



Zimbabwe Economic  
Policy Analysis and  
Research Unit

PATHWAY TO FORMALIZATION OF  
**ARTISANAL MINING**



IN **ZIMBABWE**

May 2018





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# PATHWAY TO FORMALIZATION OF **ARTISANAL MINING**

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## IN ZIMBABWE

PREPARED BY

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## I. INTRODUCTION AND BACKGROUND

The informal economy thrives in the context of high unemployment, underemployment, poverty, gender inequality and precarious work (LEDRIZ:2017). The informal economy plays a significant role in income-generation due to of the relative ease of entry and low requirements for education, skills, technology and capital. According to LEDRIZ participation in the informal economy is necessitated by need to access to basic income-generating activities as a means of survival rather by choice<sup>1</sup>. They also highlighted that there are a number of methods to which the informal economy can be formalized and these can take various forms which include registration, taxation, organisation and representation, legal and social protection, business incentives and support. Benefits of formalizing informal operations includes; creation of a broader tax base that may allow lower rates, possibly increases investment and strengthens the social contract/rule of law. Formalization also leads to access to finance and market information, thereby enabling improvements in the productivity of informal units. Increased productivity means better incomes.

### **Box 1: What is Formalisation/regularisation?**

According to the ILO statistical manual, it defined the informal sector as consisting units engaged in the production of goods or services with the primary objective of generating employment and incomes to the persons concerned. These units' typical operates at a low level of organisation<sup>1</sup>. Thus accordingly formalisation is the process of bringing players in the informal economy into the formal economy. Formalization of the informal economy can take different forms: registration, taxation, organization and representation, legal and social protection, business incentives and support<sup>2</sup>,

Whilst acknowledging the different benefits of formalization and regularization it has impacts on livelihoods and sustainability of business operations which include; improvement in social welfare as informality imposes significant risk and vulnerability to economic and social shocks also its improves business efficiency as it allows informal businesses to enjoy economies of scale associated with large firms that are legally recognized.

Thus according to ILO the informal economy refers to different situations with different causes, posing different problems that require different solutions. The first step towards designing effective interventions to facilitate transitions to formality is to recognize the heterogeneity of the informal economy, participants in the informal economy differ widely in terms of income (level, regularity, seasonality), status in employment (employees, employers, own-account workers, casual workers, domestic workers), sector (trade, agriculture, industry), type and size of enterprise, location (urban or rural), social protection (social security contributions) and employment protection (type and duration of contract,

<sup>1</sup><http://library.fes.de/pdf-files/bueros/simbabwe/13714.pdf>

annual leave protection). Thus instrument for formalization should be adapted to the specific characteristics of the different groups, the contingencies to be covered and the national context<sup>2</sup>.

However according to WIEGO they stressed that there are limits with regards to formalization of the informal sector that need to be understood and these include formalization is not a one-time process involving a specified set of steps but rather a gradual on-going process involving incremental steps .Lastly they pointed out that formalization is not be feasible or desirable for all informal enterprises thus varying degrees and forms of informality will continue in the long run<sup>3</sup>.

### 1.1 WHAT IS ARTISANAL MINING?

Artisanal and Small Scale Mining (ASM ) activities are mainly characterised by the minimal use of machinery or technology; operation with or without legal mining title or valid contract with the title holder; low productivity; inadequate safety measures, healthcare and environmental protection; high seasonality linked to economic insecurity (Hentschel et al., 2002).However it is important to further distinguish between artisanal mining and small-scale mining as the two activities share many characteristics to the extent that in some usages, the terms are treated synonymous and are used interchangeably (Hentschel et al. 2002).Artisanal miners are usually individuals or family members involved in very small-scale manual mineral extraction without legal mining title, whereas ‘small-scale miners’ usually have legal mining title and their operations are larger and more mechanized (MMSD 2002).

According to the United nations Economic Commission for Africa (UNECA) they defined artisanal mining as mining activities that are characterised by manual labour or minimal-to-no mechanization; minimal-to-no geological knowledge; minimal-to-no start-up capital and highly mobile (they follow the rushes and booms) workforce/ participants whilst Small Scale Mining is usually formal (with mining title); semi-mechanized; has access to some structured, quantifiable though at times still limited geological knowledge; low to medium start-up capital; regulated by the Mining Code; usually required to produce an environmental impact assessment study; while in some countries it is hijacked by “investors” who then produce beyond the allowed output levels<sup>4</sup>.

Barry (1996) noted that the majority of artisanal mining is poverty driven activity, he however stressed that artisanal miners are caught in a negative circle of cause and effect which have limited them to grow. The use of inadequate mining and processing techniques

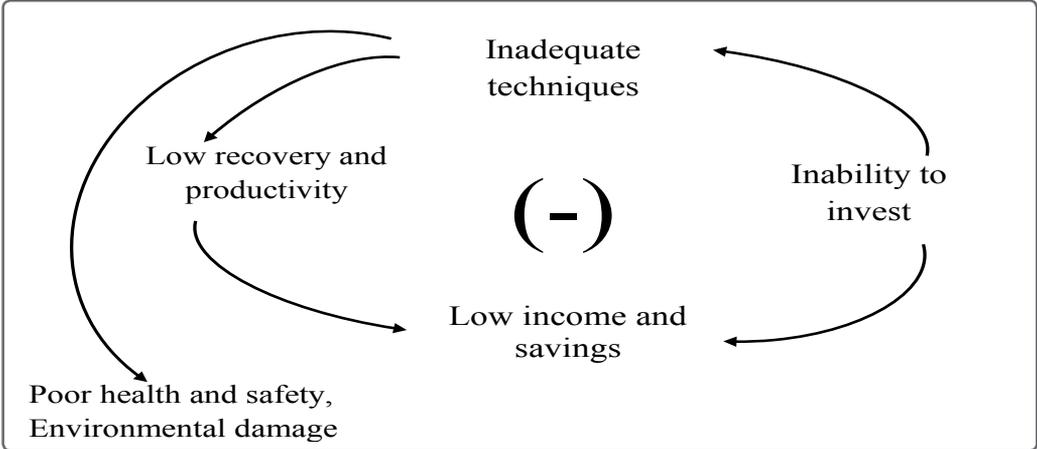
<sup>2</sup>[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_218128.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_218128.pdf)

<sup>3</sup>Rethinking Formalization: The Women in Informal Employment: Globalizing and Organizing (WIEGO) Perspective; <http://www.wiego.org/informal-economy/rethinking-formalization-wiego-perspective>

<sup>4</sup>What is artisanal mining, UNECA; <https://knowledge.uneca.org/ASM/sectorPersp>

and equipment leads to low productivity of operations and low recovery of valuable minerals which in turn results in low revenues and the inability to accumulate funds for investment

**Figure 1: Negative circle affecting artisanal miners**



Source: Barry (1996)

According to the African Mining Vision (AMV), the poverty cycle is aggravated by legal and regulatory failures, including failure of governments to recognize and formalize the sub-sector. According to ILO, an estimated 80 per cent of small-scale mining falls outside any legal or regulatory framework, however African Mining Vision (AMV) report notes that were efforts have been made to regulate the artisanal mining sector the legal frameworks has not been adequate and preference is still being given to large scale mining<sup>5</sup>. Thus it is in this regard that the Yaoundé Conference on Artisanal and Small-scale Mining in Africa recommended that Governments formalize their commitment with regards to ASM issues by ensuring that appropriate legislation for ASM is in place, revisiting existing ASM policies and legislation with implication to traditional land rights on modern land use legislation and role of central government<sup>6</sup>.

