APROACHING ARTISANAL AND SMALL-SCALE MINING THROUGH THE LENS OF HUMAN RIGHTS:

A CALL FOR INTERNATIONAL ACTION

A work in progress

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Alliance for Responsible Mining

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APPROACHING ARTISANAL AND SMALL SCALE MINING THROUGH THE LENS OF HUMAN RIGHTS: *A CALL FOR INTERNATIONAL ACTION*

Introduction

Over the last 15 years, the ASM sector has grown dramatically around the world gaining a greater importance in the generation of employment and development of local economies, especially in the rural areas in Africa, Latin America and Asia. It has become one of the most important economic activities in generating direct and indirect income for millions of poor people.

This trend has attracted attention, giving ASM great visibility, but it remains poorly understood and lacks coherent, integrated long-term policy and program approaches. The consequence is inadequate support and promotion of an unhealthy and unsustainable ASM sector, and an ongoing difficulty in engaging relevant stakeholders in the important process of ASM formalization.

ARM's motivation in making this call for international action, is based on the assumption that if the international community takes a clear position about the contribution of ASM to achieving development goals, it can result in greater and faster results where the sector can can fully contribute to resolving the serious poverty that is keeping an estimated 925 million people hungry.[i] The action that can make a real difference includes: 1) a vision of the ASM sector as a legitimate part of the mining sector; 2) recognition of ASM rights and obligations towards a sustainable sector; and 3) the engagement of miners, all relevant stakeholders and the international community in the process of ASM transformation.

The proposed framework for an international position is a starting point, which hopefully will promote a debate and collaboration that enriches the final structure and content. The document does not make a suggestion about what organization or agency may champion this position but ideally a representative group of the international community can lead the process of developing this position.

Finally, it is important to underscore that this document is a draft for consultation that can be improved, modified and elaborated to include contributions for all interested individuals or

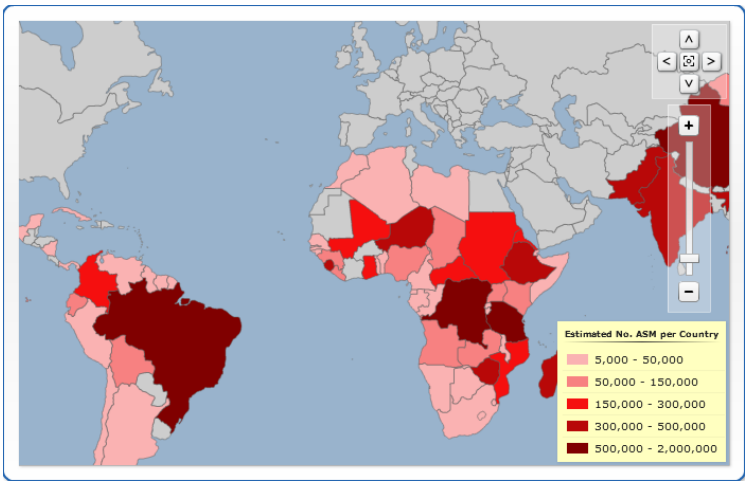
organizations. This draft document will be posted on ARM's website for public dissemination and participation.

1. OVERVIEW OF ASM

A. WHAT IS THE CURRENT STATUS OF ASM

Artisanal and Small-scale Mining (ASM) is a mining phenomenon in most developing countries in Asia, Africa and Latin America.
It is a longstanding and expanding socio-economic reality that is here to stay.

In terms of the economic contribution, ASM plays an irreplaceable role in providing directly and indirectly a reliable income for more than 100 – 150 million people through the extraction of diverse minerals including gold, diamonds, gems stones, cassiterite, tantalite, coal, and others. [ii]



In terms of mineral production, estimates from the late 1990's indicate that ASM is responsible for 12% to 20% of the gold production, 75% of the gems, 21% of industrial minerals, 20% of coal and 10% to 20% of the diamonds worldwide.[iii] It is estimated that in Africa alone, gold and gemstones worth $1 billion a year are produced by the ASM sector.[iv]

B. NATURE OF THE ARTISANAL AND SMALL-SCALE MINING SECTOR GLOBALLY

ASM is an economic sub-sector within the mining industry with specific technical, economic and social characteristics

There are a lot of misunderstandings around the nature of ASM activities, for example, that it is common that it is considered a subsistence activity with a different economic logic from a sector in which the objective is to generate profit. Associated with this perspective of ASM as a subsistence activity comes the difficulty in recognizing that ASM is actually a viable, legitimate part of the mining sector.

