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ILLEGAL MINING IN THE QUARRY INDUSTRY

Who is ASPASA?

The Aggregate and Sand Producers Association of Southern Africa (ASPASA) is a voluntary membership, private sector producers association.

Aspasa represents its members in regard to policy positions, through various organs of the National and Provincial Governments. Contact and interactions also takes place with other relevant policy-making and opinion - forming entities. Contact is kept with other similar associations overseas.

To achieve the industry's needs properly, regulation and control is required with particular emphasis on:

The support that Aspasa gives its members is on the strategic and advisory sides of business. A great deal of work is put into promoting the industry and the association to the outside world, but also to ensure interaction among other companies/producers in the industry. Consultation and co-operation within Aspasa occurs on a voluntarily basis and does not encroach on the managerial prerogative of individual companies.

Aspasa is striving for clarity and certain principles to be developed to ensure the sustainability of the industry:

- A sound and comprehensive regulator authority
- A financially sound and sustainable industry
- An environmentally responsible industry
- An empowering and developing industry
- An industry that embraces the transformation imperatives

ILLEGAL MINING IN THE QUARRY INDUSTRY

THE ISSUE OF ILLEGAL MINING

- Illegal mining is a criminal activity. There is a specific prohibition in the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) on mining without the required statutory authorisation (section 5(4)). It usually also involves at least trespassing and theft.
- As far as is known, South Africa is about the only country in the world where it is illegal to be in possession of unwrought (unrefined or partly refined) precious metal ore (platinum group metals [PGM's] and gold bearing material [GBM]) without the required statutory authorisation. South Africa is also one of the few countries in the world where it is considered to be a criminal offence to be in possession of rough diamonds without the applicable license.
- Illegal miners are often heavily armed, have explosives, and set ambushes and booby traps for employees, security and rival groups of illegal miners.
- There is an increasing level of violence, gang war and intimidation by illegal miners.
- The growth in illegal mining, which is now happening on a large scale nationally, could be attributed to the combination of a difficult socio-economic climate and limited resources at the disposal of law enforcement agencies, such as police, immigration, border controls and prosecuting authorities.
- Poverty, unemployment and large numbers of illegal immigrants in South Africa, are contributing to higher crime levels in general, including in illegal mining. About 70% of all arrested illegal miners are illegal immigrants, mostly from Lesotho, Mozambique and Zimbabwe.
- Illegal mining activities and organised crime are inter-related. Very often, illegal mining is spearheaded by illegal mining syndicates operating in South Africa. These syndicates are professionally run and very well organised.
- Illegal mining is not only taking place in abandoned mines but happens in operating mines as well. Sometimes formal mine employees engage in illegal activities, either while at work (abandoning their working places) or during their leave periods. Sometimes the employees merely collude with the illegal miners and aid them in their endeavours, very often making use of this as an alternative income stream.

IMPACT OF ILLEGAL MINING GOES BEYOND COST OF THEFT

- Illegal mining has a serious detrimental financial impact on the state, employees, companies, the mining sector and the country because of loss of revenue, taxes, employment opportunities, capital expenditure, exports, foreign exchange earnings, procurement, etc. It also presents a serious risk to the sustainability of the industry and its ability to contribute to a meaningful future for all South Africans.
- Mining companies have to spend a significant amount of time and money on security.
- Illegal miners present a major risk to themselves and to the health and safety of the employees of legal mining operations, often threatening them and their families to assist in the crime. The illegal miners also steal explosives, diesel, copper cables and other equipment from mines and make illegal electricity connections from the mine's electricity infrastructure.
- Illegal mining destroys the social fabric of mining communities because of, amongst others: the bribery of workers to gain access to mines and to secure food and other supplies; the threats and violence against workers and management; and the high number of illegal miners in the communities around the mines.
- Illegal mining leads to other criminal activities in surrounding communities, such as prostitution, substance abuse and illegal shebeens.
- Illegal mining activities threaten the viability of the mining companies' mine closure efforts.
- Business and production are disrupted due to the theft of copper cable or damage to underground workings (such as ventilation, lighting, pumps etc).