<sup>5</sup>Social and labour issues in small-scale mines; [https://unites.uqam.ca/gmf/globalmercuryforum/files/articles/small\\_scale\\_mining/General%20ILO%201999%20-%20Social%20and%20labour%20in%20small-scale%20mines.pdf](https://unites.uqam.ca/gmf/globalmercuryforum/files/articles/small_scale_mining/General%20ILO%201999%20-%20Social%20and%20labour%20in%20small-scale%20mines.pdf)

<sup>6</sup>[http://www.artisanalmining.org/Repository/01/The\\_CASM\\_Files/CASM\\_Meetings\\_National/2002\\_Cameroon\\_Yaounde/Yaounde\\_Recommendations.pdf](http://www.artisanalmining.org/Repository/01/The_CASM_Files/CASM_Meetings_National/2002_Cameroon_Yaounde/Yaounde_Recommendations.pdf)

**Table 1: Categories of informal miners**

Categories	Description
Unregistered	Non-compliant with any regulatory provisions or Act of Parliament or subscribe to any membership organisation
Registered non-compliant	compliant with one of regulatory provisions or Act of Parliament or subscribe to any membership organisation but remain non-compliant with the majority of regulatory requirements <ul style="list-style-type: none"> <li>• registered with a membership association but not with the Mines and Minerals Act</li> <li>• Compliance with the local authorities act/ownership of land but not registered with the Mines and Minerals Act</li> <li>• Registered with the Mines and Minerals Act but non –compliant with other regulatory requirements</li> </ul>

## 1.2 CHALLENGES TO FORMALIZATION

The major challenges that have been highlighted as a barrier towards formalization by the informal sector according to Echavarría C (2014), the author identified the following factors as barriers for the artisanal mining sector to comply with formal provisions.

- Stringency of rules and (administrative, accounting, legal, financial, statistical & information and/ or time-related) costs to comply in the formal economy, both for start-ups and agents who want to continue operating in the formal economy.
- The tax and “non-tax” burden faced by formal agents net of the tax and “non-tax” payments made by agents in the informal sector. The requirements and procedures in mining sector legal framework tend to favour or recognize large scale mining at the expense of artisanal and small scale miners
- Low benefits (both financial and non-financial) of being formal including (perceptions about) poor quality of public and social services;
- Strong eligibility criteria to benefit from public and social services;
- Higher public utility rates for formal businesses;
- Lack of access to resources including land and credit in formal versus informal sector;
- Low effective enforcement in the formal sector by authorities to ward off competition from the informal sector. This poor enforcement of legitimate rights, entitlements and poor enforcement of regulation have led to most small scale businesses preferring to enter the informal economy due to avoiding complying with formal requirements and enjoy low costs of operations for them to remain competitive.
- Lack of trust in governance institutions and their enforcement, high degree of corruption faced by formal versus informal sector.

### 1.3 APPROACHES TO FORMALIZATION

Since there is no one-size-fits-all approach to formalization of the informal sector, there have been a number of different approaches to formalization that have been presented in literature and their adoption have largely been dependent upon a number of factors chief among them the drivers of informality and the country contexts in which informality is occurring (Koroma S; 2017)<sup>7</sup>.

#### 1.3.1 Policy and legislation approaches to formalization

Under this approach, the main focus of formalization is on the policy and legislative reform, thus it seeks to highlight the main dimensions/provisions in the policy architecture of a country by considering the established policies that unambiguously facilitate/promote the creation, preservation and sustainability of small enterprises. Some of the key elements considered under this approach is the policy framework to support transition to formalization and this could include creation of macroeconomic policies that directly seek to promote sustainable small enterprises, business confidence, and addressing inequalities.

#### 1.3.2 Partnership-based approaches to formalization

The formalization and recognition of the informal sector needs a collaborative approach among formal private sector, non-governmental organization and development partners' in order to foster and promote integration. Formal private sector organization can come up with products and market linkage relationships with informal sector as their clients and source markets. Thus this approach supports the intuition that the transition to formalization of informal sector could be achieved through multiple strategies and programmes developed by formal enterprises, NGOs and development partners towards addressing some of the critical needs and gaps of the informal economy such as access to finance, access to technical information (health & technical standards), access to market information (inputs, product).

#### 1.3.3 Rights-based approaches to formalization

This approach seeks formalization of the informal sector premised on access to certain rights and freedoms of players in the informal sector and this include reference to specific laws and policies, but more importantly promoting the organization of informal sector players.

#### 1.3.4 Incentives and compliance-based approaches to formalization

Under this approach, incentives and compliance measures for formalization are usually offered to players in the informal sector in response to identified barriers in the transition from the informal economy to the formal economy such as breaking barriers to market access, provision of capitalization funds at affordable rates for SMEs and enhancing of trade and business skills.

<sup>7</sup><http://www.fao.org/3/a-i7101e.pdf>

## 2. CURRENT STATUS OF ARTISANAL MINING IN ZIMBABWE

The ASM sector in Zimbabwe has historically largely been a subsistence activity, complementing small-scale farming (Maponga and Ngorima, 2003). Artisanal miners work on a scale smaller than that of small-scale miners and, though they are expected to be registered, many of them work illegally without mining title. Traditionally artisanal miners have mainly undertaken alluvial gold panning and gemstone mining. In the context of alluvial mining, EMR (2014) defines an artisanal miner as 'a miner who carries out mining activities using approved tools and employs up to 50 people; these include government-registered groups or syndicates or co-operatives'. In recent years, the contribution of the ASM sector to gold deliveries and hence to the national economy has been significant. The ASM sector has also contributed substantially to mining production by tapping into mineral deposits that are of little economic value for large scale mining, and in many instances ASM is a precursor to large mines (AU 2009).

The ASM sector in Zimbabwe dates back to at least the 13<sup>th</sup> Century when the Munhumutapa traded gold with the Portuguese; modern mining began in the 1890's with the reappraisal of ancient workings by the British South Africa Company (Viewing 1984). ASM in Zimbabwe includes both legal and illegal operators, mechanised and semi-mechanised miners of varying sizes in terms of output, employment and capitalisation (Maponga and Ngorima, 2003). ASM activities in Zimbabwe are scattered around the country, with no specific areas designated for ASM activities. Traditionally, a major concentration of ASM activities has been alluvial gold mining along river banks.

In 1991, the government of Zimbabwe enacted Statutory Instrument 275 of 1991, the *Mining (Alluvial Gold) (Public Streams) Regulations* in order to recognize the artisanal and small scale mining sector thereby incorporating the sector into the national developmental plans. The regulatory instrument allowed local authorities particularly rural district councils to allocate mining blocks to organized ASM in consultation with the Mining Commissioner. The SI outlined and specified areas in which artisanal mining activities can be carried out. However the statutory instrument was later repealed as government responded to increases case of illegal trade in gold<sup>8</sup> In 2014, alluvial mining was effectively banned through EMR (2014), which states that, 'alluvial mining shall not take place on land within 200 metres of the naturally defined banks or land within 200m of the highest flood level of any body of water conserved in natural or artificially constructed water storage work or stream; or any bed or banks or course of any river or stream; or land within 200m from any wetland. (GoZ 2015), this was realisation that Rural District Councils saw the licencing requirements under SI 275/1991 as an opportunity to generate income at the expense of the environment as they did not put in place measures to protect the environment.

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<sup>8</sup><https://projekt263.wordpress.com/2013/09/24/formalising-zimbabwes-artisanal-mining-sector/>

As of 2014, Zimbabwe had approximately 500,000 artisanal miners, of which about 400,000 mine gold<sup>9</sup>. ASM sustains the livelihood of at least two million people in Zimbabwe directly and indirectly through ancillary services and secondary economic activities (Maponga and Ngorima 2003). ASM activities are concentrated in gold panning<sup>10</sup>, chromite and tantalite mining although Zimbabwe is richly endowed with other resources such as diamonds, iron ore, copper, coal among others. Poverty and lack of employment alternatives due to prevailing economic hardships; low productivity resulting in low income from farming activities, and lack of other viable non-farm activities are some of the major drivers of ASM in Zimbabwe. These developments, place ASM at the heart of the rural communities where there is mineral occurrence that is amenable to exploitation by ASM. In these rural communities ASM activities have become an increasingly important source of income and livelihood option (Maponga and Ngorima 2003; Spiegel 2015). Crop failures during drought years have also contributed to increased ASM activities as households look for alternative sources of livelihood. A scoping study by PACT (2015) found that women working in the ASM sector are more likely to operate on unregistered land or in informal operations (35 percent) than men (19 percent). Women working on registered claims were more likely to work on claims without a valid license (28 percent) than men (20 percent).

Berry (1996), stressed that in order to transform the activities of the informal mining sector into a sustainable activity, there is a need to encourage the registration and licensing of informal mining. This can be achieved by establishing an enabling legal environment and institutional framework for artisanal mining.

