



LAWS AND REGULATION IN AFRICA IN RELATION TO RESPONSIBLE SOURCING

IMPACT ON ARTISANAL AND SMALL-SCALE MINERS



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MADI CONFERENCE: NEW EU REGULATION ON CONFLICT MINERALS

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OUTLINE

- What is responsible sourcing?
- What are the dominant sourcing frameworks?
- ASM provisions in African mining regimes and relevance to responsible sourcing frameworks
- How have artisanal and small-scale miners been impacted?
- What of the future?

WHAT IS RESPONSIBLE SOURCING?

- *“Responsible Sourcing is a commitment to ethical considerations by a company in all aspects of its procurement. By ensuring their suppliers adhere to comprehensive international standards, companies can positively improve their supply chains. Responsible Sourcing requires that firms go beyond financial, logistical and even reputational considerations, to take into account the wider impact of their own actions and those of their suppliers.”*

http://www.lbma.org.uk/assets/RSReport/2020/LBMA_RS_Report_2020_ResponsibleSourcing.pdf

DOMINANT RESPONSIBLE SOURCING FRAMEWORKS

- Guidance vs Standards vs Certification Schemes
 - Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Area
 - London Bullion Market Association (LBMA) Responsible Sourcing Programme
 - World Gold Council – Conflict-free Gold standard.
 - ICGLR Regional Mineral Certification Mechanism

