

# **LEGALIZATION GUIDE FOR ARTISANAL AND SMALL SCALE MINING (ASM) DRAFT FOR DISCUSSION**

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## 1. ABOUT THIS GUIDE

### *The Vision*

The Quirama vision<sup>1</sup> provides a very important and basic principle concerning legalization of Artisanal and Small Scale Mining (ASM), as follows,

*“The legalization of ASM is a fundamental and necessary condition but not enough to achieve socially and environmentally responsible mining”.*

The Quirama legalization statement continues and defines the consequences of this principle for ARM’s initiatives,

*“Only the gold production from legal operations can be certified as fair trade”.*

Legalization, as a process to obtain the necessary regulatory authorizations to conduct a mining operation, is a precondition for the legitimacy and stability of ASM. Without it no real progress can be achieved because the right of an ASM mining operation to exist can always be questioned. With this uncertainty and insecurity, the consequence is a sector that is based upon and operates with an economic and short-term technical vision and rationale. The result for the operation is typically minimum investment, extraction of only the easiest and richest parts of the mineral deposit and the tendency to move on as soon as possible to the next available and most promising mineral deposit, with all the social and environmental implications of this approach. Many of the problematic characteristics commonly associated with ASM are in fact rooted in the marginalization of this sector as a result of the existing barriers associated with legalization.

Legalization is not an impossible task. On the contrary, it is a desirable and pragmatic approach to a sustainable and responsible ASM sector.

If it is true that legalization is a fundamental condition towards an environmentally and socially responsible ASM sector, it is also true that the majority of ASM operations are still in a state of illegality despite their economic and social contributions at the local level in the majority of developing countries in Asia, Africa and Latin America.

There are different reasons that can explain the situation of illegality or informality of this sector, including: the lack of understanding in regulatory terms of the differences between Large Scale Mining (LSM)<sup>2</sup> and ASM; the inappropriate existing regulatory frameworks for ASM; negative

<sup>1</sup> *The Golden Vein: A Guide to Responsible ASM*. ARM Series on Responsible ASM No.1. Lima, 2007. ASM’s Quirama vision was developed by the members of RESPOMIN, and is the foundation of ARM’s mission and programs. RESPOMIN – Latin American ASM Network that was financed by CYTED and helped to create the foundation of the ARM initiative.

<sup>2</sup> Large Scale Mining (LSM) is used here as a synonym of industrial mining and also includes medium size mining operations.

preconceptions about ASM, and; the difficulty to regulate ASM in particular situations (e.g. in ‘gold rush’ situations or where there is alluvial mining in river banks, among others).

The list of reasons that can explain the ongoing illegality of the ASM sector is long and diverse and each country has its own challenges, but the reasons do not change the fact that legalization is not an impossible task. On the contrary, it is a desirable and pragmatic approach to a sustainable and responsible ASM sector.

This perspective is fundamental to ARM’s position on the sector and it has explicit implications for ARM’s mission,

*“Where possible, ARM will provide support to national governments to promote better policies for ASM organizations that are interested to commit to the standards of fair trade”.*

This guide is one example of ARM’s contribution to this important and necessary process of ASM legalization.

### ***The Objective***

The objective of this document is to provide guidelines that will stimulate the development and the improvement of public policy and legal frameworks for ASM for all actors who are directly or indirectly involved with the sector and are interested in the subject of ASM legalization.

The Guide is not intended to be a ‘recipe’ for ASM legalization nor does it promote a particular model, because the legalization of ASM (or any other sector) is first of all a socio-cultural process. This means that the effectiveness of a particular ASM legal framework will depend on its ability to address a number of factors including, a) the specifics of the ASM reality in the country, b) the socio-cultural context of the society and or group(s) involved and, c) the legitimate interests of relevant actors in the mining sector.

This document will address guidelines for two of the main dimensions of the legalization of ASM namely, for the process of legalization and the attribution of mining and environmental licenses. The reason for choosing only two of the dimensions of ASM was to produce a “pilot guide” that, hopefully, will show the potential of this kind of tool to contribute to a new way of thinking about ASM legalization. We expect that subsequent development of this guide will be undertaken to address other dimensions of legalization such as health and safety, cleaner technology, access to credit and taxation, etc.

### ***An invitation to contribute to this guide***

This guide summarizes the experience of the author on the subject of legalization of ASM,

but it also incorporates ideas and recommendations obtained in meetings and workshops promoted by the RESPOMIN network and ARM's pilot projects<sup>3</sup> experiences in public policy and legalization of ASM.

The idea is to consider this guide a work in progress that should be improved with ongoing review.

All these contributions were very important to the development of this first draft, but it is understood that the guide can benefit from a deeper collaborative review process that involves the ARM pilot projects and relevant actors from other countries and continents.

The idea is to consider this guide a work in progress that should be improved with participation of key ASM actors. To achieve this objective the document will be submitted to a process of review which includes, a) being available on ARM's website, b) selecting a group of organizations and individuals from the ARM network and inviting them to participate in the review, and c) inviting ARM's pilot projects in Latin America and Africa and their respective national networks to further contribute with their experiences.

This review process will guarantee that the final product includes the experience of ASM actors, in particular the miners and their associations from different countries, who can bring valuable lessons related to the implementation of the existing legal frameworks.

The importance of including the experience of diverse actors is crucial for a document that is intended to be a guide for action and an incentive to miners, civil society organizations and governments to engage in this complex but essential process of legalization and formalization of ASM.