According to ZELA (2016) the government has indicated its intentions to formalize ASM activities in Zimbabwe by decriminalizing ASM activities and bring the miners into the formal economy. They noted that most of the gold that produced by artisanal miners is not sold formally, with an estimated more than 15 tonnes of gold, being smuggled out of Zimbabwe between 2002 and 2007. ZELA (2016) highlighted that structural economic impediment to domestic resource mobilisation in the ASM sector is due to high rate of informalisation. Thus they stressed that where an economy is highly informal, there is a likelihood that most people or businesses would operate outside the margins of the law. The report noted that formalization of ASM activities, provides an opportunity for domestic resource mobilisation on part of the state as well as increasing the likelihood that minerals mined particularly gold would be sold formally<sup>11</sup>.

The objective of this study is to explore options available in recognizing and formalizing the artisanal mining sector in Zimbabwe.

<sup>9</sup><http://www.landscapes.org/formalizing-poverty-alleviation-zimbabwes-landscape-better-future-artisanal-miners/>

<sup>10</sup>largest segment of the sector estimated to constitute between 70-90% of ASM activities

<sup>11</sup>ZELA(2016); Domestic Resource Mobilization in Zimbabwe's Mining Sector: Enablers and Inhibitors [http://www.zela.org/docs/publications/Domestic\\_Resource.pdf](http://www.zela.org/docs/publications/Domestic_Resource.pdf)

- Identify legal, technical and financial constraints preventing artisanal miners from regularizing their activities
- Identify alternative options available in recognizing artisanal mining activities

### 2.1 LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING ASM IN ZIMBABWE

In Zimbabwe, all mining activities are regulated and registered with the Ministry of Mines and Minerals Development under the provisions of the Mines and Minerals Act Chapter 21:05 (1996), the Environmental Management Act Chapter 20:27 (2002) and various other regulations such as Mining (Management and Safety) Regulations (1990), and the 2014 Environmental Management (Control of Alluvial Mining) Regulations (EMR 2014). The Third Schedule of the Indegenisation and Economic Empowerment Act (Chapter 14:33) categorises artisanal mining activities with the exception diamond as reserved activities for Indigenous Zimbabweans as part of the overall empowerment drive. Furthermore there exists a Draft Mineral Policy of 2013 that is yet to be effected. A new mines and Minerals bill has been put forward before parliament for debate and approval; however the Bill is silent in the recognition of artisanal and small-scale miners. Section 257 A (1) of the bill gives a vague definition of a small-scale miner as ‘a holder of a mining location who is not a large-scale miner’.

Part IV of the Mines and Minerals act (Chapter 21:05) on the Acquisition and Registration of Mining Rights particularly sections 20 to 62 stipulates the procedure in which one acquires mining rights furthermore Part VIII on mining leases highlights the procedures to be followed in acquiring and maintaining a mining lease with section 135 of the Act requiring holders of a registered mining location make written application to the mining commissioner for the issue a mining lease. The application for registration must be submitted to the ministry of mines and mining development accompanied with the following documents:

- Prospecting licence: This licence gives the holder the rights of prospecting and pegging mining claims in Zimbabwe. This licence can be acquired by any person who is a permanent resident of Zimbabwe above the age of 18 and is valid for a period of two years. Applications are made to the provincial mining director.
- Discovery notice (base minerals)
- Notification of intention to prospect to the landowner;
- A map in triplicate to the scale 1:25,000

If the provincial director is satisfied that all pegging procedure have been followed, he/she shall issue a certificate of registration upon payment of the gazetted fees to allow the holder to start mining operations. Precious mineral claims are supposed to be continuously worked in order to obtain renewal of title. Claims have tenure of 12 months after which they have to be renewed. However failure to renew title will result in the forfeiture of the mining claim.

**Box 2: Previous attempts at formalising and recognising artisanal mining activities in Zimbabwe**

In the early 1990s the government of Zimbabwe liberalised the economy following the adoption of the Economic Structural Adjustment Programs (ESAP). The ESAPs, reform package had four main elements; namely fiscal and monetary policy, trade liberalisation, economic deregulation and social dimensions. The policy saw a number of sectors being deregulated and accompanied by increased unemployment following retrenchment exercises resulted in the exponential growth of the informal economy.

In this regard the government of Zimbabwe gazetted the Mining (alluvial gold) (Public Streams) regulations, (*Statutory Instrument 275 of 1991*) which sought to recognise the activities of artisanal miners working on alluvial deposits in public streams. The regulation gave rural district councils in consultations with the mining commissioner the power to allocate issue out permits to mine alluvial gold deposits within their jurisdiction. Furthermore sections 5, 7, 8 and 9 of the regulation had clearly stated requirements for working on alluvial mining deposits. Section 5 focused on the persons authorised to work on alluvial deposits and it stated that applicants should be over the age of eighteen and be resident in the council, or cooperative society registered in terms of the Cooperatives Societies Act of 1990 whose members are composed of persons residing in the council area.

Furthermore section (8) prohibits the workings to have a vertical depth of more than 1.5 metres and also prohibits the use of mechanical equipment to dig the river bed. On the other hand the regulation explicitly required the rural district council to maintain an up to date register of all permit holders operating within their jurisdiction as well as submitting monthly gold production returns to the mining commissioner. Thus the regulation had clearly defined registration procedure as well as the limitations and benefits to accrue to the artisanal miners. However Statutory Instrument 275 of 1991 was later repealed in the year 2006, following rampant violation of a clause relating to the marketing of gold to unlicensed buyers and severe land degradation accompanying mining activities.

On the other hand the Rural District Councils Act (Chapter 29:13) empowers the local authorities to collect land development levy on any rural land owners including miners that fall within the council's jurisdiction. In addition, mining activities have to adhere to the provisions of the Environmental Management Act to which the renewal of mining licenses is dependent on the miner's reclamation of land degraded by their mining activities.

Mining companies need to obtain environmental permits which are renewed on an annual basis. The environmental permits pertain to pollution prevention and control issued under the various regulations in Zimbabwe. Permits issued cover radiation sources, air emissions, effluent discharge points, solid waste sites and hazardous substances storage sites. Certificates

## Pathway to Formalization of Artisanal Mining in Zimbabwe

on Environmental Impact Assessment (EIA) and Environmental Management Plans (EMP) are issued by the Environmental Management Agency (EMA).

The requirements and procedures in mining sector legal framework tend to favour or recognise large scale mining at the expense of artisanal and small scale miners. There is high prioritisation of large scale mining activities in the framework hence this may explain the little political drive to regularise and formalising the sector.

### 2.2 THE MINING FISCAL REGIME

The mining sector fiscal regime encompasses both direct and indirect taxes and licences collected at both central and local government levels. Several government agencies, including local authorities are involved in the collection of mineral revenue and these include Zimbabwe Revenue Authority (ZIMRA), Environmental Management Agency (EMA), Ministry of Mines and Mining Development, Zimbabwe Mining Development Corporation (ZMDC) and Minerals Marketing Corporation of Zimbabwe (MMCZ). In an effort to redress these challenges government is in the process of reviewing the mining fiscal regime to ensure that the country maximizes the benefits from its mineral resources, while at the same time encouraging investment in the sector.

Royalties and licencing fees are the most visible indirect instruments for collecting revenues from activities of the Artisanal and Mining sector. Royalties are the oldest form of mineral taxation and is applicable in Zimbabwe currently. The country's royalties are generally the highest in the region and are above global standards. Royalty is determined by multiplying the stipulated percentage by the revenue generated by each metal.

Table 2: Royalties

Mineral	Rate
Diamonds	15%
Other precious stones	10%
Platinum	10%
Gold	LSM are charged a royalty of 5% whilst ASM are charge a rate of 1%
Other precious metals (Palladium, Rhodium, Ruthenium, Iridium and Silver)	4%
Base metals (Nickel, Copper and Cobalt)	2%
Coal bed methane	2%
Coal	1%

Source: ZIMRA

The royalties are charged ad-valorem, as a percentage of the total revenue generated from the selling of minerals. In 2009, the government introduced a presumptive tax on all informal businesses, including the ASM sector. Initially, the tax was at pegged at 5% of revenue and later revised to 2% in January 2011 and finally scrapped in 2014.

### 2.3 SUPPORT TO THE ASM SECTOR IN ZIMBABWE

The Government of Zimbabwe has been supporting the ASM sector in Zimbabwe through provision of credit and equipment in order to increase production especially gold production. The Reserve Bank of Zimbabwe through Fidelity Printers and Refinery's launched the Gold Development Fund which sought to assist ASM gold producers in the procurement of equipment and working capital.