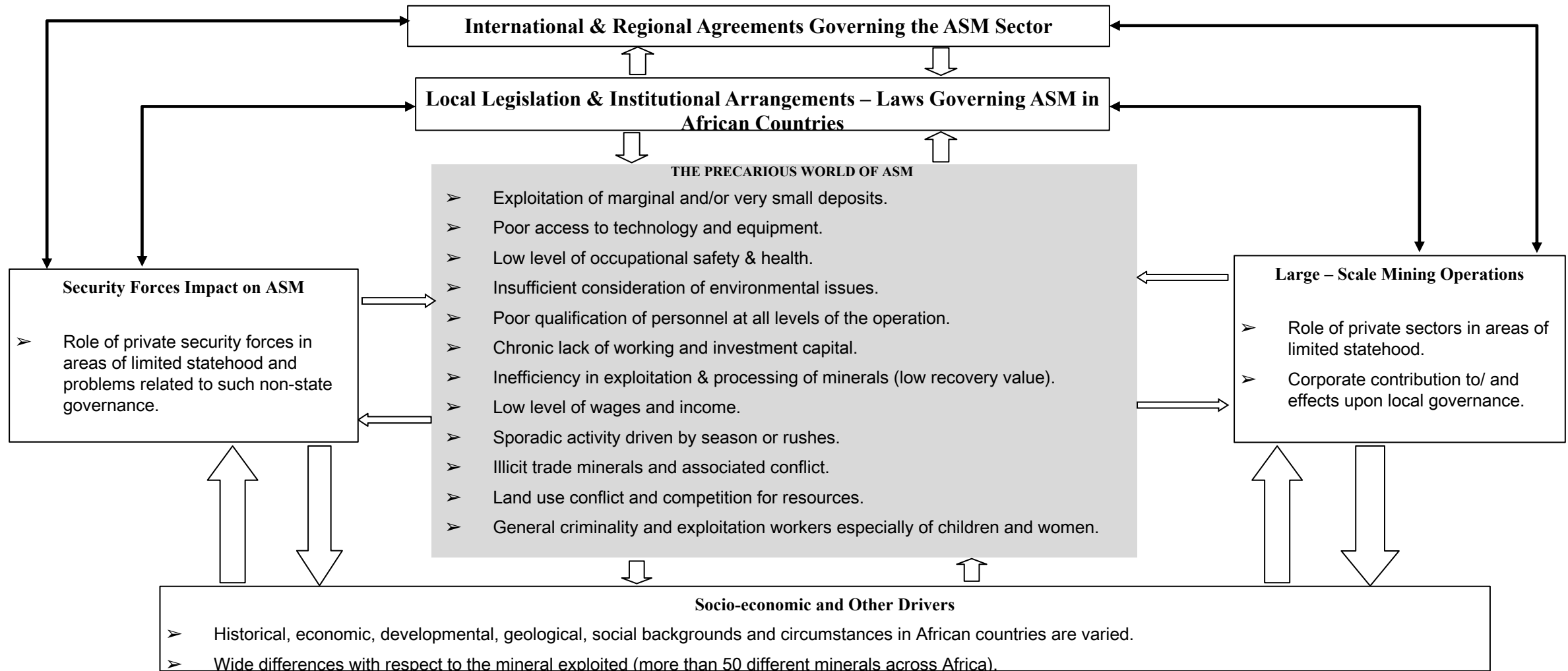
ASM, AFRICAN MINING REGIMES AND RESPONSIBLE SOURCING

- What is ASM?
- How is it provided for the African Mining Regimes?
- What aspects of the ASM provisions in are relevant to responsible sourcing

ASM DEFINITION

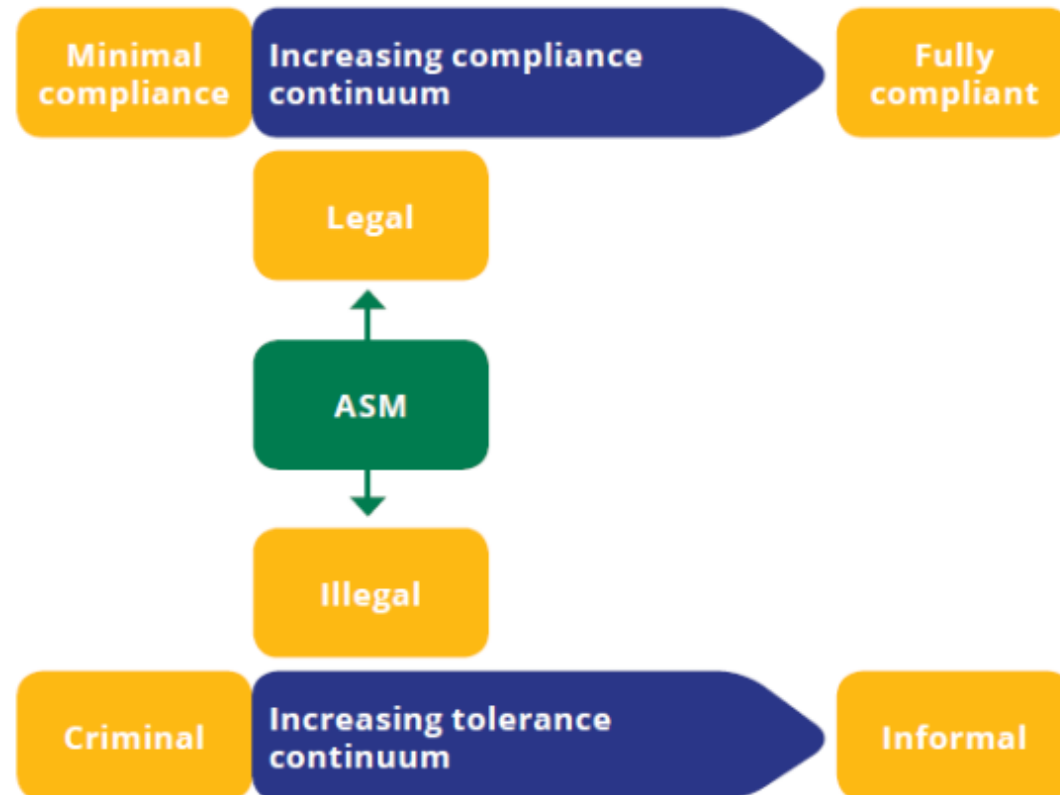
Definition of Artisanal and small-scale mining (ASM):

ASM includes all the activities concerned with mineral searching (i.e. prospecting), ore extracting, processing and trading of mineral product, when the activities apply simple methods. Usually low levels of capital and technology are applied and its is labour intensive. The distinction from industrial scale is subjective and tends to be user specific. (Mutemeri et al 2016).



