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MINING & RESOURCES

Illegal mining, the ‘zama zamas’ and the Law

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

The South African government previously recognised the potential of small scale mining operations to increase the portfolio of minerals being produced and possibly lead to the exploitation of resources that would otherwise be sterilised.[1]

In 1998, the *then* Department of Minerals and Energy recognised that well-managed small-scale mining operations had the potential to provide increased access to the minerals industry and to ensure that minerals are mined economically where large-scale mining would be unable to operate profitably.

Small scale and artisanal mining currently take place on a sizeable scale in South Africa, with opportunities for small-scale mining projects found mainly in gold, diamonds, coal and industrial minerals. In recent years, and with the significant growth in global technological advancement, illegal and small scale mining operations have been found in minerals such as chrome and copper.

Some of the challenges encountered by small scale or artisanal miners in accessing the formal mining industry include:

- lack of access to mineral rights – with South Africa having an onerous mineral licensing regime;
- lack of access to finance and funding – financiers are seldom likely to participate in small-scale mining ventures which provide limited security and financial returns;
- lack of appropriate structures to assist the small-scale mining developments; and
- lack of management, marketing and technical skills (particularly those in complex metallurgical processes).

Artisanal and Small Scale-Mining Policy 2022

In response to this challenge of illegal mining, on 30 March 2022, the Minister of Mineral Resources and Energy published the Artisanal and Small Scale-Mining Policy 2022 (the “Policy“) 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 R 70 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.

Intensive environmental management guidance is required in areas where there is a high concentration of small-scale miners. Health and safety standards and the rights of workers should be enforced and maintained in small-scale mining operations.

The Policy recognises that the current regulatory framework, and in particular the provisions in section 27 of the Mineral and Petroleum Resources Development Act 28 of 2002 (the “**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 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.

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 which 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 which exceeds a prescribed amount. A maximum of R1 million investment for artisanal miners is prescribed and the prescribed amount of small scale miners is R 10 million.

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

- an Artisinal 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.

The strength of the Policy lies in its implementation in order for it to achieve its intended objectives.

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

Footnotes

[1] See the *White Paper: A Minerals and Mining Policy for South Africa published by the Department of Minerals and Energy*, October 1998, p 24.