## 2. GUIDELINES FOR THE PROCESS OF LEGALIZATION

For the legalization of ASM it is important to understand legalization as a process, not simple a regulatory fact. This process has several cross-cutting dimensions. The importance of this process resides in three interconnecting characteristics of ASM legalization: the complexity and diversity of the sector; the extent of the informality or illegality of the sector in the ASM countries, and; the fact that the "solution(s)" to resolving the situation of illegality require simultaneously

Legalization is only one component of a larger vision and strategy for ASM formalization that integrates social, environmental, labor, health and safety, economic, commercial, gender, organizational and technical dimensions.

<sup>3</sup> ARM's pilots are mining operations selected by ARM to receive support through capacity building to meet the Fairtrade and Fairmined Standards. At the present, ARM has nine pilots in Colombia, Ecuador, Bolivia and Peru and is expanding to Africa. For more information about the pilots, standards and ARM activities please consult ARM's website: <http://www.communitymining.org>

addressing diverse fundamental challenges that prevent many ASM operations from being able to become legalized. The integrated nature of these dimensions is very often not well considered.

A fundamental principle on which this guide is built is that the process itself is something that deserves careful attention, as it will be central to the success of ASM legalization objectives. This section outlines the primary considerations and guidelines for undertaking this cross-cutting process for legalization.

### ***Guideline 1: ASM legalization is a process that is integrated into a larger process of formalization***

As noted above, the legalization of ASM is a necessary step and a precondition for any serious initiative towards ASM improvement – environmentally, socially and economically. That said, legalization has a greater chance to succeed if it is integrated into a broader process of ASM formalization and is part of a country’s economic development plans and international commitments (e.g. implementation of Agenda 21, poverty alleviation actions, mercury abatement, etc.).

This approach also implies that legalization is only one component of a larger vision and strategy for ASM formalization that integrates social, environmental, labor, health and safety, economic, commercial, gender, organizational and technical dimensions.

These different levels of integration of public policy will create better conditions in which ASM can operate, grow and improve. They will contribute to the kind of stable long term environment fundamental to transforming ASM into a sustainable and responsible activity.

To achieve this level of integration it will be necessary to have coordination and cooperation among governmental, non-governmental institutions and ASM mining organization at all levels of the country.

### ***Guideline 2: An integrated ASM legal strategy is necessary***

The process of legalization includes different dimensions and components (i.e. mining licenses, environmental licenses, evaluation and management of environmental and social impacts, taxation and fees, access to credit and financial support, development of technology and transfer of technology, health and safety, access to markets, etc.) and therefore different disciplines of law (environmental law, mining law, commercial law and tax law, etc.)

A better and faster move towards legalization can be achieved if regulations are based on a coordinated legal strategy designed for ASM.

A better and faster move towards legalization can be achieved if these regulations are based on a coordinated legal strategy designed for ASM. Regardless of the particular legal discipline, each legal act promulgated within the strategy should contribute to and support the same vision and long term objectives.

***Guideline 3: The different ASM stakeholders, particularly the miners, must contribute to the process of development of public policy and regulatory framework***

The success of the development of ASM legislation depends on understanding the ASM phenomenon - its similarities and differences with other mining activities. It must also recognize and address the diversity of interests and the potential conflict of interests among different mining sub-sectors. This means that the involvement of various ASM stakeholders (miners' organizations and associations, mining industry associations, environmental organizations and other civil society organizations) in the elaboration of the regulation is a large part of the successful path towards realistic legislation that respects the diversity and complexity of the sector.

The involvement of relevant stakeholders of ASM in the development of the legal framework not only creates political commitment towards ASM being recognized as a legitimate economic mining activity, but also creates better political conditions to address the difficult issues around resource competition with the mining sector and other economic sectors. Additionally, the process of participation has the potential to generate a constructive and creative exchange of ideas among the different stakeholders.

***Guideline 4: The implementation of an ASM regulatory framework needs to involve ongoing monitoring and improvements***

As a general principle, all regulation should be monitored towards the objective of enforcement. Independent of this function, in the case of ASM the monitoring can be specifically considered as an instrument for improvement of the ASM framework.

Given that ASM is a sector that has a longstanding history of different kinds of difficulties and problems in the area of legalization, it makes good sense to use the monitoring of the implementation of a legal framework as a proactive evaluation tool.

This monitoring function can provide a clear and regular feedback mechanism on what needs to be improved and what is working well in the

The monitoring process (for improvement of the ASM framework) can be more effective if managed independently from law enforcement authorities or other governmental agencies directly responsible for the implementation of the ASM law.

implementation of the framework.

The success of monitoring as an instrument of law evaluation will be related with its ability to be accountable and independent. To achieve this, the monitoring process can be more effective if managed independently from law enforcement authorities or other governmental agencies directly responsible for the implementation of the ASM law.

Additionally it will be crucial to have the involvement in the monitoring process of different ASM stakeholders including the different governmental agencies responsible for defining policy, major civil society organizations, ASM organizations, etc.

Both the diversity of composition of this monitoring group and the nature of its institutional home will be very important to give credibility to the evaluation process.

### ***Guideline 5: Access to information about the legal framework is as fundamental as the existence of legislation itself***

An obvious but often overlooked requirement for success of the legalization process is to guarantee that the miners and respective organizations or associations (especially those located in very remotes areas) have awareness of and access to all legal acts and administrative decisions relevant to ASM activities, in a culturally compatible and timely manner.

