including any proposed remedial action.*
- (3) The finding of the Panel at the hearing is final and is not subject to an appeal as provided for in Chapter 9 of the Procedures.”*

The Commission is satisfied that these prescribed formalities have been complied with.

According to Article 26(3) of the SAHRC Complaints Handling Procedures, this finding is not subject to appeal. The Commission will, however, undertake to constructively engage with all parties affected by the recommendations espoused in this document so as to ensure maximum implementation of these recommendations.

It is the sincere hope of the Commission that this investigation and its findings will be of assistance in resolving some of the issues and challenges in relation to unregulated artisanal and small-scale underground and above-ground mining in South Africa. The Commission will follow up with all parties in respect of whom recommendations were made, to facilitate their implementation. This report will also be sent to Parliament and, as indicated, made available to the public.

Signed at Johannesburg on the 8th day of July 2015.

Commissioner Janet Love

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12. APPENDICES

1. SADPMR

MINE CODE	MINE NAME	MINE OWNER	POSTAL ADDRESS	TELEPHONE & FAX NUMBER	COMMODITY	MAGISTERIAL DISTRICT & PROVINCE	OPERATIONAL STATUS & TYPE OF MINING	FARM NAMES
1. THIS TABLE IS AVAILABLE IN EXCEL FORMAT AND CAN BE DOWNLOADED FROM: www.dmr.gov.za (PUBLICATIONS/MINERAL ECONOMICS)								
2. USERS OF THE ELECTRONIC FILE SHOULD NOTE THE CONTENTS OF THE PDF FILE: D1 2014 Information.pdf								
3. THE EXCEL WORKSHEET IS PROTECTED TO PREVENT ACCIDENTAL DELETIONS OR RE-FORMATTING								
4. TO UNPROTECT THE SHEET USE THE PASSWORD: mineral								
	A DUNWOODY DELWERYE	A DUNWOODY	PO BOX 59 WINDSORTON	(053) 551 0018 (053) 551 0018	DIAMONDS ALLUVIAL	BARKLY WEST NORTHERN CAPE	MINE OPENCAST	WINDSORTON ERF 145
14155	ABRIE OLIVIER	HILGARDT KAIRUZ	PO BOX 93 SCHWEIZER-RENEKE 2780	(053) 963 1108 086 716 7082	DIAMONDS ALLUVIAL	SCHWEIZER-RENEKE NORTH-WEST	MINE OPENCAST	GANSPAN 194 HO
14868	AF DELWERYE CC	AF ROBERTS	PO BOX 82 WINDSORTON 8510	(053) 551 0088 (053) 551 0088	DIAMONDS ALLUVIAL	BARKLY WEST NORTHERN CAPE	MINE OPENCAST	WINDSORTON 290
14740	ALBETROS INLAND DIAM - NAMAKWA	ALBETROS INLAND DIAMOND EXPL (PTY)	PO BOX 1086 SCHWEIZER-RENEKE	(053) 963 1081 (053) 963 1081	DIAMONDS ALLUVIAL	NAMAKWALAND NORTHERN CAPE	MINE OPENCAST	JOLMAT 176; PREDKANTVLEI 180;
10614	ALEXKOR LTD	ALEXKOR LTD	PRIVATE BAG X5 ALEXANDER BAY 8290	(027) 831 1330 (027) 831 1194	DIAMONDS ALLUVIAL; DIAMONDS MARINE	NAMAKWALAND NORTHERN CAPE	MINE AT SEA; OPENCAST; SURFACE	ALEXANDER BAY
13688	ALFA MIK DIAMANT	NICOLAAS STEFANUS SMITH	PO BOX 342 BARKLY WES 8375	(053) 531 0140 (053) 531 0140	DIAMONDS ALLUVIAL	KIMBERLEY NORTHERN CAPE	MINE OPENCAST	DIJKERSPUT PTN; ANHASHOOP PTN 7 OF PTN 5; ZANDHEUWEL
14362	AMOS JACOB DAVIDS	AMOS JACOB DAVIDS	PO BOX 82 WINDSORTON 8510	(053) 551 0099 (053) 551 0088	DIAMONDS ALLUVIAL	BARKLY WEST NORTHERN CAPE	MINE OPENCAST	WINDSORTON ERF 1 PTN
13884	ANDREAS ADAMS	ANDREAS ADAMS	PO BOX 509 KAKAMAS 8670	(054) 431 0945 (054) 431 0506	DIAMONDS ALLUVIAL	GORDONIA NORTHERN CAPE	MINE OPENCAST;	REMYVASMAAK 498
13773	ANDRIES MYBURGH	ANDRIES MYBURGH	2 SPITSKOP ROAD DEBEERSHOOFT BARKLY WEST 8375	072 288 3558	DIAMONDS ALLUVIAL	BARKLY WEST NORTHERN CAPE	MINE OPENCAST	WALDECK'S PLANT 281
14955	ANIX TRADING 701 - PLEIDOOI	ANIX TRADING 701 CC	PO BOX 1086 SCHWEIZER-RENEKE 2780	(053) 963 1081 (053) 963 1081	DIAMONDS ALLUVIAL	SCHWEIZER-RENEKE NORTH-WEST	MINE OPENCAST	PLEIDOOI 62 HO
14288	ANNA LOCK	ANNA LOCK	PO BOX 1086 SCHWEIZER-RENEKE 2780	(053) 963 1081 (053) 963 1081	DIAMONDS ALLUVIAL	SCHWEIZER-RENEKE NORTH-WEST	MINE OPENCAST	DELUX 87 HO; MANAETCHESFONTEIN 54 HO; PANFONTEIN 58 HO
14531	ANNA MARIA TSHIPI	ANNA MARIA TSHIPI	47 MOJANAGA STREET VERGENDEG KIMBERLEY 8301	072 600 4395	DIAMONDS ALLUVIAL	BARKLY WEST NORTHERN CAPE	MINE OPENCAST	LONGLANDS 350
14281	ANTON BRINK	ANTON BRINK	PO BOX 1086 SCHWEIZER-RENEKE 2780	(053) 963 1081 (053) 963 1081	DIAMONDS ALLUVIAL	WOLMARANSTAD NORTH-WEST	MINE OPENCAST	RIETKUL 155 HO
14303	AP STRYDOM	AP STRYDOM	PO BOX 31 RYSMAERBULT 2498	(016) 765 1094 (016) 765 1094	DIAMONDS ALLUVIAL	VENTERSDORP NORTH-WEST	MINE OPENCAST	RIETVALLEI 130 IQ
14915	AR LUMMIS	AR LUMMIS	PO BOX 3364 LICHTENBURG	072 529 0790	DIAMONDS ALLUVIAL	LICHTENBURG NORTH-WEST	MINE OPENCAST	WITSTROUWBOOM 9 P
14823	BAREND FREDERIK DU PLESSIS	BAREND FREDERIK DU PLESSIS	PO BOX 1086 SCHWEIZER-RENEKE 2780	(053) 963 1081 (053) 963 1081	DIAMONDS ALLUVIAL	CHRISTIANA NORTH-WEST	MINE OPENCAST	WELGEDIAAN 292 HO
14887	BASADI BA TLOU SUPPLY CHAIN SOLUTIONS	BASADI BA TLOU SUPPLY CHAIN SOLUTIONS	36 LAWSON STREET NEW PARK KIMBERLEY 8301		DIAMONDS ALLUVIAL	HERBERT NORTHERN CAPE	MINE OPENCAST	ETTRICK 182
14556	BATAUNG MINING	TA MOKHERA	9 DIEBEL STREET WEST-END KIMBERLEY 8301	(053) 861 5442	DIAMONDS ALLUVIAL	BARKLY WEST NORTHERN CAPE	MINE OPENCAST	LONGLANDS 231 J
13918	BATAVIA TRADING (VRYHEID)	BATAVIA TRADING	PO BOX 1086 SCHWEIZER-RENEKE 2780	(053) 963 1081 (053) 963 1081	DIAMONDS ALLUVIAL	SCHWEIZER-RENEKE NORTH-WEST	MINE OPENCAST	VRYHEID 154 HO
14034	BATAVIA TRADING 48 CC (GANSPAN)	BATAVIA TRADING 48 CC	PO BOX 1086 SCHWEIZER-RENEKE 2780	(053) 963 1081 (053) 963 1081	DIAMONDS ALLUVIAL	SCHWEIZER-RENEKE NORTH-WEST	MINE OPENCAST	GANSPAN 194 HO
14269	BATTON MINING	PARADISE CREEK INVESTMENT (PTY) LTD	PO BOX 711 VENTERSDORP 2710	(016) 264 4705 (016) 264 5258	DIAMONDS ALLUVIAL	VENTERSDORP NORTH-WEST	MINE OPENCAST	ROODEPAN 180 P 7 & RE