ILLEGAL MINING IN THE QUARRY INDUSTRY

- The company carries a significant cost for repair and ongoing maintenance, and there is risk to local communities (especially children) and livestock, where perimeter fences are broken by illegal miners to gain access to old mine shafts and tailings dumps.

SOME LEGISLATIVE BACKGROUND

- In order to determine statutory liability for health and safety obligations at mines one should distinguish between three classes of mines: a) a mine that is lawfully being worked; b) a mine that is not being worked but in respect of which no closure certificate has been issued; and c) a mine that is not being worked and in respect of which a closure certificate has been issued and a mine placed under liquidation.
- Section 2 of the Mine Health and Safety Act (MHSA) obliges the employer (the mineral right holder) of a mine which is being worked to ensure, as far as *reasonably practicable*, that the *mine* is designed, constructed and equipped to provide conditions for safe operation and a *healthy* working environment; and commissioned, operated, maintained and decommissioned in such a way that *employees* can perform their work without endangering the *health* and *safety* of themselves or of any other person.
- Section 2 of the MHSA also requires the employer of a mine which is not being worked and in respect of which a closure certificated has not been issued under the MPRDA to take reasonable steps to continuously prevent injuries, ill-health, loss of life or damage of any kind from occurring at or because of the *mine*.
- Section 43 of the MPRDA requires the holder of a mining right to apply for a closure certificate upon, amongst others, the lapsing, abandonment or cancellation of the right. A closure certificate is only issued once the holder's obligations in relation to environmental, health and safety liabilities have been complied with. It entails a cumbersome process to obtain and is not easily issued by the DMR.
- So-called "abandoned mines" mines could fall into one of two categories, i.e. those in respect of which closure certificates have been issued and those in respect of which closure certificates have not been issued. Technically in the case of the latter, the mineral right holder remains responsible under section 2 of the MHSA "to take reasonable steps to continuously prevent injuries, ill-health, loss of life or damage of any kind from occurring at or because of the *mine*". However, in practice this responsibility is usually pick up by the state as the holder cannot be found or has insufficient funds to perform its obligations (sometimes the mine is under liquidation). Further, the obligation is only "to take reasonable steps", which are often insufficient to prevent or deter illegal miners, as they will use all available means (explosives, bribery, violence, etc) to gain access to minerals and retrieve them.
- In South Africa the state is the custodian of all minerals and often the mineral right holder is not the landowner. In such cases there can be confusion about the different responsibilities of the land owner and mineral holder. The landowner, where it is in control of the land, would still have a common law obligation to take reasonable steps to prevent reasonably foreseeable damage being caused to anyone on its land.

A COLLABORATIVE APPROACH

Until all the socio-economic factors contributing to illegal mining (and other crimes) are addressed, we will be addressing only the symptoms. In addition, the whole legal enforcement system needs to be addressed, not only from a socio-economic point of view, but also in terms of policing, prosecution, immigration and border control.

ILLEGAL MINING IN THE QUARRY INDUSTRY

It has long ago been recognised that the only way to deal with the problem is to focus on both the supply and demand side of illegal mining.

Various forums have been established to address the different challenges and these should be used and strengthened where needed rather than duplicating efforts.

State involvement is not always optimal because of shortage of human and financial resources, overlapping jurisdictions and slow decision and implementation processes.

LOOKING AHEAD

No single stakeholder can address the challenge of illegal mining on its own – collaboration is key. The industry, individually and through ASPASA, remains committed to working with other stakeholders to address this serious challenge.

Please forward all illegal Mining details to ASPASA. Remember to supply detail of where and how to get there.

ASPASA does not divulge complaints details.

Regards

NICO PIENAAR
DIRECTOR