It is important to understand that capacity building is a “two way street”, meaning that it is an opportunity to learn from the miners and community members as much as it is to impart knowledge to them

As part of this commitment, it is important to provide capacity building in those aspects in which the regulation is highly complex or technical. Capacity building can assume different forms, including training courses, workshops, didactic materials, etc. The important point in this kind of initiative is that the methods used should create real incentives for the miners to participate actively (and not only as passive recipients of information), regardless of the particular form that is being used.

It is important to understand that capacity building is a “two way street”, meaning that it is an opportunity to learn from the miners and community members as much as it is to impart knowledge to them. It is essential, as part of this process, to learn more about what the mining operations are actually doing, as well as to better understand the impacts (both positive and negative) of the new information, techniques, tools and laws being disseminated on the lives of the miners and their respective operations.



## ***Guideline 6: The stability of the legal framework is as important for ASM as for other mining activities***

The stability of the legal framework is very important for any economic sector because it builds confidence of all stakeholders and creates the conditions for long term investment and planning. ASM is no different from other economic sectors and given its history as being excluded, marginalized or (in the best cases) underestimated, the stability of the legal framework is a very important factor and indicator.

That said, the longer-term stability should address the need for modification, refinements and improvements as noted in Guideline 4 and 5. The process of legalization is a dynamic and evolving process but such evolution of the legal framework will benefit from and is based on a stable approach that is supported by long-term objectives and a long term vision for ASM activity in a country.

## ***Guideline 7: The legalization process is incremental, but respect for human rights is not.***

The longstanding marginalization of ASM sector from the public policy and appropriate regulatory frameworks has generated a situation of under-capitalized operations that are very sensitive to fluctuation of the price of particular mineral commodities as well as other economic factors. Marginalization typically also generates a culture of informality which cannot be changed overnight. A new business culture needs to emerge and be nurtured and this tends to be a slow and complex process.

In the development of the legal framework the specific historic, economic and social context of ASM cannot be ignored. It is important to differentiate between what is possible to achieve in the short term and what must be a long term goal, based on the unique ASM reality of each country. The legalization of ASM can be seen as an incremental process concerned with the economic, environmental, technical and social standards and legal procedures of the activity. The legal framework should be designed to stimulate, guide and guarantee that these kinds of incremental processes will occur without becoming a threat to the interim viability of the activity, or the respect for human rights of those involved.

Human rights... should be respected by the ASM legal framework and implemented throughout the process of legalization.

It is recommended that the rights and obligations, standards and legal and administrative procedures for ASM legalization be based on a progressive and incremental approach. Human rights, however should be respected by the ASM legal framework and implemented throughout the process of

legalization, as they are fundamental to social values at all levels, at all times (please see Human Rights Declaration in Annex 1).

***Guideline 8: Establish dedicated governmental division to coordinate and guarantee the long term vision for the sector***

To manage the overall process of legalization it is recommended to ensure that there is a specific division or department responsible for defining public policy for ASM at the governmental level. Preferably this will be in the same governmental institution umbrella that is responsible for the definition of public policy for the mining sector. The division or department could be tasked with a number of duties including:

- a) coordination between different governmental institutions that are related with ASM
- b) bringing knowledge inside the government about ASM
- c) integration of different areas of the public policy
- d) continuity of policy and actions
- e) generating a dialogue between ASM and other mining activities

It is very important that this ASM department has representatives at the local and provincial level of governments (and not only at the national level) because ASM activities are very often distributed in different parts of the country and in remote areas. The regular presence of the government in the main regions of ASM operations is crucial to the improvement of relationship between the government authorities or officials and the miners' organizations and operations, as well as the development of knowledge and awareness of ASM activities beyond the traditional roles of any governmental agency that has the dual function of controlling and promoting the activity.

It is strongly recommended that law enforcement is administered independent from the governmental body responsible for the implementation of the regulatory framework of ASM and promotion of responsible mining because of potential conflict of interest and/or conflict of functions.

### **3. GUIDELINES FOR MINING AND ENVIRONMENT LICENSES CONFIGURATION AND ALLOCATION**

In the majority of mining countries the mineral resources belong to the State and the government is responsible for granting mining titles or licenses. Countries have different names for the mining titles concept (concession, authorization, license, etc.) and some countries have different types of mining licenses for different categories of mining and for different phases of the mining project.

In Brazil, for example, there are four different mining titles: authorizations for the prospecting and exploration phase for Large Scale Mining (LSM) (exceptionally this can also apply to ASM); concessions for the exploitation phase for LSM; mining licenses for construction materials which includes all phases of the mineral project, and; permission for *Garimpeira* exploitation which also includes all phases of the mineral project.<sup>4</sup>

Peru has different categories of concessions related with phases and activities of mining projects (e.g. concessions for exploration and exploitation, and individual concessions for processing, refining and mineral transportation) that apply to all mining activities including ASM with some restrictions for artisanal mining producers.

The allocation of mining license(s) is the first step of the process towards legalization. Other licenses, permissions or requirements (e.g. environmental licenses, environmental and social impacts assessment and even closure plans) are part of the ASM process of legalization and very often connected with the allocation of mining titles or licenses. In Peru, small and artisanal mining producers have the obligation to submit the Declaration of Environmental Impact or Simplified Environmental Impact Assessment, depending on the potential impacts and the location of the mining project.

The examples above are illustrations of countries that recognize ASM and have ASM mining and environmental licenses similar in quality to other mining activities. However in some countries the ASM mining and environmental license systems are very weak and in others they do not have any legal mechanisms for ASM.