Today these misconceptions have a strong negative impact; in particular on the way public policy deals with the sector as well as the focus of many national and international programs intended to address both challenges and opportunities for ASM.

Misconstruing or ignoring the real nature of ASM sector in part explains the difficulty in formalizing the sector and the associated ongoing problems that come with informality under the law.

While it is important to recognize ASM as a legitimate economic mining sector, it is equally important to acknowledge the unique characteristics of this sector with its distinct economic and technical challenges and opportunities. Some key distinctions are outlined below:

i. Scale of Capital and Labour - Large Scale versus Small Scale Mining

The LSM sector is capital and technology intensive and is increasingly concentrated in a few major companies – a business for relatively few players. ASM, on the contrary, is characterized by being very low capital and technology intensive and with diverse actors and dependent on significant human labour inputs – an activity for many.[v]

ii. Open Access Mineral Resources

Part of the uniqueness of ASM is due to the nature of the mineral deposits and minerals they mine.[vi] The characteristics of the deposits and the minerals have a number of important implications in terms of exploration, exploitation, processing as well as transportation and commercialization. Important factors include,

- open and easy access to anyone interested in extraction
- generation of economic and social returns for low investment cost
- diverse and plentiful interest in the resource that makes it hard to control the exploitation

In summary:

ASM works with mineral deposits that allow relatively simplified mining activities in all phases of the mining cycle.

These characteristics are all associated with the fact that the mineral deposits that ASM works are in an 'open access' situation.[vii]

Some resources are more difficult than others to establish property rights for because of the physical and chemical properties of the resource. The 'open access' concept describes a situation in which there is limited or no "natural" control over *how many* companies or individuals can produce or consume a resource and virtually no restrictions on *how* to produce or consume it.[viii]

The easily accessible deposits (e.g. alluvial, colluvial, eluvial or superficial primary deposits) extracted by ASM are considered to be in situation of 'deep open access' because of the special physical and chemistry properties of the deposits and the minerals that ASM produces.[ix] Another industry facing the challenges of open access is many of the world's ocean fisheries.

While all countries have these kinds of deposits, some countries have the combination of geological and environmental conditions that result in greater quantity and quality than others.

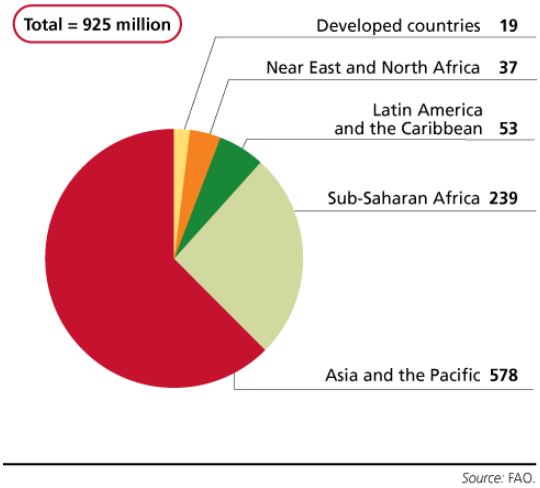
The persistence of ASM in the past, present and the future is fundamentally tied to the abundance of these deposits.[x]

Similar to Large Scale Mining (LSM), ASM is an economic opportunity based on geologic potential but with a different economic, social and technical logic.

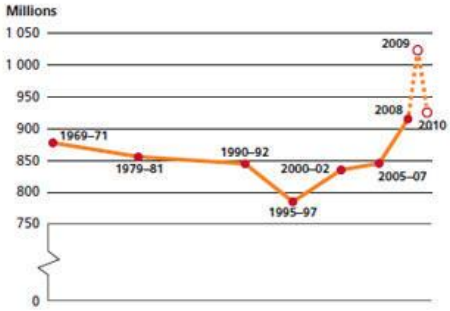
2. NATURE OF ASM AND IMPLICATIONS FOR ECONOMIC DEVELOPMENT AND POVERTY ALLEVIATION

A. THE BIG PICTURE: GLOBAL HUNGER

One of our worst calamities of this century is hunger. An estimated 925 million people in the world are hungry. This means that 13.1 percent, or almost 1 in 7 people are unable to get sufficient food for their needs.[xi]



As the figure below shows, the number of hungry people has increased since 1995-97.