2. MINTAILS – Letters



Dear Residents of Mindalore

11 August 2014

NOTIFICATION OF COMMENCEMENT WITH REHABILITATION ACTIVITIES OF THE MININGAREA GP 30/5/1/2/3/2/1 133 EM – EAST CHAMP D'OR AREA

Mintails has been issued with a directive by the Inspector of Mines to rehabilitate the East Champ d'Or mining right area. This is being done to curtail the current illegal mining activities being undertaken within the area. The rehabilitation and mining of the area will be conducted through mining out the surface pillars and open holings which are being exploited by the illegal miners within the area.

The East Cham d'Or mining area is situated in the south of the suburb Witpoortjie, and is split into the eastern target and the western target. Those target areas are separated by the Chamdor road which runs from Witpoortjie to the industrial area of Chamdor.

Rehabilitation of the East Cham d'Or mining area has commenced with mining of the eastern target situated between the Chamdor road and the suburb of Mindalore. The area is called the eastern target area and will comprise of four operational pits namely Pit 1,2,3 and 4. Pit number 1 will be on the most eastern side of the mining area, Pit 2 will be situated in the centre of the block and pit 4 situated on the western side of the target area. Rehabilitative mining will commence on the eastern part of the target area in Pit number 1 and progress away from the community as activities progress.