This section has the objective of presenting guidelines for Mining and Environmental Licenses - a central component of the regulatory framework for ASM. The following guidelines cover the terms and conditions of the mining and environmental titles (i.e. categories of ASM, allocation and termination of titles, rights and obligations, transfer of mining titles, right to business partnership, etc.)

### ***Guideline 9: Development of specific regulation for Artisanal and Small Scale Mining***

It is important that ASM has a specific legal treatment distinct from other mining activities such as industrial mining (LSM), oil and gas and civil construction materials<sup>5</sup>. The technical and economic specificity of ASM associated with the internal diversity and social complexity in relation to other mining activities justifies the different treatment for this sub-sector.

<sup>4</sup> *Garimpeira* activity is the synonym for Artisanal and Small Scale Mining in Brazil. The Portuguese word for the mining title is *Permissão de Lavra Garimpeira*.

<sup>5</sup> The construction material sector is actually very similar to ASM but still has economic and technical particularities that suggest it should be considered as a separate mining segment or sub-sector.

The different treatment can be accomplished in the various ways. In some cases a special chapter is dedicated to ASM in the mining law or code, or in others there is a separate law dedicated to ASM. Some countries have a third approach in which the mining law has a generic chapter that defines ASM and other fundamental legal concepts but there is also a dedicated law and regulation for ASM. Nevertheless, it is important to have coherence in terms of legal and conceptual principles (e.g. the right of preference<sup>6</sup> or the right to transfer the license should apply to all mining licenses independent of whether they are LSM or ASM).

Regardless of the approach chosen, the important point is to have a legal treatment for ASM that recognizes the special characteristics of ASM in the mining regulatory system of the country. This is not currently the case in many countries

The consequence is the exclusion of the ASM from the legal world and/or a confusion of ASM with other mining activities (because the mining law does not make a distinction between ASM, MSM and LSM for example). Where this situation occurs, it results in giving the same legal treatment for both, which may appear to be beneficial for all but is in fact an important cause of the informality or illegality of the ASM. It commits the mistake of attempting to apply the same rights and obligations, legal requirements and administrative procedures of LSM to the very different structural, economic and technical realities of ASM, to the detriment of the ASM sector.

Regardless of the approach chosen, the important point is to have a legal treatment for ASM that recognizes the special characteristics of ASM in the mining regulatory system of the country.

Because the terms and conditions of the mining and environmental licenses provide the fundamental parameters that shape the mining operations' business attitude and behaviour, these licenses are very important instruments for public policy, as well as for the economic stakeholders (companies, cooperatives and individuals) who invest in ASM mining projects.

The specific regulatory framework for ASM should not be restricted to mining and environmental licenses but also should include other dimensions, for example, taxation and royalties, technology development and controls on processing techniques (e.g. gold processing through use of mercury or cyanide), etc.

These considerations can be summarized in the following recommendations for the creation of a specific framework for ASM:

- ✓ *The unique characteristics of ASM should be acknowledged through the legal framework;*

<sup>6</sup> Right of preference is the principle that defines to whom the license will be granted in cases of simultaneous license applications for the same area. Mining laws have different systems to apply this principle - the first to demarcate the area (a very old method), the first to register the license application, etc.

✓ *The actual structure and approach will differ depending on the legislative practices in each country;*

✓ *Independent of the specific approach (i.e. through a unique mining law for ASM, as a chapter in the mining code, etc) the following important aspects should be taken into consideration for the development the framework:*

- i. the legal framework should not only acknowledge the differences but also the similarities among types of mining*
- ii. it is a legalization framework to regulate and support an actual economic and mining sector; and*
- iii. there should be explicit integration between the ASM legal framework and the framework that apply for other mining activities.*

✓ *The legal framework for ASM should include all dimensions of the legalization process (see Guideline 2) and not only the mining and environmental licenses.*

We believe that the definition of ASM is not a gratuitous or academic exercise but a practical necessity that creates the foundation for building a realistic legal framework.

### ***Guideline 10: Conceptualize ASM as an economic sector and as a mining activity with specific characteristics***

In the mining and environmental law or in specific legal acts that define the regulatory framework for ASM, the definition of the sector is fundamental. In practical terms it is not possible to define a framework for ASM activities if there is not clarity about what ASM is (and is not) in terms that distinguish it from other economic and mining activities and that allow for the understanding of the differences among types of mining while also identifying the diverse types of ASM.

We believe that the definition of ASM is not a gratuitous or academic exercise but a practical necessity that creates the foundation for building a realistic legal framework.

In the definition it is relevant to acknowledge that ASM is primarily a distinct economic and mining sub-sector. The acknowledgement that ASM is an economic sector is crucial because it provides the government with basic orientation in terms of the need to create the legal and public policy conditions for the *economic and technical* viability of the activity.

The acknowledgement that ASM is a mining activity is also very relevant because it gives the direction in which the main legal principles and concepts of the legal ASM framework. In the case of Ecuador small scale mining is considered a mining activity but artisanal mining is considered a subsistence

activity<sup>7</sup>. This interpretation results in restrictions on succession and transferral of rights for the artisanal mining license.

The consequence of these two main acknowledgments is that the ASM definition needs to be drawn from criteria that are related with the key characteristics that distinguish ASM mining operations from other mining activities and the overall economic viability of the mining operation, such as,

- characteristics of the deposits exploited by ASM,
- characteristics of the mining phases (in particular exploration and exploitation),
- types of minerals extracted by ASM, and
- size of the mining operations.

The size of the mining operation criteria is essential to distinguish the different categories within ASM and is the point of departure for creating different mining and environmental licenses with appropriate rights and obligations.