The FAO report [xii] explains: *"The increase has been due to three factors: 1) neglect of agriculture relevant to very poor people by governments and international agencies; 2) the current worldwide economic crisis, and 3) the significant increase of food prices in the last several years which has been devastating to those with only a few dollars a day to spend. Nearly all of the undernourished are in developing countries*".

B. THE OTHER BIG PICTURE: INFORMALITY

Another profound problem in our society is the recent growth of informality in economic activities. Levels of informality vary substantially across developing countries, ranging from as low as 30% in some Latin American countries to more than 80% in certain sub-Saharan African and South Asian countries. The consequence is that in many developing economies job creation has mainly taken place in the informal economy, where around 60 per cent of workers find income opportunities.

Informality is costly for the country as much as it is costly for the person in the situation of informality. *"Informality limits the potential for developing countries to benefit fully from their integration into the world economy. In particular, large informal economies prevent countries from developing a sizeable, diversified export base, as the capacity of companies and economic projects to grow is constrained",* explains the report Globalization and Informal jobs in Developing Countries.[xiii]

Contrary to what much of the literature describes, the informal world often has clear rules, hierarchies and is very organized. These structures create the conditions for production, which are ruled by the law of the silence that perpetuate the system. The breaking of these rules can be very dangerous for all involved.

A central problem of informality is related with the relationships that are established in which most people are dependent on the informal structures to sell, buy, operate and become prisoner to various exploitive situations. They enter into a cycle of poverty and exploitation and are forced to develop a culture to operate and survive in this informal and/or illegal world. They live side by side with the formal world but function in a parallel universe, and only few have the power and right to operate in two worlds. In the case of the mining chain of custody, these players are the ones that typically bring the mineral production to the formal economy.

This exploitive situation is mainly created due to the lack of the rights to exist and be recognized as an economic actor in a legitimate economic sector.

C. THE ROLE OF ASM IN ADDRESSING DEVELOPMENT GOALS

Currently, ASM plays a fundamental role in generating income for millions of poor people in less economically developed country (LDC) and developing countries. In some countries ASM is the only economic sector that can absorb and provide a livelihood for the less economically advantaged people that are displaced from formal economy because of the factors highlighted in the FAO's report cited above. The traditional livelihood activities (such as agriculture or forestry) available in rural areas are not a solution in and of themselves because they are often less attractive in terms of the generation of a sufficient income and the fact that there is a gap between the number of jobs that can be generated and the number of people currently in need of employment.[xiv]

Also, it is important to note that, as a means of addressing issues of poverty alleviation, the downside to large-scale mining is that it is not a substantial employer because of its focus on capital and technology intensity.

Given these limitations, there is a role for ASM to help to address development goals, however, the present and future contribution of ASM sector can only be fully realized if ASM is considered to be a legitimate economic and mining sector. The negative and fatalistic concept about ASM based on the idea that it is an unavoidable problem, and something that cannot be improved but needs to be tolerated or repressed, is a concept that is very damaging to any long term process of transformation of the sector and an impediment to development objectives.

Understanding ASM as the economic manifestation of a geological reality redefines the debate about ASM from being a social problem to being a mineral opportunity that has the potential to substantially address poverty issues.

This is not to say that social problems do not play a role in ASM. The current level of social problems, which less economically developed countries and developing countries are facing, does place various negative pressures that are largely resulting from the informality of the ASM sector. These, in turn, result in a series of negative impacts and phenomena commonly associated with ASM. However, it is important to understand that these current negative manifestations are symptomatic of a combination of social problems and the marginalization of the sector from effective public policy.

These negative impacts can be addressed, transformed and, importantly, ASM can actually become part of the solution to overcoming one of the most tragic problems of our century - the increasing impoverishment of the developing countries in particular in rural areas.

The geological fact of the resource availability, combined with this view of the potential resolution of social problems related to the sector implies that if, over time, ASM is able to be included as a formal sector, ASM will not disappear but will rather continue as a segment of the mining sector side by side with other economic alternatives, without many of the negatives impacts currently associated with it.

At the same time, the recognition that large-scale mining is not the only or exclusive industry model is very important, because enabling diversity in approaches to better use all of the geologic potential of the country, can create a more healthy mining sector that make more diverse contributions to the economy.