In response to increase in the illicit trade and smuggling of gold to neighbouring countries the Reserve Bank of Zimbabwe through Fidelity Printers, which have a monopoly in purchasing of gold and silver produced in the country instituted a "No Questions Asked" policy towards artisanal mined gold. The government of Zimbabwe in 2014 introduced the Artisanal Mining permits (AMPs). The AMPs are free, issued at gold service centres, FPR sites, and licensed millers' offices. As long as they have an AMP, ASM gold producers can easily sell their gold to FPR; AMPs could mark a milestone in the formalization of ASM operatives as a form of licensing of artisanal miners (PACT; 2015). Furthermore through the Minerals Marketing Corporation of Zimbabwe (MMCZ) the government has been providing market channels for other the mineral products such chrome and have establish a special purpose company (AppleBridge) that assist ASM miners in the chrome mining sector market and sale their commodities

In the late 1980s and early 1990s the Shamva Mining Centre (SMC) was conceived, the centre served as a multi-functional service provider to respond to the stated needs of the small-scale gold miners'. The Centre's core function was to provide access, for small-scale gold miners, to efficient minerals processing. The centre also provided other services such as equipment hire and mining advice. The design and implementation of the SMC was based on providing a service for about 40 ASM mine sites<sup>12</sup>.

The Zimbabwe Mining and Smelting Company (ZIMASCO), a chrome mining and smelting company, used to have tributary agreements with miners in the local surrounding areas, and they used to assist the tribute holders identify high-grade ore bodies and sometimes also assist them with equipment and transport to transport the ores to their processing plants and pays tribute holders based on tonnage (of both ore and waste). In addition, the company leases out equipment for environmental rehabilitation.

<sup>12</sup><https://knowledge.uneca.org/ASM/zimbabwe>

ZIMASCO preferred the tribute system because compliance with statutory requirements was transferred to the tribute holder. The tribute holder pays fees for the Environmental Management Agency (EMA), fees for the National Social Security Authority (NSSA), and presumptive tax to the Zimbabwe Revenue Authority (ZIMRA). ZIMASCO would only cater for taxes payments, RDC levies, submit returns to the Ministry of mines and pays a royalty to ZIMRA (PACT; 2015)

### 2.4 SOCIAL ORGANISATION OF ASM SECTOR IN ZIMBABWE

The participation of miners' organizations in the regulatory frameworks and mining sector policies or programs is essential in the recognition of the artisanal and small scale mining sector. However it has been noted that miners who are mining illegally are more likely to stay away from local or national authorities rather than engage in any type of organisation, especially in countries where they face persecution, confiscation of their tools and/or fines. Organisation of the ASM workforce is generally encouraged to facilitate better communication between the state and miners, and to improve access to technology that is beyond the budgetary means of most individual miners or families (Centre for Development Studies; University of Wales Swansea)<sup>13</sup>. According to Skinner and Lund (1999) the functions of associations include establishing and defending legal rights; setting up effective channels for representation; raising members' profile; protecting their interests in policy processes; building leadership through empowering members, and providing members with benefits<sup>14</sup>.

It is important that organizations that purport to represent the interests of artisanal miners are voluntary have their inherent strengths and weakness that prevent them to fully raise awareness, thus there is need for these membership organisation to be diverse to meet the needs of the sector<sup>15</sup>. ASM membership organisation main roles is to serve as source of information and aid in issues related to the legal, fiscal, institutional and administrative framework of the sector, lobbying government and defend the interests of its members.

#### Zimbabwe Miners Federation

In Zimbabwe Artisanal and Small scale miners are organized under the auspice of the Zimbabwe Miners Federation which was a brainchild of the government through the Ministry of mines and mining development in 2003, with a mandate of growing the ASM sector. The Zimbabwe Miners Federation is made up of 24 affiliate membership organisation. The activities of the organisation is guided by a constitution which serves as the organisation code of conduct and also has a strong leadership, with 18 member executive including the president, two vice presidents, treasurer and secretary general. The activities of the ZMF are directed by a Secretary General and a Chief Executive officer who is responsible for the day to day operations of the organisation. With regards to funding of its operations the

<sup>13</sup><https://assets.publishing.service.gov.uk/media/57a08cd4e5274a31e0001498/C391.pdf>

<sup>14</sup>In King R S (2015)

<sup>15</sup><https://commdev.org/wp-content/uploads/2015/06/Analysis-stakeholders-formalization-artisanal-and-small-scale-gold-mining-sector-based-experiences-Latin-America-Africa-Asia.pdf>

organisation rely on fees from affiliate member organisation which have been highlighted as inadequate as some members do not pay in time or do not honor their dues at all. Stakeholder in the ASM sector highlighted that the organisation is self-funded and relies on contributions from its affiliate members however because of perceived lack of progress in representing miner's rights and grievances members have been demotivated to pay their subscriptions much to the detriment of the ZMF operations. The organisation receives no funding at all from government although benefiting from the use of government provided offices, however the organisation also benefit from the program specific funding from development partners which do not cover operational costs.

### **Efforts towards formalizing**

The ZMF have been engaged in some with the objective of gradually moving members and non-members towards formalization/regularization of their operations. It is estimated that there are between 500,000 and 1,5 million artisanal and small scale miners operating in Zimbabwe and of these only 16% are registered according to the Mines and Minerals regulation Act Chapter 21:05. whilst 84% remain unregistered. The Zimbabwe Miners Federation has managed to strengthen the regulatory environment for members as well as non-members, the organisation have been involved in the regularization and formalization of ASM sector in Zimbabwe. They have lobbied government to liberalize the trade in gold by allowing unregistered miners to sell gold to Fidelity Printers and Refineries using only their national identity documents however evidence from interview with artisanal miners shows that whilst pronouncements on No questions asked on gold trading are made there hasn't been much done in terms of registering the artisanal miners by fidelity refiners and printers. The involvement of ZMF affiliates in the mining sector policy have greatly improved regularization of the sector as government immensely benefit from the local knowledge resident in these associations<sup>16</sup>.

However some of the regional affiliate associations under the Zimbabwe Miners Federation are alleged to have strong political links which to their advantage make their voices heard whilst on the other hand this have implication in the execution of their functions as they can be used further political interest rather than the interest of the miners. Furthermore alignment with politicians can also act as a barrier to other miners who want to subscribe as members if they don't share the same political views with the leadership of the associations.

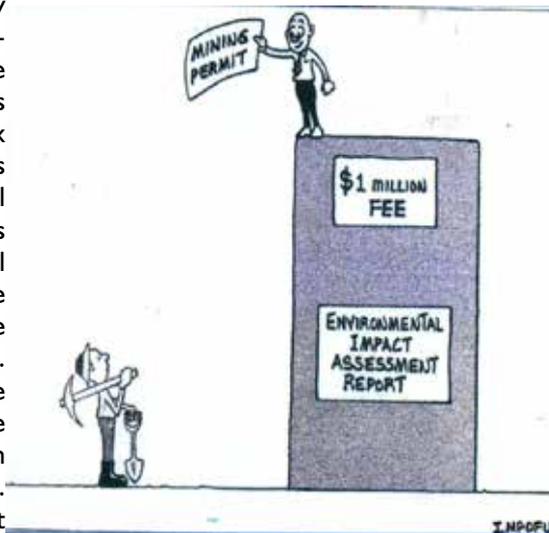
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<sup>16</sup>[http://www.artisanalmining.org/Repository/01/The\\_CASM\\_Files/CASM\\_Meetings\\_International/2009\\_Maputo\\_AGM/Presentations/CASMSept10AM\\_Session6\\_CASMAfrica\\_Env%26Social\\_TakavarashaZimbabwe.pdf](http://www.artisanalmining.org/Repository/01/The_CASM_Files/CASM_Meetings_International/2009_Maputo_AGM/Presentations/CASMSept10AM_Session6_CASMAfrica_Env%26Social_TakavarashaZimbabwe.pdf)

### 3 CONSTRAINTS TO FORMALIZATION BY ARTISANAL MINERS IN ZIMBABWE

The major constraints posing as barriers towards formalization and regularization of activities by the artisanal and some small scale miners in Zimbabwe has been identified as follows:

- Stringency of rules and (administrative, accounting, legal, financial, statistical & information and/ or time-related) costs to comply in the formal economy<sup>17</sup>.
- The Mines and Minerals Act does not differentiate between Large Scale mining activities and ASM, thus the legislation, is widely recognized as unfavorable to the ASM sector. Thus in Zimbabwe unaffordable licences and license requirements have made it difficult for ASM miners to remain legally compliant. According to the 2018 World Bank doing business report noted that in Zimbabwe it takes an estimated 9 procedures to start and register a business and cost an estimated 110% of income per capita. On the other hand the report also highlighted that with regards to registering property it takes 5 procedures over a period of 36days. Findings by Pact (2015) found that for potential miners in the ASM sector to operate legally would have to go through 13 procedures and that the process would take at least 158 days and cost US\$3,220. According to Spiegel (2015) EIA requirements by the Environmental Management Agency (EMA) for artisanal miners in Zimbabwe were prohibitively costly and most miners could not afford to pay the fees and this created significant formalization barriers.
- The tax and “non-tax” burden faced by formal agents net of the tax and “non-tax” payments made by agents in the informal sector. The mining sector is required to comply with a multiple tax and licensing requirements which places a burden on the operations of a small enterprises. Thus the requirements and procedures in mining sector legal framework tend to favour or recognize large scale mining at the expense of artisanal and small scale miners. Multiplicity of taxes and levies are major challenges faced by players in the mining sector in Zimbabwe in addition to uncoordinated government agencies. The different tax rates are not consistent across the various government agencies



<sup>17</sup>Exorbitant fees hinder small scale miners' growth, Newsday September 28, 2017, <https://www.newsday.co.zw/2017/09/exorbitant-fees-hinder-small-scale-miners-growth/>

- making it difficult to track and fully comply with the tax obligations<sup>18</sup>.
- The 2016 World Bank Doing Business report observed that it takes 242 hours per year and 51 payments to comply with Zimbabwe's tax laws and obligations. This resulted in high levels of non-compliance due to errors of commission and omission<sup>19</sup>.
  - Low benefits (both financial and non-financial) of being formal including (perceptions about) poor quality of public and social services.
  - Strong eligibility criteria to benefit from public and social services; The ASM sector in Zimbabwe faces financial challenges to mechanise their operations due to lack of viable business plans and collateral security required to access bank loans. For instance for artisanal miners to access the Fidelity Printers and Refineries Gold Support facility the set criteria and conditions include ownership of a mine claim, have delivery records with Fidelity printers and Refineries and some special case also accept movable property as collateral for loans below \$15,000. These requirements are beyond the reach of artisanal miners who do not have ownership of any mines claims, movable assets as well as records of delivery to fidelity printers as they rely on middle men for the sale of their gold.
  - Higher public utility rates for formal businesses; Lack of access to resources including land and credit in formal versus informal sector;
  - Low effective enforcement in the formal sector by authorities to ward off competition from the informal sector. Most informal artisanal miners are mining on other miners claims who in turn as the legitimate owners of the claims are penalized for the land degradation caused by the illegal mining activities. The poor effective enforcement of legitimate rights, entitlements and poor enforcement of regulation have led to most small scale businesses preferring to enter the informal economy due to avoiding complying with formal requirements and enjoy low costs of operations for them to remain competitive<sup>20</sup>
  - Lack of trust in governance institutions and their enforcement, high degree of corruption faced by formal versus informal sector. High levels of reported cases of corruption allegations in the licencing administration and perceived lack of clear communication between licencing authorities and players in the artisanal mining sector resulting in poor working relationships<sup>22</sup> For instance ASM are battling with issues of forfeiture of claims, on short notice by the mines ministry without any effort for redress. According to Spiegel (2015) the ever-increasing fee systems constitutes a clear form of "rent-seeking" from national government officials such that the licencing procedure is prolonged to frustrate the applicants.

<sup>18</sup> <http://www.enterprisesurveys.org/data/exploreeconomies/2016/zimbabwe#regulations-and-taxes--size>

<sup>19</sup> <http://www.doingbusiness.org/data/exploreeconomies/zimbabwe#paying-taxes>

<sup>20</sup> <http://www.doingbusiness.org/data/exploreeconomies/zimbabwe#enforcing-contracts>

<sup>21</sup> <http://www.enterprisesurveys.org/data/exploreeconomies/2016/zimbabwe#informality--size>

<sup>22</sup> <https://www.transparency.org/country/ZWE>

### Findings from fieldwork

- Noted that the majority of artisanal miners are operating without licenses due to the cost and time it takes to comply with regulatory requirements. Most artisanal miners are being driven into the mining ventures as a source of livelihood; hence they are also struggling to raise bus fare to travel from their homes to their mine workings hence cannot afford to raise the requisite licence fees.
- Low sensitization on the mining registration procedures among artisanal miners, with most of them highlighting that they only need the service of a registered prospector to register a claim, whom they said is too expensive to engage their services
- Artisanal miners are operating on other peoples claim both individual and corporates with or without permission. Were they are operating on someone else claim artisanal miners are expected to cede an agreed portion of their gross revenues to the claim owners. However some claim owners have not been honest in their agreements with the artisanal miners by changing the terms of agreement without notice resulting in artisanal miners working on other peoples claims illegally to avoid paying.
- Artisanal miners expressed concern on the existence of mafia like gangs in the mining sector known as '**Mbinga**' who controls the illegal gold mining sector. They highlighted that these groups are violent and will not hesitate to harm anyone who resists their directives. They determine who mines were and what quantities one mines and who buys gold in their areas. Furthermore these *Mbinga*'s are said to be sponsored by powerful individual and well-resourced gold smuggling syndicates. Hence if they get arrested for not possessing relevant documents they are released and continue their mining activities and they attributed this to perceived corruption and bureaucracy with the government system.
- Perceived vested interest by some law enforcement agencies in the activities of artisanal miners to the extent of sponsoring some with equipment as well as shielding them from abiding by regulatory requirements.
- The existence of the **Mbinga** have been identified as being a major driver of informality in that artisanal miners once they have discovered gold they will try to extract as much mineral ore as they can before a hostile takeover of their workings has been initiated .
- Whilst pronouncements on No questions asked on gold trading are made there hasn't been much done in terms of registering the miners.
- Furthermore the price discrepancies between the formal market prices and black market prices are driving artisanal miners to trade their gold on the parallel market. For instance Fidelity Printers and Refineries are paying prices below USD45 per gram which is paid 70% in the form of hard cash and 30% as electronic transfer, whilst black market buyers are paying USD50 in hard cash. Thus such disparities are driving informality in the gold sector, because unregistered miners do not have to submit production returns to the Ministry of Mines and Mining development who have to tally production with what have been sold to Fidelity Printers and Refineries.

## 4. BEST PRACTICES IN RECOGNIZING ARTISANAL MINING ACTIVITIES IN SELECTED COUNTRIES

Globally the ASM sector is a major employment generator and source of livelihood. According to the International Labour Organisation Fact Sheet, it is estimated that at least 13 million people worldwide are working in the ASM sector these support an additional 100 million people<sup>23</sup>. Faced with worst performing economies with fewer economic opportunities and diminishing rural livelihood choices, worsened by natural and man-made disasters the ASM sector is poised to grow further. The positive impacts of ASM on alleviating livelihoods are however, often clouded by negative impacts which include environmental damage, social ills, and poor health and safety records. Lack of adequate support or neglect of the ASM sector is a key contributory factor to the dark side of ASM (MMSD 2002; AU 2009). Thus this section will seek to discuss the main tenets of good practice in supporting activities of artisanal miners and scale miners in general geared towards recognising and formalising their activities in Zimbabwe.

### 4.1 ASM IN MALI

Gold and gemstone mining dominates the activities of the ASM sector in Mali. The government of Mali have put in place a robust regulatory framework to regulate activities of the ASM sector in Mali. After independence, the authorities enacted, the first major mining regulation in 1963 replacing the 1899 order. This was later replaced by the mining ordinance of 1970 (ordinance no. 34/CMLN of 1970) which allowed private investments in the mining sectors; this regulation had a specific provision recognising the activities of artisanal and small scale miners.

The country have a clear and defined definition of artisanal (traditional) and small-scale mining. The mining codes defines traditional (artisanal) mining as the exploitation of mineral substances using traditional techniques before the deposits is revealed whereas small-scale mining is permanent mining with a minimum of fixed facilities using semi-industrial or industrial techniques on a 'small' mine and based on prior revealing of a deposit (Keita 2001).