These considerations can be summarized in the following recommendations regarding the concept of ASM,

- ✓ *The definition of ASM should be part of the legal framework of the activity because it is only possible to regulate when you have clearly defined the object the regulations are addressing]*
- ✓ *The definition should not be a general one but rather one that describes what is and what is not ASM (e.g. relative to LSM) in the legal framework of the country*
- ✓ *Starting with the recognition that ASM is a economic and mining sector (and not a recreation or subsistence activity) has important regulatory implications, such as,*
  - i. *Not promoting unfair competition among ASM operations or among ASM and LSM operations (with respect of the differences and the clear power imbalance between ASM and LSM );*
  - ii. *The economic viability of ASM operations should be taken into consideration when the regulation imposes a cost (in the form of fees, administrative requirements, taxation, etc)*
  - iii. *Actions towards prohibition of the use some processes (such as amalgamation) should be take into consideration the availability of other processes that have similar characteristics and are appropriate for use by ASM operations*

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<sup>7</sup> In a broad sense, subsistence activity is any activity of human beings to *survive* in a given environment. Subsistence activity is used in the document to contrast with economic activity, the latter has the objective to generate profits.

## ***Guideline 11: Legalization applies to all types of ASM***

The regulatory framework of ASM has to identify and define variations in or even different types of licenses for the different categories of ASM. The concept that there exist categories of ASM that are impossible to regulate is a false concept that is rooted in the idea that there is some “intrinsic nature” in certain peoples, situations or activities that cannot be changed.

It is true that there are some categories of ASM and/or political contexts that are more difficult to regulate and control than others. For example, the variation of mining cycles particularly when there is a “rush” scenario can make the task of legalization very difficult (especially when there has been no previous work on legalization or organizational structure in the sector). However these challenges should not prevent the efforts towards legalization and the entry into the formal economy. On the contrary these challenges are often just symptoms of a lack of appropriate mechanisms for prevention and management that could be used to engage the ASM mining operations in the legalization process.

The diversity of ASM is typically acknowledged in the legal framework through the different categories of mining and environmental licenses. In the case of Ecuador and Peru there are two categories of ASM – artisanal mining and small scale mining, however, Brazil, Papua New Guinea and Mongolia only recognize one category. It is arguable, that neither approach sufficiently addresses the significant diversity among different types of ASM mining operations.

The criteria selected to define the categories of ASM are a crucial aspect of the law because some criteria can have a negative impact on the socio-economic and environmental development of the activity if the restrictions/thresholds are not well chosen (i.e. restrictions on the use of certain technologies (Cote d’Ivoire, Ethiopia ), amount of investment (South Africa, Zimbabwe, Tanzania), or restrictions on number of employees (Ghana and Tanzania), can establish unnecessary limitations for the business and are difficult to control.

Other criteria, like type of mineral deposit (alluvial or primary<sup>8</sup>), quantity of material extracted (Ethiopia uses annual production criteria) and dimension of the area tend to be easier to define and control.

Defining the quantity of material that can be extracted can mean a limitation on business growth and indirectly can have an impact on the technology that can be used due to scale-related costs restrictions. This means that the use of volumes of material that can be extracted as a criterion can also provide control over the size of operations.

The size of operations is one fundamental variable to evaluate potential for negative environmental and social impacts and the corresponding administrative requirements and procedures of the

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<sup>8</sup> Primary deposit is more commonly known as “hard rock.”



legalization of the mining project. For example, in Peru small producers are allowed a capacity of 350 tons/day or 3,000 cubic meters/day depending on whether it is a hard rock (primary deposit) or secondary deposit (placer or alluvial) and artisanal producers have an allowance for capacity of 25 tons/day or 200 cubic meters.

A slightly more refined approach to volume-based criteria can be found in the draft law in Mongolia dated April 2009<sup>9</sup> (see *Sustainable Artisanal Mining Project (SAM)* website <http://www.sam.mn>). This law suggests the following categories of ASM licenses:

- a) Artisanal Mining license: Extraction of up to 25 cubic meters per day of mineralized material for placers or 5 tons per day of total material for hard rock;
- b) Micro Scale Mining license: Extract up to 500 cubic meters per day of mineralized material for placers or 100 tons per day of total material for hard rock;
- c) Small Scale Mining license: Extract up to 2500 cubic meters per day of mineralized material for placers or 500 tons per day of total material for hard rock.

This approach has the advantage of allowing for a progressive licensing process that can be applied in the case where operations expand over time.

The quality of the mining title and its negotiability in the market is defined by the rights and obligations granted under the license. These rights and obligations include, number of years granted, size of the area, succession and associated conditions, environmental and social requirements. The value of a specific mining project is a combination of the type of mining license and of course the conditions and situation of the mining project at the moment of the transfer of mining rights or granting of other rights (e.g. attribution of credit). These kinds of considerations should be part of the decision about the different categories of ASM defined in the legislation and the mining licenses associated with them. This issue around the quality of the mining title and its negotiability is one of the motivations and assurances for the economic actors to invest in ASM (as in any mining activity).

The concept that there exist categories of ASM that are impossible to regulate is a false concept that is rooted in the idea that there is some “intrinsic nature” in certain peoples, situations or activities that cannot be changed.