3. INTERNATIONAL COMMUNITY AND ARTISANAL AND SMALL SCALE MINING

A. First phase

In the 1990s, several international meetings discussed the issue of small-scale mining. One of the most important of these was a UN Interregional Seminar on the Development of Small and Medium-scale mining in Harare in February 1993 where the Harare Guidelines were developed.[xv]

These international forums culminated in the report of the UN Secretary-General entitled, *Economic and Social Development Needs in the Mineral Sector: Small-scale Mining Activities in Developing countries and Economies in Transition,* which was published by the United Nations Economic and Social Council (ESC), in response to ESC decision 1993/302 in March of 1994. [xvi]

This pioneering report created some awareness and was in part responsible for the development of relevant national and international initiatives, such as the promulgation of several ASM legal frameworks in Africa, Latin America and Asia, a comprehensive ILO report in 1999 on the situation of ASM in the world, the Communities and Small-scale Mining (CASM) initiative at the World Bank (2001), the Global Mercury Project at UNIDO with GEF financial support in 2002 and Global Mercury Partnership.

These initiatives and programs breached the silence around the ASM sector, generated more visibility and promoted specific achievements but they certainly did not succeed in bringing ASM globally to the level of formality and economic and social recognition it deserves, as one of the most important sectors in generating employment in the rural areas in developing countries.

B. The current international scenario: A new era for ASM?

i. Mercury Treaty

Recently, the UNEP was mandated to act as secretariat to negotiations towards a global, legally binding instrument on mercury.[xvii]

In the current mercury negotiations, it has become more clear that ASM should be treated as a special case and that there needs to be a shift away from the approach which has focused solely on mercury use prohibition.

The few organizations representing ASM producers at the negotiations share the same view and in December of 2010, they presented to the UNEP Manila meeting an ASGM Mercury Reduction Declaration[xviii] to express the commitment and optimism about addressing mercury use problems, but also their concerns about the need for an approach to the mercury negotiation that can be truly useful and fair for the ASM sector.

It is important to understand that unlike other economic sectors, ASM producers do not have a direct presence at the mercury negotiations, which means that it is very difficult for them to formally present ideas, and to make suggestions that can help to shape the governments' decisions on these issues that directly affect their interests.

There has been a growing sentiment in the negotiations that for ASM, mercury use must be understood as a symptom of a lack of options, resources and incentives. Given this reality a simple focus on legal tools for mercury elimination will not address the root of the problem.

The mercury treaty may represent a unique opportunity to finally build an approach that, while addressing harm from mercury use, will move ASM from its history of illegality and marginalization towards being a substantial contributor to poverty alleviation. On the contrary, if the treaty ignores the development challenges that surround ASM in an attempt to resolve an environmental problem in isolation, it could potential end up creating an unprecedented violation of human rights while not addressing in any practical terms, the core environmental problems.

ii. Africa Mining Vision

In 2008, the African Mining Ministers started a very innovative, powerful and inspiring initiative and in the following year, 2009, the Africa Mining vision was adopted with a multidimensional and integrated approach to guarantee that mining is a constitutive part of the development policies at all levels.

"*That means thinking about how mining can contribute better to **local** development by making sure workers and communities see sustainable benefits from large-scale industrial mining and that their environment is protected. It also means making sure that **nations** are able to negotiate contracts with mining multinationals that generate fair resource rents and stipulate local inputs for operations. And at **regional** level, it means integrating mining into industrial and trade policy.*

Most of all it's a question of opening out mining's enclave status so that Africa can move from its historic role as an exporter of cheap raw materials to a manufacturer and a supplier of

knowledge-based services."[xix]

In 2011, an Action Plan was approved. Under the Action Plan, the Africa Mining Vision will be implemented through nine programs. In addition to these two documents, the Africa Mining vision and the Action Plan, which reflect the African diplomatic commitment, another document was produced, entitled, *Minerals and Africa's Development: the International Study Group Report on Africa's Mineral Regimes***.** This report had the objective of informing policy decisions towards the implementation of the Africa Mining Vision and respective Action Plan.

In all these documents, ASM is one of the priority issues and goals. In last document cited above, the concept of ASM, the role that it plays and the potential role that it could play in the rural economies of Africa countries is well understood:

ASM activities are widespread in Africa, employing a large number of people directly in mining and associated services, as well as supporting large numbers of dependents (...)