The activities of the ASM sector in Mali are governed by clearly defined social structures which follow family and village structures that have a set of customary rules of which violations are subject to sanctions within the social structures. Access to mining sites is open to all who accept and respect the regulations in force. According to Keita (2001) there are four main variants of work organization at ASM sites in Mali and these are as follows:

- Family-level organization: the family head retains and manages mining income.
- Informal groups: the mine belongs to the whole group and production is shared at the end of the day among all members according to the group's rules.

<sup>23</sup>Facts on Small Scale Mining; International Labour Organisation(ILO) [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_067582.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_067582.pdf)

## Pathway to Formalization of Artisanal Mining in Zimbabwe

- Cooperatives or associations: About 40-50 ASM workers from the same village organize themselves into a formal structure into which the community can invest to develop the project.
- Owner-worker arrangements: the owner injects capital for equipment and catering, and other operational costs. The workers (miners, diggers, washers) are paid a percentage of the production. For example washers (mainly women) at some sites are paid one unit out of every three units of mineral extracted.

The organizational variants above are within a customary set up that includes:

- The landowner (or Dugutigui) who is the heir of the village land.
- Owner of the site (or Damantigui) who is the central authority and chief decision maker of an ASM site appointed from among notables and landowners.
- Mine police (or Tomboloma) are group village youths who are in charge of peacekeeping, enforcing the customary regulations, arbitration of disputes and collaboration with the public administration. They represent the moral authority of the Damantigui.
- Organisers of ritual sacrifices: they perform rituals to protect ASM workers from evil spirits.
- Mechanics or blacksmiths: they are in charge of equipment repair and maintenance.
- Trader or gold buyer who purchases the gold produced on the site and arranges to buy other necessities needed at the site.

The 2012 Mining Code for Mali has the following provision and these establish how mining titles and how authorisation for mining activities for artisanal miners are to be issued:

- According to the Mining code authorisation for artisanal mining: may be issued by a local authority to an individual or a legal entity incorporated under Malian law. The authorisation will be granted for a period not exceeding three years, renewable by three years until depletion of reserves.
- Authorisation for small-scale mining: may be issued to a legal entity which is incorporated under Malian law and which has technical and financial capacity to carry out small-scale mining. A successful applicant will be granted by decree the authorisation to mine for up to four years, renewable by a further four years until depletion of reserves.

However ASM are recognised as seasonal activities, thus accordingly no ASM activities can be carried out during the rainy season from 1 June to 30 November of each year (Keita; 2001) to cut down on accidents due to carve-ins and to divert labour back to agriculture

## 4.2 ASM IN GHANA

In Ghana ASM gold operators are awarded licenses by the government to mine in a designated area not exceeding 12 hectares in size. The operator then employs 5 - 20 groups or of about 10 workers each for gold mining and processing. The groups retain two thirds of the output and the remaining one third goes to the operator. The workers use simple tools such as shovels, picks, wheelbarrows, sluice boxes and occasionally compressors and water pumps. A similar system obtains in the diamond mining sector where tributary plots within concessions of larger diamond companies and employ groups of workers who retain two

thirds of production as payment. The gold mining and buying licenses are granted only to Ghanaian nationals who are at least 18 years of age and are registered within a designated area. According to Ghana's Mining and Minerals Act (Act 703) of 2006, an ASM license granted to a person or group of persons shall be for an initial period of 5 years and renewable for such a period as determined by the minister. Small-scale miners are usually exempted from payment of taxes and royalties for the first three years of operation; however they are not exempted from paying local fees and taxes.

In the year 2015 the government of Ghana came up with an Artisanal and Small Scale Mining Framework, which identified activities of the ASM sub sector as well as coming up with strategies to engage the sector. The framework had six main objectives which sought to support and ensure long terms sustainability of the for the ASM sector in Ghana namely<sup>24</sup>;

- Regulate and assist ASMs to improve efficiency of their operations
- Ensure the use of appropriate, safe and affordable techniques in small-scale mining
- Ensure that relevant stakeholders enforce the law reserving small scale mining for Ghanaians
- Ensure sustainable use of resources (water, land, minerals) by promoting integrated land use planning, taking cognizance of ASMs
- Develop a more efficient taxation system for artisanal and small scale mining
- Discourage any form of gender biases

Furthermore the framework sought to improve access to finance for small-scale miners, including:, thus it sought assist ASM obtain fair market prices for their minerals by the control of illicit dealings and trading of minerals through appropriate licensing and providing necessary market information and training, facilitate access to finance, through co-operative savings, pooled equipment leasing arrangements and concessional lending schemes (with special support funding from both local and international sources); and assist in business skills training.

The ASM Framework also sought to encourage collaborative relationship between the ASM sectors and large scale mining companies as well as providing advice and support to small-scale miners on forming representative associations.

### 4.3 ASM IN TANZANIA

Tanzania is endowed with varieties of minerals amenable to both ASM and world class large scale mining. ASM in Tanzania dates back to the 1940's, and is mainly based on high value minerals such as gold and gemstones and, to a lesser extent, salt, limestone (aggregates and lime), kaolin, and gypsum (Dreschler 2002). The ASM sector accounts for approximately 10% of the country's gold production. The ASM sector has increasingly become an important poverty alleviation and livelihood strategy in Tanzania which has seen the number of ASM miners balloon from 150,000 in 1987 to over 700,000 in 2012 (UNEP 2012; Masanja 2013).

<sup>24</sup><https://knowledge.uneca.org/ASM/Ghana>

The ASM sector is also estimated to support an estimated 1.5million through upward and downward linkages<sup>25</sup>.

In the late 1980s, the government began to support new opportunities for small-scale mining communities by liberalising the mining and selling of gold and in the 1990s, the government developed a legal and policy framework for formally integrating small-scale mining into a national mineral development strategy via the Tanzanian Mining Policy of 1997 and the Mining Act of 1998 (UNEP 2012). Recent initiatives to support the ASM sector are enshrined in the Mining Law of 2010, informed in part by findings of a presidential mining sector review committee. The law, which stipulates that ASM is the preserve of Tanzanian citizens, has several key legislative thrusts that support the ASM sector (UNEP 2012).

- The ministry of mines in Tanzania have come up with simple system of granting Licenses to Small Scale Miners known as Primary Mining License (PML). The licenses are open to nationals of Tanzania. The licence costs an equivalent of USD50. By improving the Licensing system the number of PMLs Holders has increased from 7,000 in 2010 to more than 35,000 by 2016
- Designation of ASM areas: to reduce conflicts between the ASM and LSM (large scale mining) sectors, enhance equitability of mining permit allocation and create a more stable foundation for environmental and livelihood planning. At least 38 Areas (242,401 hectares) has been specifically demarcated for SSM
- Establishment of centres of excellence. The Ministry is in the process to establish eight centres of excellence where SSM will learn the technology and process their minerals.
- The government of Tanzania have been encouraging artisanal miners to form groups to facilitate networking, exchange of information and joint access to government subsidies. In this regard the government have been involving Federation of Miners Association of Tanzania (FEMATA) in the administration of grants, allocation of claims, stakeholder involvement the policy making process and changes to mining regulations.
- Decentralization of permitting: permitting was decentralized to Zone Mines Office level, making the system more efficient and integrating ASM sector into the local planning and administrative systems.
- Micro-finance policies: Banks, companies and microfinance institutions are encouraged to offer credit terms to the ASM sector. On its part the government introduced the Small-Scale Mining Development Revolving Fund to provide the ASM sector with loan facilities for geotechnical investigations and gold processing (Masanja 2013).
- Extension services - a phased approach to integration and capacity-building-The Tanzanian government offers grants; equipment hire/purchase centres; training and skills enhancement and making available geological data to ASM. Furthermore the government is also encouraging partnerships between the private sector and the ASM which have seen players in the ASM sector being assisted with geological information and working tools.