Due to the social, technical and economic characteristics typical of the ASM sector participants it is important to give attention to the simplification of the procedures and requirements of mining and environmental titles attribution. It is possible and valuable to maintain relatively simple procedures governing various aspects of the sector including relations with other mining activities and among the different categories of ASM titles, as well as designing incremental requirements for obtaining mining

<sup>9</sup> The author of this guide participated as a consultant of Materials Efficiency Research Group (MERG) in the development of the ASM draft law for Mongolian referred to in the text.



and environmental titles in relation to increasing complexity of the operations.

Examples of simplification could be requiring one mining title and one environmental title for all phases of the ASM mining project (geologic recognition, exploitation, development and closure of the mine) or, depending on the category of ASM, only requiring one mining title that also includes an approval of the environmental plan.

These considerations can be translated into recommendations for the main characteristics of the mining titles and environmental licenses<sup>10</sup> as follows,

- ✓ *The different types of ASM activities can be translated into categories that serve as the basis for defining the terms and conditions of the mining and environmental licenses for the sub-sector*
- ✓ *The quality of the titles are fundamentally important from a public policy point of view but also from the business perspective of the mining producer*
- ✓ *Different ASM titles need to be incremental in terms of legal requirements and administrative procedures. This principle can apply also to associated mining and environmental licenses*
- ✓ *Integrate the mining and environmental titles as much as possible: (e.g. one mining and environmental title for different phases of the mineral project or a mining title that includes the environmental requirements.)*

### ***Guideline 12: The miners have the freedom to choose the appropriate legal entity for the mining project***

As a general principle ASM legal frameworks should avoid imposing unnecessary restrictions or prohibitions on the right of the mining producer to choose the type of legal business entity from among the various types defined in the commercial legal framework of the country.

The ASM legislation in some countries (e.g. Brazil and Bolivia) defines the cooperative as the required legal business entity for ASM operations. This option is grounded in the social component of ASM activities, which are very intensive in terms of the labour force as well as in the concept that all miners in ASM are workers.

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<sup>10</sup> Note that the recommendations are not arranged by order of importance.

These two assumptions are true in some cases and in these the cooperative is one of the best entities, however, in the situation where ASM activities have an economic structure and work relations of a company or enterprise, other forms of commercial entities such as individual or solo companies, shareholders companies (or public limited company), private limited company, simple or general partnership (*Comandita*) or an anonymous society (in countries based on civil law) can be the appropriate entities depending on the specific economic and work relations of the operation and the particularities of the commercial law of the country.

Other legislation limits ASM to one type of business entity (e.g. partnerships in Mongolia) or in some others cases allows only natural persons and not any business entities to be part of ASM (e.g. in Ecuador only natural persons can participate in artisanal mining).

Restrictions on the use of some business entities can, nevertheless, be justified in limited cases, for example, when the limits on the size of the operation prevents the adoption of more complex forms of business entities. If the legislation takes this route it should be undertaken with the principle of not creating unnecessary restrictions or limitations on the development of the mining project.

In the case where there is a desire to promote specific business entities (e.g. cooperatives) through economic incentives such as exemption from taxation or royalties, careful analysis is needed in terms of implementation of such incentives to not generate problematic distortions between the reality of business operations and chosen legal status. If done without the right precautions, this kind of incentive can lead the economic actors to choose the particular entity in legal terms without any corresponding structure reality on the ground. An example of this situation has developed in Bolivia and in Brazil where the legal framework gives incentives to cooperatives, but in practice many of the cooperatives function with the economic structure and labour relations of conventional companies.

As a general principle ASM legal frameworks should avoid imposing unnecessary restrictions or prohibitions on the right of the mining producer to choose the type of legal business entity.

Another important issue related with the definition of legal entities is in relation to the subject of nationals and foreign legal entities and capital. ASM is an activity that is a great source of employment (recent estimates are around 80 to 100 million people in direct and indirect ASM jobs) and is an activity that the poor can perform because it does not necessarily require capital, complex technology or heavy machines. These factors mean that it is an opportunity for the nationals of the country to resolve part of the poverty problems of the rural areas. If it is opened to foreign entities, particularly when the country has legislation that allows and promotes the activity, the consequence can be problematic at two levels:

- Foreign companies or capital can significantly influence ASM development
- There is a risk of stimulating significant migration of impoverished people from neighbouring countries

To prevent this situation from occurring countries need to pay attention to the nature of labour and capital restrictions in ASM licensing. Note that it is not enough to define that ASM is only legal for nationals because foreign companies can become national companies simply by registering and opening up a local office in most countries, a situation that has occurred in some countries like Peru.

To be effective the restriction also needs to be related with the constitution of the capital for the legal business entities of ASM by not allowing foreign capital and foreign natural persons as shareholders and partners, including subcontracting operators of the business entity. This restriction need not apply for service providers to the ASM which could restrict access to best technology etc.

These considerations can be summarized in the following recommendations for the legal approach to defining legal ASM business entities:

- ✓ *Participation, in terms of capital, in the ASM sector should only be open to the nationals of the country*
- ✓ *Participation in terms of labor should be given careful consideration to provide the appropriate mechanisms to address regional and national employment objectives*
- ✓ *As a general principle, avoid exclusions or prescriptions of specific types of legal business entities for ASM*
- ✓ *Restrictions on the use of legal business entities can be done inside of categories of ASM but care must be taken to not create unnecessary limitations to growth of mining operations*
- ✓ *The incentive of one type of legal business entity does not necessarily require the prohibition of others*
- ✓ *Analyze potential consequences of the incentive of specific legal business entity. Choosing the correct incentive(s) is important to avoid the creation of imbalances and distortions in the mining sector of the country*

### ***Guideline 13: The allocation and related rights, obligations and procedures of the mining license area is a key public policy instrument***

Mining licenses are associated with an area (land) allocation where the exploration and exploitation activities are granted rights to operate.<sup>11</sup>

<sup>11</sup> As explained before, the ownership of surface and subsurface is separate in most countries.

