



December 6, 2011

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RE: Summary of comments on the document entitled “Analysis of formalization approaches in the artisanal and small-scale gold mining sector based on experiences in Latin America, Africa and Asia: Summary for Policymakers.”

Dear Brenda,

Thank you for the opportunity to comment on the document entitled: **“Analysis of formalization approaches in the artisanal and small-scale gold mining sector based on experiences in Latin America, Africa and Asia: Summary for Policymakers.”**

We are encouraged to see UNEP providing information to policy makers on this important topic. Formalization can be an important tool for improving the environmental and social performance of the ASGM sector, including reducing mercury use. Ensuring that miners have clear rights and responsibilities, and providing needed institutional support to the sector, can encourage miners to make longer term investments in improving practices. Moreover, formalizing ASGM can also help combat the culture of corruption that exists in some places in the sector. We hope that having a document that illuminates the process will encourage more governments and other interested stakeholders to undertake formalization initiatives.

Below is a summary of our main comments on the referenced document. We have also attached a version of the document with these comments, as well as additional suggestions for additions and edits, noted in “track changes” mode.

General comments:

While recognizing the need for the document to be brief, there are several places in the document that would benefit from concrete examples of which governments and how these governments have successfully addressed the various issues raised regarding the formalization process. Even brief (one or two sentence) comments, with examples of how governments have handled particularly challenging issues and what were their positive experiences, would be helpful.

As another possible (or complementary) approach, the document could provide some summary appendices, which describe (for example in brief table form) how the countries discussed in the case

studies have addressed some of the major formalization issues. At a minimum, this summary document should reference the case studies, and direct interested readers to them for further country-specific examples.

The summary should have more an explanation of the benefits of formalization, with special emphasis on how it can lead to better environmental practices and less mercury use, which is the focus of this exercise. It could also be helpful to identify the most successful approaches as a starting place for other countries that are just starting the process to consider. We have included recommended language for the introductory section in this regard (see “track changes” comments on the text), but this kind of language could be added throughout the document where appropriate.

Throughout the document the authors will refer to certain facts to be applicable globally or of its wide acceptance or usage. Some readers may find confusing the factual reference or conclusion to the global application of certain practices, when the formalization document only focuses on certain case study areas. It would be helpful if the authors indicate their references when citing facts that have broad application beyond the case study areas or be specific as to which country/ies the specific observation or facts apply. We have noted these in track changes or comments in the document.

We also note that the issue of corruption needs to be mentioned somewhere in the document. Certain actors in the SSM sector take advantage of the "illegal" or "informal" nature of the sector, thus breeding a vicious cycle of corruption. It also forces a status-quo of "informality" on the sector. Government support and initiatives for formalization of the sector will be greatly beneficial not just for the miners but for all legitimate stakeholders as well.

Moreover, formalization must not be seen as simply a license for miners to mine. Inherent in formalization is the quid pro quo between government and miners, that in order for the government to accord the formal recognition to the sector, the sector must in turn be prepared to be held accountable by the government. Thus, following environmental rules, paying of taxes, and other areas observed by formal industries must be equally expected from the sector as well.

Another broad item worth linking with formalization is the area of development. With formalization, governments can finally be in a position to determine the path of development it wishes to follow because it can engage with a formal ASGM sector. The establishment of key indicators for development through consultative processes with miners and the community, activities to take towards development, etc. will now be developed through active, open, and transparent participation of miners and representatives.

Finally, in some places the document identifies certain challenging issues in the ASGM sector without offering potential solutions or examples of how the issues have been managed by the countries with formalization experience. Such solutions or examples should be added (briefly). We have noted this in our “track changes” comments on the text.

A final note regarding the document formatting: when particular documents are referenced, it may be useful to include a web link to the documents, as an aid to the reader, rather than just including the reference alone.