<sup>25</sup><https://knowledge.uneca.org/ASM/Tanzania>

4.4 ASM IN IVORY COAST

- The country’s main ASM products are gold, nickel, diamonds and coltan, other minerals such as manganese and silver are also produced. ASM activities are currently a preserve of nationals of Ivorian origin and in zones reserved by the government for the specific purposes of ASM activities. Artisanal activities are mainly centered around diamond and gold , diamonds were first discovered in in 1928, but exploitation only began in the 1940s. The mining of precious minerals resulted in an influx of miners, accompanied by increased migration activities hence it was outlawed in 1962<sup>26</sup>.
- In 1986, the government of Ivory Coast created 24 village councils in the *Séguéla* area, known as *Groupements Vocationels Cooperatifs* (GVCs) to license and administer the artisanal diamond mining. The *Société pour le Développement Minier en Cote d'Ivoire* (SODEMI), a state owned enterprise demarcated land earmarked for artisanal mining in each GVC into plots. However the state owned enterprise retained control of the remaining land with an eye to the possible resumption of industrial mining. A program of local content was also created under which holders of mining licenses must give priority to competent Ivorian companies, establish training programs for local companies and contribute to the development of the capacities of the mining administration.
- In 2013 the government of Ivory Coast sought to organise and regulate the sector. The objectives of the plan was to gradually bring informal ASM operators in the formal domain, through training, organising the sector in groups and to teach ASM operators new farming techniques. Thus the Ivorian government came up with an elaborate framework for the sector, that clearly spell out how the authority to mine is granted and the rights associated with the permission granted.

Table 3: ASM framework in Ivory Coast

<b>Issue</b>	Ministerial order to individuals of Ivorian nationality and cooperatives
<b>Rights</b>	Exclusive mining rights , except in cases of deposits requiring semi industrial or industrial methods and process of mining to which the holder is indemnified No chemicals or explosives No mining agriculture land without settlement
<b>Terms</b>	2 years renewable 25 hectares maximum Non transferable

<sup>26</sup> <https://knowledge.uneca.org/ASM/cotedivore>

## 5. RECOMMENDATIONS AND OPTIONS FOR FORMALIZING ARTISANAL MINING IN ZIMBABWE

An appropriate pathway that supports the transition of artisanal miners into the formal sector should ensure that it is characterised by more incentives and less penalties in order to ensure voluntary compliance. In order to achieve this, governments, in collaboration with stakeholders/ partners need to address known ASM key issues pragmatically. Thus to improve the transition to formalization relevant measures that need to be taken include: supporting community-based management initiatives, facilitating market access, Streamlining business registration and regulations ,providing business support services and Strengthening public–private partnerships<sup>27</sup>.

However according to WIEGO, formalization is not a one-time process that has a specified set of steps, rather they stressed that formalization should be seen as a gradual on-going process involving incremental steps and different dimensions leading towards varying degrees and types of formality thus formalization will not proceed quickly or automatically for all those who choose to formalize. WIEGO recommended that formalization of the informal economy can take different forms such as registration, taxation, organization and representation, legal and social protection, business incentives and support <sup>28</sup>. In line with Koroma S (2017), who stressed that since there is no one-size-fits-all approach to formalization of the informal sector, this study recommends the following pathways for transitioning artisanal mining activities into formally recognizable activity.

### 5.1 POLICY AND LEGISLATION APPROACHES TO FORMALIZATION

According to the African Minerals Development Centre (AMDC), the rights and obligations provided for in the ASM licensing category often make it difficult for artisanal mining sector to seek the regularisation and formalisation of their operations. A consistent policy regime is a prerequisite for a sustainable ASM sector which contributes to poverty alleviation and rural development, and is integrated into the formal economy (Hentschel et al. 2002; MMSD 2002). Some key tenets of such a policy, as envisaged by Hentschel et al. (2002), include:

- There is need to improve regulatory obstacles: that is differentiating between different mining types .Government policies and regulations ought to be reviewed with the objective of drawing the sector into the formal sphere.
- Harmonisation of government departments and other stakeholder institutions in the ASM sector policy administration and implementation. In Zimbabwe this is particularly important where a multiplicity of agencies separately seek to collect fees from, and regulate, ASM activities. Thus the policy and regulatory framework should have structured taxes that are responsive to the needs of ASM operators as well as incentivising compliance.

<sup>27</sup>Local (rural and urban) development strategies <http://library.fes.de/pdf-files/bueros/simbabwe/13714.pdf>

<sup>28</sup><http://www.wiego.org/informal-economy/rethinking-formalization-wiego-perspective>

- A transparent and appropriate legal framework. A good ASM policy must provide framework for legislation that is easily understood by people who participate in the ASM sector, with workable licensing categories with respect to tenure, duration and rights and obligations.

## 5.2 PARTNERSHIP-BASED APPROACHES TO FORMALIZATION

The lack of representation for the artisanal mining sector have in some case made it difficult for the private sector, government and development partners to cooperate and engage with the ASM sector as well as the drafting of policy responses that are responsive to the needs of the sector. Thus according to the African Minerals Development Centre (AMDC), there should be provisions to support the establishment or recognition of national associations of ASM so as to provide a platform for interface. The ASM policy should provide for opportunities for collaboration between ASM and LSM operations to encourage coexistence and minimizes conflicts, such policy could come in the form of a mining legislation as in Burundi in which the regulation requires direct relationships between buyers, commonly referred to as *comptoirs*, and artisanal miners. It requires all artisanal miners to be registered in associations and to demonstrate a long-term buying relationship to a Burundian *comptoir*. This legislation, whilst intended for greater transparency of the supply chain, has in effect forced artisanal associations into formalizing their activities through joining associations.

On the other hand the International Council on Mining and Metals (ICMM) came up with the mining together toolkit that seeks to guide the interaction between the ASM and LSM sector. Thus it focuses on the regularization/formalization; organisation of the ASM sector; segregation of concessions between ASM and LSM operations; establishment of ASM Department with LSM and provision of technical assistance<sup>29</sup>. Segregation of LSM mineral concessions to invite ASM activity onto the concession in designated areas which can't be mined by LSM companies.

Access to basic services, including technical assistance, donor funding and micro-credit can be difficult for ASM miners operating individually. Thus there is need to organize artisanal miners into cooperatives or associations so as to increase access to these services. Associations are usually voluntary organisation were people are united to meet their common economic, social and cultural needs and aspirations, through a jointly owned and democratically controlled enterprise". Associations and cooperatives plays a critical role in addressing other benefit issues raised in the previous section. In particular, the federation provides market access, and related to this, fairer pricing and timely payments.

<sup>29</sup>[http://www.artisanalmining.org/Repository/01/The\\_CASM\\_Files/CASM\\_Meetings\\_International/2009\\_Maputo\\_AGM/Presentations/CASMSept9PM\\_Session5\\_LSM-ASM\\_AnneMarieFleury%26LizWall.pdf](http://www.artisanalmining.org/Repository/01/The_CASM_Files/CASM_Meetings_International/2009_Maputo_AGM/Presentations/CASMSept9PM_Session5_LSM-ASM_AnneMarieFleury%26LizWall.pdf)

### 5.3 RIGHTS-BASED APPROACHES TO FORMALIZATION

Lack of incentives to legalise has been cited as one of the reason why artisanal miners choose to remain informal, the non-provision of benefits which should be associated with legalising activities. A supportive ASM regime should encourage and incentivise legalisation or formalisation of ASM. To this end governments should develop an objective, rights based and entitlement system that seeks to encourage artisanal mining activities in the formal economy. This approach should involve local authorities, community leaders and artisanal mining associations to come up with a framework community based regulation of artisanal mining activities.

Since Rural District Councils administer communal areas in Zimbabwe, were most of the artisanal mining activities takes place, it is imperative that the government can re-enact the provisions of Mining (alluvial gold) (Public Streams) regulations, (*Statutory Instrument 275 of 1991*) that gave the power to rural district councils to allocate and issue out permits to mine alluvial gold deposits within their jurisdiction accompanied with certain responsibility. In this way the government will be able to recognize and regulate activities of the artisanal miners through community management committees. The government needs to reinstate and expand the Communal Areas Management Programme for Indigenous Resources (CAMPFIRE) approach towards communal rights in the artisanal mining sector. CAMPFIRE relies on its practical appeal through establishing a unified policy which present a complete 'bundle of natural resource rights and responsibilities' to communities. The program has been successful in both management and prevention of environmental degradation practices. According to the Centre for Development Studies at the University of Wales Swansea locally -owned and driven projects have much better chances of survival if local stakeholders are involved in all stages of design and implementation. Participation encourages ownership which has implications in the facilitating process of dialogue and partnership (stakeholders with equal stake, sharing risk and rewards), rather than imposing solutions on recipient institutions/countries<sup>30</sup>.