Owing to its high labour intensity, ASM is commonly acknowledged to create far more jobs per invested dollar than large-scale mining (LSM) (…)

As in other regions, ASM exploits many minerals in Africa, ranging from diamonds and a variety of other gemstones, to precious metals such as gold and tantalite, to industrial minerals including limestone for aggregate and agricultural purposes, clays for pottery and other uses and many other non-metallic minerals. ASM thus not only contributes to national and continental economic activity: as part of overall development programs, it can be an important opportunity for improving conditions in rural and remote areas, especially where alternative livelihoods are few (…)

The document also identifies the current challenges that ASM faces to fully realize its potential. *"They [challenges] include inadequate policy and regulatory frameworks; limited technical can-paucity and access to appropriate technology (and consequent environmental degradation); lack of finance; inadequate access to exploration and mining areas; difficulties in accessing the market; issues associated with conflict minerals; and women and child labour concerns. The opportunity for ASM to be transformed into a tool for sustainable development, particularly in rural areas, can thus be realized only if these challenges are met holistically."* [xx]

iii. Certification initiatives: an important tool for transformation of ASM sector

In the last decade, certification schemes have become an important tool in the mining sector (as well as others such as forestry, agriculture and fisheries) to provide assurances that goods

are produced under specified, acceptable criteria. The use of these tools is more developed in other sectors but is a relatively new phenomenon in mining.

Some initiatives such as the Responsible Jewellery Council, Kimberly Process and *Fairtrade and Fairmined* are the most advanced in terms of implementation but others such as the OECD Due Diligence Guidance and the Supplements on Tin, Tantalum and Tungsten and Gold are in the process of implementation.

Some of these initiatives suffer from some structural and governance problems; for example the Kimberly Process is not a typical/formal certification scheme because it attempts to certify the origin of the product without a formal independent third party certification process as it gives the role/obligation to governments to implement and monitor the system. The OECD Due Diligence Guidance, as the name indicates, was developed with objective to make sure that the companies that operate in conflict-affected and high-risk areas follow some procedures, however these procedures are focused on independent third-party audits at the smelter/refiner level. This initiative is not a certification system *per se* but may function as such, however it is too soon to analyze how this process will work. Arguably, it has more potential to become a true certification and standards assurance scheme than does the Kimberly Process.

Another important approach to address the need for ASM environmental reform and development challenges has been led by the Alliance for Responsible Mining (ARM) that, since 2003 has been actively working with ASM organizations on a market-based certification strategy which was launched in 2011 as the *Fairtrade and Fairmined* initiative, a partnership between ARM and Fairtrade Labeling Organization (FLO).[xxi]

Fairtrade and Fairmined only includes gold from artisanal and small scale mining, and is a certification system that is ISEAL compatible and includes independent third party certification. Standards were tested in 9 pilot communities in four countries, involving 3,800 families supporting roughly 15,000 people plus miners. The Standards require specific compliance with criteria on environment, labour, legality, organization, health and safety, management of toxic substances, womens rights and no child labour. Expansion is planned for Africa, Asia and Latin America with 18 new pilots in Africa and more than 30 new pilots in Latin America. The system includes a base premium of 10%, or 15% for mercury and cyanide free gold, with a minimum price of 95% of the gold international quotation. It is now possible to buy *Fairtrade and Fairmined* gold in 8 countries (UK, IE, CAN, SE, FI, NL, LU, KR).[xxii]

ARM's and FLO initiative clearly shows that is possible to work successfully with the ASM sector by taking an integrated approach to solving environmental and social problems. The initiative underscores the possibility to develop a responsible ASM sector and that the tremendous potential this approach represents cannot be ignored.

4. THE IMPORTANCE OF AN INTERNATIONAL HUMAN RIGHTS STATEMENT FOR ASM

A. ASM INFORMALITY, ILLEGALITY AND LEGITIMACY AND THE ROLE OF INTERNATIONAL COMMUNITY

It is clear that national governments, like the international community are in need of a more consistent and constructive approach to dealing with this sector that effectively addresses its real problems and potentials.

One of the current challenges is how the international community can support a sector that it is in a situation of illegality (or informality)? Without this support it will be much more difficult for those governments and other stakeholders engaging in a constructive process of formalization that we recognize will be neither quick nor simple to achieve.

That said, in order to create a sector that can more fully contribute to economies and to the sustainable development of the countries, legalization and formalization is inevitable and desirable.

The process of ASM legalization and formalization are indeed very challenging because the unique characteristics of this sector and the difficulty of society, including the governments to understand the realities of the sector and to translate these challenges/opportunities into appropriate public policies. [xxiii]

In the last 20 years, several public policy responses to ASM have emerged that include ignoring, forbidding, waiting for it to disappear and sometimes, active repression. All have been proven to not work and typically result in compounding the existing problems.