Specific comments:

Section IIA Definition of ASGM Activities:

This section notes: “From a national public policy perspective and especially for regulatory purposes, a definition is fundamentally important to distinguish ASGM from other mining activities. “ This statement needs to be explained. Why is the definition important? (eg because the definition will dictate to whom the law is applied, and thus will allow different, appropriate levels of control for different types of activity.)

Box 2:

This box should be explicitly organized around the four considerations for mining titles that precede it:

- Designating specific areas for ASG mining activity;
- Duration and renewal of mining titles;
- Persons permitted to undertake ASGM activities; and
- Transfer of rights and mining titles upgrades.

One element of the box reads: “The definition and size of mining area should be treated as an instrument of public policy that can have positive or negative economic impacts on the operations, on the stability of the people that work in the operations, and on the social fabric of the local community.” The meaning of this statement will not be self-evident to most readers. In what way should it be used as an instrument of public policy? Please explain or give an example. Also, under which of the four headings noted above should this item be placed (e.g., designating specific areas)?

On the element “Persons Permitted”: We are conscious that large-scale gold mining companies have and can pose as small-scale gold mining associations or entities to take advantage of legal requirements. Thus, in elaborating what entities can be entitled to undertake ASGM activities it is necessary to caution government to ensure that as they open the classification of entities who can engage in ASGM, that these entities not result in shell companies of large mining corporations.

The last element of the box reads “Transfer and upgrading of mining titles through the regulatory framework is essential to create the legal conditions for better management of mining operations” It is not obvious why this is the case. An explanation would help.

The document may benefit from an appendix to this section that summarizes minimum requirements for a mining title (or summarizes what is typically required in the countries where the case studies were conducted).

Box 3

The statement “Environmental impact assessment (EIA), management plans, and requirements for attribution of environmental licenses should take into consideration the negative impacts that different sized operations generate” is not clear. Does it mean that the requirements should consider the idea that different sizes and types of operations pose different types of environmental threats? While it may well be the case that different operations pose different threats, the threat is not necessarily a function of size. For example, river dredging has terrible impacts even for small dredges. Small operations that perform whole ore amalgamation may use more mercury than larger operations that perform concentrate amalgamation. Also mines in protected areas may also pose a great environmental threat regardless of size. Thus, this statement should be revised.

Regarding the EIA requirement, it may be worth a brief comment about the impracticality of ASGM miners performing full scale EIAs, and the likely need to scale this requirement for ASGM without sacrificing environmental protection (as recommended with the environmental requirements in the license).

Section II.B. iii. Pollution control, bans and restriction measures:

This section describes measures to control pollution from ASGM. Ordinarily these kinds of pollution control measures should adhere to the “Polluter Pays Principle” and hold operations accountable for cleaning up any contamination they cause. As a practical matter, ASGM miners will have limited resources in this regard, so the need for prevention – that is, helping miners transition away from mercury use/release in the first place – is especially critical, and this should be noted.

Section II.B. iv. Regulating the sale of ASGM production:

This section notes important issues with ASGM gold trade but does not provide any solutions, recommendations or examples of how these issues have been addressed in some countries. What is the recommendation for governments here? Also some comments about government policies that have been tested, such as paying above spot price for gold, should be noted here.

Section II.B.v. Rehabilitation and mine closure

Formalization must not be simply taken as a license for miners to mine. It is also important that formalization acknowledge the equal requirement on miners to be accountable. Thus, rehabilitation of mines, decontamination of specified areas needs to be incorporated into the discussion. Creation of a trust fund from a portion of mining proceeds can be set up to address issues of rehabilitation and decontamination for instance.

Section II. C.

This section needs a concrete example of an economic instrument (are there any examples from the case studies?)

Section III:

This section notes “The general lack of capacity of government mining and environmental institutions, aggravated by the heavy public management burden required by the ASGM sector, affects the central administration as much as the provincial and local levels. “

What are the recommendations for addressing this problem? More resources? Simplification/less administrative burden? Both?

Thank you again for the opportunity to comment. Please direct any questions about these comments o Susan Keane at skeane@nrdc.org.