Since Rural District Councils administer communal areas in Zimbabwe, and are a mechanism for the implementation of government's policy of sustainable use of natural resources in these areas were most of the artisanal mining activities takes place, it is imperative that the government can re-enact the provisions of Mining (alluvial gold) (Public Streams) regulations, (*Statutory Instrument 275 of 1991*) that gave the power to rural district councils to allocate and issue out permits to mine alluvial gold deposits within their jurisdiction accompanied with certain responsibility. In this way the government will be able to recognize and regulate activities of the artisanal miners through community level management.

Furthermore because women can be easily disposed of their working area in the artisanal mining activities by the patriarchal society granting them protection rights and title to mining

<sup>30</sup><https://assets.publishing.service.gov.uk/media/57a08cd4e5274a31e0001498/C391.pdf>

claims through formalizing and regularizing the informal mining sector it gives women power to make and participate in mining activities and thereby earning their own income. This gives women financial autonomy and power in household decision making<sup>31</sup>.

**Box 3: Communal Areas Management Programme for Indigenous Resources (CAMPFIRE)**

The CAMPFIRE framework established an innovative rural development strategy to compliment economic benefits from subsistence farming in the marginal districts of Zimbabwe. Economic benefits are generated through non consumptive and consumptive tourism, but especially safari hunting. CAMPFIRE's was established with the objectives to initiate a programme for the long term development, management, and sustainable utilization of natural resources in the Communal Areas; achieve management of resources by placing the custody and responsibility with the resident communities and allow communities to benefit directly from the exploitation of natural resources within the Communal Area. Thus since its inception, the CAMPFIRE program has largely been successful in the sustainable utilization of natural resources in the Communal Areas and placing the custody and responsibility with the resident communities.

The CAMPFIRE program depends on hunting to generate the economic benefits to local communities to supplement their subsistence farming. Elephants are the major species producing the revenue stream that creates these benefits. CAMPFIRE communities suffer most from elephant crop damage, so elephant hunting creates benefits that encourage the local communities to value the elephants instead of viewing them as a dangerous nuisance. However the challenge with CAMPFIRE approach is that communities in mineral rich areas don't know the quantum of the mineral reserves so as to quantify their potential benefits from mining activities.

<https://firstforwildlife.com/2015/08/18/the-campfire-program-in-zimbabwe/>

#### 5.4 INCENTIVES AND COMPLIANCE-BASED APPROACHES TO FORMALIZATION

In order to encourage the transition of the artisanal mining from the informal sector to the formal sector the government should consider coming up with a vibrant ASM support system that provides incentives whilst at the same time ensuring compliance with the country's regulatory system. Thus the ASM support system should consider facilitating access to markets, access to finance as well as recognizing the need for skills in development by the ASM operators. In Sierra Leona the government established an Extension Services Unit within the mines ministry to provide extension services to artisanal diamond miners. The extension services include assisting artisanal miners in the proper identification and selection of reserve areas, the use of modern production and safe mining techniques.

<sup>31</sup><https://www.reuters.com/article/us-brottem-mining-commentary/commentary-women-miners-shouldnt-be-seen-as-victims-idUSKCN1GJ29P>

The African Minerals Development Centre (AMDC) proposed a support triangle for the ASM sector, in response to some key ASM challenges within the scope of the AMV's need to address them. These challenges include lack of institutional, technical, financial and regulatory support. Through the support triangle, the ASM sector can be assisted to transition from the informal sector to the formal sector thereby transforming it into an engine for sustainable development, particularly in rural areas<sup>32</sup>. The three pillars of the support triangle are as follows:

Figure 2: ASM Support Triangle



Source: UNECA<sup>33</sup>

### Technical and Social support

According to Hentschel et al. (2002), most ASM problems are technical and require appropriate technical solutions implemented in an integral approach. The technical solutions have to be commensurate with the economic potential of the target group and need to be accompanied by education and training, and be affordably replicable. The technical support should technology transfer, capacity building and awareness on environmental issues. However support to the ASM can also be social support through the provision of health and social insurance covers is likely to become an important yardstick against which to judge how fairly a country treats its ASM workforce. The social security schemes need to be adapted to the specificities of informal economy groups and should be used in combination. Such measures include: the gradual extension of social insurance schemes and the introduction of special arrangements for artisanal miners. These initiatives will force artisanal miners to regularize and formalize their operations in order to benefit from public initiatives. For

<sup>32</sup><https://knowledge.uneca.org/ASM/TGAST>

<sup>33</sup>ibid

instance artisanal miners who have a long history of delivering gold to Fidelity Printers and Refiners (FPR) are automatically covered by NSSA under the Workers' Compensation Insurance Fund such that in the event of an accident artisanal mine workers are covered.

### Minerals marketing

Access to markets is one of the challenges facing the ASM sector includes lack of direct markets (going through intermediaries), stringent market regulations and illicit trading (largely due to poor government policies). The use of associations helps artisanal miner's access to markets as well as encouraging them to regularise / formalise their operations. Giving better and fair trading terms and demonstrating long-term buying relationship with associations will encourage and incentivise artisanal miners to be registered in associations.

### Access to credit and finance

The lack of access to credit by the ASM sector is considered a major impediment to the sector's growth and sustainability. Many banks consider loans to ASM to be high-risk, which is largely true because the sector generally has no capacity to provide bankable mineral resources estimates. Unfortunately the challenge is cyclic because it is not cheap to hire experts to conduct bankable resources estimates. There is therefore need for technical and financial support to the ASM sector before projects can be regarded bankable and therefore standing a chance of getting loan approvals from banks. In Zimbabwe, traditional banks are generally considered less supportive to the ASM sector compared to micro-finance institutions that are prepared to take risks of potentially bad loans.

Table 4: Reform Matrix

What needs to change	By Who
Come up with an inclusive definition of artisanal miners that is inclusive and takes into account the different characteristics and scale of minerals being mined	Ministry of Mines and mining development/ Zimbabwe Miners Federation (ZMF)
Simplify the administrative process and procedures related to complying with requirements for formalisation. Process that favour or recognize activities of artisanal and small scale miners	Ministry of Mines and Mining Development Ministry of Local Government, Rural District Councils
Reduce the burden of burden tax compliance faced by formal agents. Reduce the multiplicity of taxes have a unified tax system for the artisanal and small scale miners The different tax rates are not consistent across the various government agencies making it difficult to track and fully comply with the tax obligations. Simplify the costs / reduce the costs of acquiring licenses and permits.	Ministry of Mines and Mining Development Ministry of Local Government, Rural District Councils, Environmental Management Agency (EMA)
There is need for government replicate the tributary agreement in the delivering of benefits and rights to accompany the formalising (both financial and non-financial) of being formal including (perceptions about) poor quality of public and social services. Benefits such as access to credit, access to medical insurance and life assurance.	Ministry of Mines and Mining Development, Office of the President and Cabinet
Strengthening ASM membership organisation to offer more direct benefits to the artisanal miners to incentivise them to register as members	Zimbabwe Miners Federation (ZMF)
Simplify the eligibility criteria to benefit from public and social services for the ASM sector in Zimbabwe.	Ministry of Mines and mining development
Increase enforcement in the formal sector by authorities to ward off competition from the informal sector. The poor effective enforcement of legitimate rights, entitlements and poor enforcement of regulation have led to most small scale businesses preferring to enter the informal economy due to avoiding complying with formal requirements and enjoy low costs of operations for them to remain competitive.	Ministry of Mines and Mining Development Ministry of Local Government, Rural District Councils, Environmental Management Agency (EMA)

## 6. CONCLUSION

There are a number of good practices that can be adopted to formalize and regularize artisanal mining activities in Zimbabwe and these include:

- Supporting broad programmes of regulatory reform to eliminate barriers of most concern to enterprises at the local level, creation of business-friendly regulatory environment and creation of one stop shops for business registration and rationalizing business registration and licensing regime by deploying user friendly IT-based systems.
- Partnerships are important in facilitating transition to formalization as indeed some initiatives may require huge outlay of resources and expertise to implement.
- Incentives that are tailored made so that artisanal miners can formalize, focus on taxation should be avoided in the formalization debate as informal businesses are reluctant to formalize if they fear being exposed to paying taxes.
- Initiate dialogue with participants in the artisanal mining sector, in order to understand their constraints (including resistance to formalization) and generate buy-in.
- Tackling corruption is likely to have a significant impact on restoring confidence of artisanal mining in the public administration system increasing their willingness to formalize.

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