The reef in the area dips from north to south at a average dip of 60 degrees in the east and steepening up to about 80 degrees in the west. Mining of Pits 1, 2, 3 and 4 will be conducted to a depth circa 15 meters, which will create a pit width of approximately 25 meters.

As mining progresses towards the west the waste mining will be used to fill the previous mined area with the waste from block 1 being used to fill the void created by mining in block 4. The mining operation on the eastern target has an existing life of circa 12 months.

The mining activities will be conducted in daylight hours, blasting will be limited to one or two blasts per week as and when required although it is expected that significant amounts of works will be conducted without blasting. Blast notifications will be passed to the community as well as a blast siren should be audible prior to any blasting being undertaken.

Complaints can be directed to Mr Kabelo Mphake (Community Relations Officer) Tel: 011 660 9638 E-mail: Kabelo.mphake@mintailssa.co.za or info@mintailssa.co.za. Please find attached a copy of an incident form that can be completed and we will collect these and undertake the investigations as and when required.

Yours in Health and Safety,

Mr Anthony Ehlers
Chief Executive Officer
Mintails Mining SA (Pty) Ltd

Director • Thoko Mkgosi-Mwantembe (Chairperson) (South African) • Laurence Jonathan Blumberg (Australian) • Mark Allen Bruns (American)
• Andrew Noel Cranswick (Zimbabwean) • Bukhosi Ndimande (South African)

14 Tweelopies Road, Krugersdorp • P.O Box 803, Krugersdorp, 1740
Telephone: +27 (011) 660 9638 • FAX: +27 (011) 660 8132
Registration No. 2007/004029/07
Vat No. 4650263074



MINTAILS MINING

SOUTH AFRICA (PTY) LTD

Incident Reporting Form

Name:	
Address:	
Tel number:	
Representing:	
Date of incident:	
Time of incident:	
Please provide a short description of the incident: (if insufficient space please attach additional pages)	
Nature of incident / damage identifying corrective actions to be taken:	
Are there photos of the reported incident?	

Signature of complainant

The completed form to please be sent back to Mintails Mining via fax: 011 660 8132, e-mail: kabelo.mphake@mintailssa.co.za; info@mintailssa.co.za, or by hand to: @ grievance drop box at security gate, Mintails Mining, 14 Tweelopies Road, Krugersdorp. Any telephonic enquires can be directed to: Kabelo Mphake on 011 660 9638

Mintails Mining SA (Pty) Ltd representative _____

Date _____

Director: • Thoko Mokgosi-Mwantembe (Chairperson) (South African) • Laurence Jonathan Blumberg (Australian) • Mark Allen Brune (American)
• Andrew Noel Cranswick (Zimbabwean) • Bukhosi Ndimande (South African)

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Registration No: 2007/004029/07
Vat No: 4850263074



Dear Residents of Mindaloro

28 August 2014

NOTIFICATION OF A PRE-BLAST SURVEY - EAST CHAMP D'OR MINING AREA

Our Company, Mintails Mining SA (Pty) Limited, is conducting rehabilitative mining adjacent to your property. The intent will be to remove access points to the underground reef left open and unrehabilitated by historical mining operations. This process will initially involve opencast mining to remove remaining gold reef from the near-surface. This will be immediately followed by closure and rehabilitation of the area. These rehabilitative mining activities have been brought forward under direction from the Department of Mineral Resources (DMR), as part of its drive to combat illegal mining activities in the area.

Blasting activities will be undertaken in certain areas of the mining operation. There are defined standards on noise and vibration for blasting operations that guarantee the safety of structures. Despite these standards, our experiences from our other opencast operations and in particular our consultation with neighbouring communities is that our Company should evaluate the structures of selected neighbouring properties prior to the commencement of blasting operations. This is termed a 'Crack Survey' and is made up of a photographic record of 'before' and 'after' mining activities. This is a requirement that will now be imbedded in our Environmental Management Programme (EMP) which forms part of our Mining Right.

Mintails Mining (SA) Pty Ltd would therefore like to call on the support of selected property owners and tenants along Impala Road, Surrey Street and Haynes Street, Valley Road and Sadie, and Farell Street to undertake this survey. The survey will record and document the physical condition of the dwelling or structure prior to blasting operations at the East Champ D'OR mining area. Pictures will be taken inside and outside the property.

A pre-blast surveyor will be conducting visits in the area on the following days:

Date	Time
29 August 2014	09h00 – 17h00
1 September 2014	09h00 – 17h00
2 September 2014	09h00 – 17h00

Please could any owner or resident, contact us before the **3 September 2014** should you wish to have the survey undertaken at your premises.

Should you have any queries please contact Mr Kabelo Mphake (Community Relations Officer)
Tel: 011 660 9638 E-mail: Kabelo.mphake@mintailssa.co.za or info@mintailssa.co.za

Yours faithfully

Mr Anthony Ehlers
Chief Executive Officer
Mintails Mining SA (Pty) Ltd

Director: • Thoko Mkgoshi-Mwambi (Chairperson) (South African) • Laurence Jonathan Blumberg (Australian) • Mark Allen Brune (American)
• Andrew Noel Cranswick (Zimbabwean) • Bukhozi Ndamand (South African)

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