In some countries an authorization is given to ASM activities that allow exploration (or 'recognition') and exploitation in public and free land without any delimitation of the area for the specific mining license, this was the case of Brazil from the period from 1968 to 1989. The problem of this approach is the lack of accountability for specific areas results in the impossibility of controlling any environmental or social impacts that may occur as a result of the ASM activities.

The allocation of the area allows for different types of property to be defined through the license. The license could include private, common, community or other types of property depending on the circumstance. For example, a community that has traditional rights could be granted a license through a legal business person chosen by them to represent the interest of the community and manage the mining business.

This simple instrument, the allocation of an area to the mining project, constitutes a fundamental part of the legalization framework with the conditions that link the natural or legal person with the attribution of rights and obligations in a specific place through a mining license.

In relation to the allocation of areas, exclusivity is the key concept to consider. This concept means that the licensee has the exclusive rights to mine in the area of the license. Any other person (natural or legal) interested in the area is required to negotiate with the licensee.

The recognition of priority in terms of rights to a given area is a fundamental concept and principle for the mining sector because it is the foundation of transparency on granting the mining licenses or titles and it deserves careful attention in its application to ASM. Priority of rights often only apply to large scale mining activities and the disparity of similar rights for ASM has been responsible for generating a series of conflicts between ASM and other mining activities. The application of this principle equally to all mining activities can result in greater clarity in administration of licenses and a significant reduction in these conflicts.

Another important concept related with area allocation is the size of the land in the license because this can positively or negatively reinforce the main objectives of the regulatory framework of ASM and have direct implications for the categories of ASM defined in the law.

If the area is too small it means that ASM will be a very mobile activity with consequences in terms of limited development as a business with this short term approach (e.g. in Zimbabwe the size of area covered by the mining license is 200m X 500m). This problem is particularly applicable to alluvial or placer deposits because they tend to be dispersed over large areas and are relatively superficial. The majority of regulations tend to restrict the size of the area for ASM especially for alluvial deposits. (e.g. in Zambia small scale mining license can be 400 hectares or less, while ASM are limited to 5 hectares)

If the license is too large it can also create distortions in terms of not promoting an efficient use of mineral resources and could allow a licensee to “sit” on a deposit (s) without actively producing minerals.

The last but not least important aspect related with allocation of area is the issue of reserves or exclusive areas for ASM. This is an instrument used in several regulations with the objective of protecting regions from other mining activities and also of controlling the ASM sector (e.g. Brazil, Colombia, Ghana and Tanzania). This instrument appears to be a practical way to resolve some of the problems that ASM is associated with, such as high mobility, conflict with other mining activities, environmental impacts, etc. In practice, however, despite best intentions, this approach tends not to work very well and on the contrary, has the effect of creating tension between mining authorities and the ASM sector.

This simple instrument, the allocation of an area to the mining project, constitutes a fundamental part of the legalization framework with the conditions that link the natural or legal person with the attribution of rights and obligations in a specific place through a mining license.

To implement this instrument in an optimal manner governments need to have reliable and detailed geological studies, allowing them to identify the deposits best suited for ASM. This is not usually the case in most developing countries, where land use decisions are being taken without sufficient information on the geological potential of specific areas.

In countries that are using ASM reserves and exclusive areas there are a number of trends and approaches that are commonly found:

- a) They identify and create ASM reserves after the ASM sector is already actively working in the area.
- b) After the definition of the ASM reserves, new legislation will start to make exceptions to allow other mining activities to work in the reserve. The reserve becomes a limitation for ASM to perform activities outside of the reserve but does not prevent other mining actors from mining in the ASM reserves.
- c) The ASM reserves do not have great mineral potential and the conditions are very hard from an ASM point of view (which is significant because we know that ASM can find ways to make extraction viable in very hard conditions). This limitation has led ASM to start extraction outside of the reserves, entering into direct conflict with the government or others and eroding trust between all stakeholders.

These arguments against the use of exclusive areas and reserves have a potential exception - in the case where ASM reserves are within traditional lands or community lands, for example those of indigenous peoples or other ethnic groups with collective land rights. Even in this case attention needs to be given to point c) above and the delimitation of the ASM reserve inside of traditional land

needs to be undertaken incorporating the advice of the community that has a traditional knowledge of the land and resources.

These considerations can be summarized in the following recommendations regarding the concept of defining mining license areas,

- ✓ *The mining license area is a crucial instrument of public policy*
- ✓ *The concepts of exclusivity and priority are essential for the miners, and for the government as instruments for the management of the mineral and natural resources*
- ✓ *The dimension of mining areas affects the ability of the operation to expand in both size and duration. Furthermore, it has direct consequences for the mining model of the country*
- ✓ *In terms of specific size of the area attention should be paid to,*
  - *The different categories of ASM activities (small scale mining and artisanal mining )*
  - *The type of deposits (primary or secondary)*
  - *Within each ASM category of mining license, define the range of areas that can be allocated (e.g. 10 ha. to 100 ha.) as opposed to absolute sizes (e.g. 5 ha.). With this approach, the legislation gives flexibility to the mining authorities to define the specific size, depending, for example, on the mineral potential in the region, the local mining culture, the competition for land in the region from other economic sectors, and of course the economic (and technical) capacity of the legal business entity that is requesting a mining license*
- ✓ *In practice, the initially attractive concept of ASM reserve or ASM exclusive area is often problematic and it is best to consider other approaches to allocating areas for ASM.*
- ✓ *In the unique case of traditional lands, with collective titles, ASM reserves or exclusive areas can be a potentially valuable instrument but only with direct engagement of the community on the area and related mineral use policies.*

## **Guideline 14: Transfer or succession of ASM mining licenses and upgrading of ASM mining licenses are essential mechanisms for the development of the ASM projects**

In the document we referred several times to the succession or transfer of mining licenses. It is important to understand the consequence of not having this legal right available for ASM.

