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MINING & RESOURCES

A new reality for illegal miners and the 'zama zamas'?

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Illegal mining challenge

Illegal mining is a critical challenge in the South African mining and minerals industry.

In response to this challenge and ahead of the Investing in African Mining Indaba 2022, on 30 March 2022, the Minister of Mineral Resources and Energy published the Artisanal and Small Scale-Mining Policy 2022 for implementation.

The policy seeks to formalise the largely informal artisanal and small-scale mining industry. The policy recognises, amongst others, the challenges posed by illegal mining activities (also commonly known as "zama zamas") which have resulted in over R70 billion per annum of the national revenue being lost due to illegal mining in the gold sector alone. These incidences of illegal mining are reportedly on the rise throughout the country.

Communities are directly affected by illegal mining in terms of environmental degradation, health risks, and gang violence emanating from rival illegal miners.

The policy recognises that the current regulatory framework, and in particular the provisions in section 27 of the Mineral and Petroleum Resources Development Act, 2002 ("MPRDA"), is inadequate and proposes amendments to the legislation. The current regulatory framework treats small-scale miners virtually the same as large-scale miners. This has been prohibitive in ensuring access of small-scale and artisanal miners into the formal mining industry and contributed to the illegal mining activities across the country's primary mineral commodities, including gold, coal, chrome, and diamonds.

The policy is a response to calls for the government to formalise the artisanal and small scale mining industry, mainly due to its potential to contribute to social-economic development and improvement of the livelihoods of South Africans.

Artisanal and Small Scale-Mining Policy

The policy proposes the insertion of the following definitions in the MPRDA:

- "Artisanal Mining": means the traditional and customary mining operations using traditional or customary ways and means. This includes the activities of individuals or groups using mostly rudimentary mining methods, manual or rudimentary tools to access mineral ore, usually available on the surface or at shallow depths; and
- "Small Scale Mining": means prospecting activities or a mining operation that does not employ the specialised prospecting, mechanised mining technologies, chemicals including mercury and cyanide, or explosives; or the proposed prospecting or mining operations do not involve an investment exceeding a prescribed amount. A maximum of R1 million investment for artisanal miners is prescribed and the prescribed amount for small-scale miners is R10 million.

The policy also proposes the introduction of two types of permits, namely:

- an Artisanal Mining Permit; and
- a Small-Scale Mining Permit.

In line with the spirit of the Mining Charter, 2018 and the objectives in Section 2(d) and (f) of the MPRDA the policy sets as one of the licensing criteria the objective of ensuring the entry and meaningful participation of Historically Disadvantaged South Africans into the mining industry and the prioritisation of women and vulnerable groups.

Importantly, the policy makes it clear that Artisanal Mining Permits and Small Scale Mining Permits must be reserved for South Africans and proposes measures, including criminal measures, to deal with illegal immigrants within the artisanal and small-scale mining space. A dedicated special unit within the South African Police Service (SAPS), to be called the Minerals and Precious Metals Theft Unit is proposed.

It is to be seen whether the implementation of the provisions of the policy will largely result in the formalisation of the artisanal and small scale mining industry, and effectively deal with the rising problem of 'zama zamas', and simultaneously also address the massive problem of illegal immigrants who are also illegal miners.

Large mining companies are not excluded from being involved in the activities of artisanal and small scale operators. In fact, the policy proposes that large-scale operators and small-scale operators should co-exist in the form of Tributing Agreements. This may enable small-scale operators to share responsibilities (including environmental responsibilities) with the larger mining companies. They may also receive technical support and refining and processing opportunities as part of the supply chain of the larger mining companies.