Recognizing the gap, ARM has worked extensively on ASM public policy reform. Over the course of this work, ARM have listened to ASM organizations around the world about the problems they are facing to become legalized, the ongoing uncertainty in terms of mineral rights attributions and the enormous and systematic human rights violation they are submitted to because of certain governmental policies and positions.

Recently, some countries have decided to adopt specific ASM policies and have some successful results.[xxiv] In any case, the formalization process is a long-term process with many challenges that need to be faced and corrected over time. Expecting that the formalization will happen without a progressive and scaled-up approach is an unrealistic and dangerous expectation that can destroy the potential of very good government and other stakeholder initiatives.

While it is important to understand ASM as a legitimate economic and mining sector, with the associated rights and obligations, this can only be possible if there is clarity in terms of the

potential macro-economic role of the sector and fundamental human rights that must be attached with it.

More clarity is needed around the relationship between ASM and the fundamental right to access and responsibly develop mineral resources. This clarity is a necessary condition for enabling legal frameworks and formalization policies for the ASM sector.

The report, *The Wealth of the Poor: Managing Ecosystems to Fight Poverty*[xxv], shares the same view with a fundamental question: *"Who controls ecosystems, and how can this control be reconfigured to allow the poor to use their natural assets as sustainable sources of wealth creation, vehicles of political empowerment, and avenues of integration into the national and global economies?"*

ASM can only fully realize its potential in terms of contributing to poverty alleviation if several propositions are met. The following propositions were identified in the above-cited report,

- *Economic growth is the only realistic means to lift the poor out of extreme poverty in the developing world; but the capacity of the poor to participate in economic growth must be enhanced if they are to share in its benefits.*
- *The building blocks of a pro-poor growth strategy begin with natural resources. These provide the base upon which the vast majority of the poor now depend for their fragile existence, but over which they exercise little control, and therefore can't exercise full stewardship.*
- *The role of governance—transparent and accountable governance— is critical to fostering pro-poor growth and essential to ensuring that the engine of that growth, natural resource wealth, is managed wisely.*[xxvi]

B. THE POTENTIAL CONTENT OF AN INTERNATIONAL POSITION ON ASM

In the last 15 years the visibility and understanding about ASM sector and its role and potential has increased substantially but there still persist several problems in terms of the approach and concepts surrounding the ASM phenomenon that creates distortions and ambiguity in the definition of public policy, legislation, national or international programs and prevents the full engagement of relevant stakeholders in the process of helping the transformation of this sector.

The international community does not have a clear and holistic position about ASM that incorporates all the advances made in the last 15 years in understanding this important mining sector.

A clear, holistic position that comes from the international community about ASM, which integrates all diverse dimensions (technical, economics, financial, social and environmental) can tremendously help governments, NGOS, international agencies and the ASM sector as well.

A human rights declaration is an important start for such an international position because it provides the correct framework and the fundamental rights and obligations that come with it. The idea is not to reproduce a human rights declaration in the context of ASM but use the human rights declaration as the context and to identify the areas/issues that are fundamental for the ASM sector to move towards its transformation into a sector that can contribute to sustainable development.

The international position can be structured in three main categories including the following issues:

1. Vision of ASM in the context of the mining sector

- Recognition that a healthy mining sector includes ASM
- ASM as a legitimate economic sector
- ASM is a fundamental ally in the fight against poverty
- Respect for the distinct, unique and diverse nature of the ASM sector

2. Rights and obligations of ASM towards becoming a sustainable socio-economic sector

- Formalization of ASM as a means to achieving sustainability objectives
- Acknowledgement that stable public policy is needed to promote a sustainable sector
- Formalization as a process with different and integrated dimensions
- Addressing the need for empowerment of women miners
- The right of miners and communities to a safe and health environment

- The right of miners to have access to mineral resources
- The right to perform ASM activities without violence, criminalization and marginalization
- The right of ASM to have access to national and international markets
- Protection of children from the most dangerous and unhealthy forms of work and creation of the conditions and programs to eliminate child labour in ASM

3. Participation of miners, relevant stakeholders and international community in the process of transformation of ASM

1. Listen to and respect the voice of the miners
2. Engagement of all relevant actors in the process of formalization
3. Promote private partnerships between medium and large scale mining sector and ASM operations
4. Develop responsive program and policy support of the international community for ASM

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