If the ASM regulatory framework forbids the transfer of mining titles or licenses, this can be a serious disincentive to formalization, investment and all kind of improvements that are associated with the business model for ASM producers. This situation is a concern in many regions, for example in Zambia, Bolivia, Cote d'Ivoire and Zimbabwe where there is not sufficient clarity about the right to transfer.

Related with this issue of the transfer of rights, we also have the subject of business association or partnerships. It is desirable that the regulation allows for various types of associations (e.g. consortia, joint ventures, cooperatives, etc.) , because there can be benefits for all parties involved in terms of promoting the organization of ASM producers , allowing for the growth of projects, encouraging economies of scale, and the reduction of the economic and social vulnerability of ASM operations.

In the case of partnerships with large scale mining, there are various outcomes that can benefit both sides: the development of an entrepreneurial culture in ASM; resolving of existing conflicts or competition for the same area; bringing into legality the existence of informal partnerships; technology transfers; and the prevention of abuses related to the lack of legal status and rights for ASM.

The issue of building balanced and productive partnership between ASM and LSM is very important in both associations and partnerships inside of ASM and outside with other mining actors. This is such an important point that it deserves separate treatment in the subsequent development of this guide.

Another relevant mechanism that can have a great impact in promoting the development of ASM as a sustainable sector is the ability to allow upgrades of the licenses. Upgrades could occur between stages of small scale licenses, or conceivably from small scale to medium to large scale operations as appropriate.

The ability to upgrade among the mining licenses can be a powerful mechanism for ASM and in some cases can be related with issue of associations or partnerships. Of course the conditions (and related incentives) governing upgrades are critically important. Upgrades need to be subject to the economic,

Legislation can give more or less freedom to the licensee for partial transfer of the rights or succession of rights, permitted associations and upgrading among the mining licences or titles. It is important to note that greater flexibility means more ability to exercise the right of exclusivity because it gives the licensee more control in responding to the diverse and evolving demands on the area.



financial, environmental, and administrative requirements and procedures of the new license. Tanzania is an example of a jurisdiction that allows for upgrades of licenses from ASM to LSM.

Legislation can give more or less freedom to the licensee for partial transfer of the rights or succession of rights, permitted associations and upgrading among the mining licences or titles. It is important to note that greater flexibility means more ability to exercise the right of exclusivity (as discussed in the previous section) because it gives the licensee more control in responding to the diverse and evolving demands on the area. This flexibility can serve both business and regulatory needs and obviously must be connected with the appropriate authorizations from the relevant mining authority for each situation.

These considerations can be summarized in the following recommendations regarding the concepts of transfer of rights, association and upgrade among the mining licenses,

- ✓ *Ability to transfer the license is an important legal concept for all economic activities including for ASM because it gives security to all stakeholders that the businesses has a legitimate value in the market place*
- ✓ *The association and partnership should be given clear incentives by the regulatory framework because they contribute to the creation of a business culture in ASM and can contribute to resolving the conflicts related with competition of the mineral resources*
- ✓ *Allowing for upgrades between mining licenses is a powerful instrument to create a diverse mining sector and for realizing the specific economic, social, natural and financial potential of the country.*

#### **4. CLOSING COMMENTS AND A CALL FOR COLLABORATION**

As explained in the introduction this document is intended to stimulate discussion and to elicit input on this critical subject for the future of ASM. The next steps will be dependent on the feedback and collaboration we receive from our many partners and associates around the world.

Clearly the subject of legalization and public policy for ASM is a complex one with many implications for operators, communities and governments alike, and as a result, it will only be through active cooperation that we can generate a truly effective tool to help guide ASM practitioners, regulators and stakeholders.

The Alliance for Responsible Mining is committed to collecting your comments, suggestions and questions and incorporating these into the subsequent stages of the Guide. For more information and to submit your feedback please see our website: [www.communitymining.org](http://www.communitymining.org)



## ANNEX 1: UNIVERSAL DECLARATION OF HUMAN RIGHTS<sup>12</sup>

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights the full text of which appears in the following pages.

### PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

**Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

#### Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

#### Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the

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<sup>12</sup> Source: United Nation website ( <http://www.un.org/en/documents/udhr/index.shtml> )

country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

**Article 3.**

Everyone has the right to life, liberty and security of person.

**Article 4.**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

**Article 5.**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 6.**

Everyone has the right to recognition everywhere as a person before the law.

**Article 7.**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8.**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9.**

No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10.**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11.**

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**Article 12.**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**Article 13.**

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

**Article 14.**

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

**Article 15.**

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**Article 16.**

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**Article 17.**

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

**Article 18.**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**Article 19.**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**Article 20.**

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

**Article 21.**

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

**Article 22.**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

**Article 23.**

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 24.**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**Article 25.**

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26.**

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27.**

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28.**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**Article 29.**

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

**Article 30.**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.