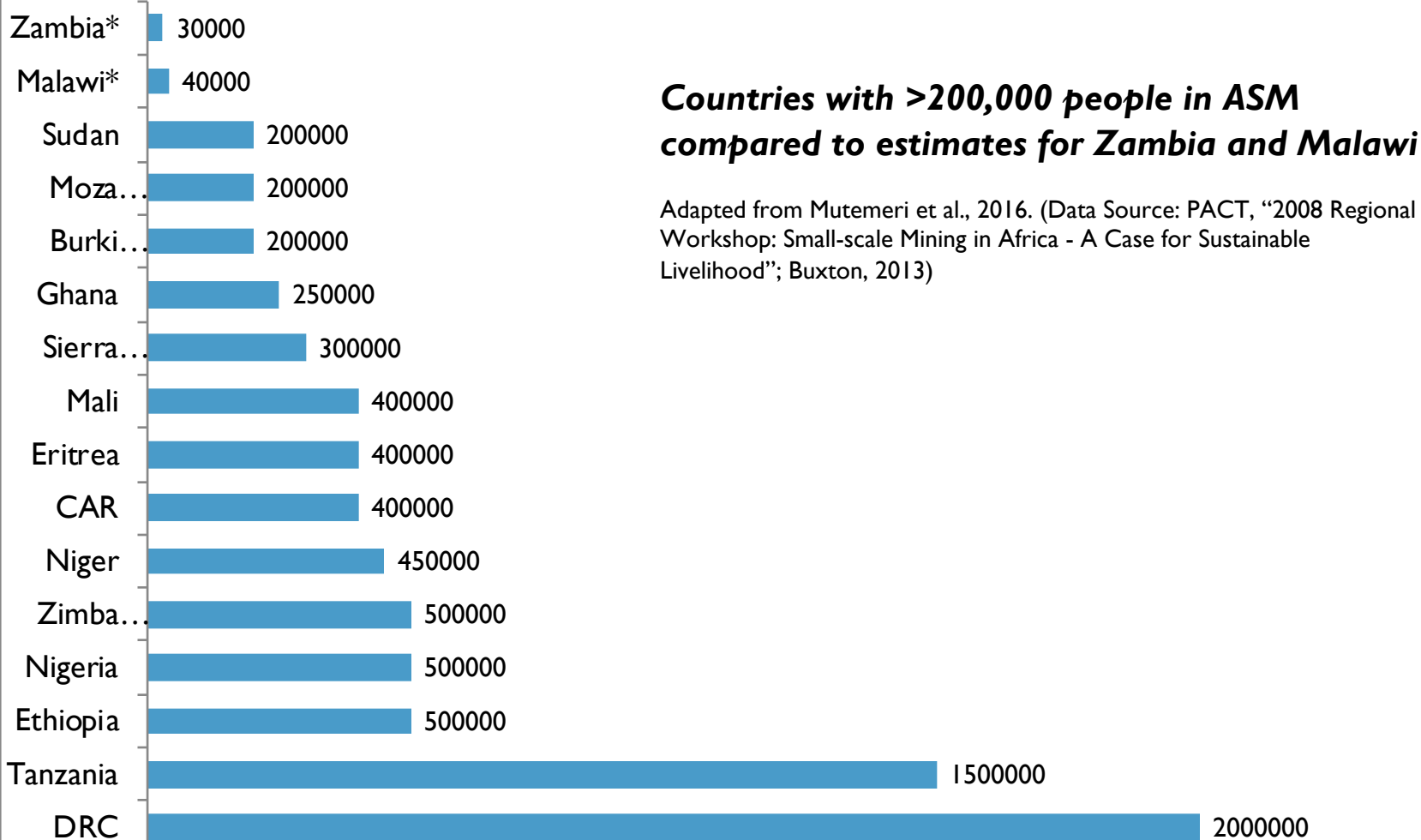
ASM CONTINUUM OF EXISTENCE

ASM framework and Zama-Zama mining



- *After Ledwaba & Mutemeri, 2017*

SIZE OF ASM SECTOR IN AFRICA



ASM AS OPPORTUNITY

- In spite of the many negative impacts of ASM (i.e. safety, health, environmental, social, political and economic etc.) increasingly the opportunity for rural livelihoods from ASM is being acknowledged.
- Also acknowledged is the need to address the challenges so as to derive sustainable developmental outcomes from ASM

AFRICA MINING VISION

- “Transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development”.
- Key Tenet II: “...A sustainable and well-governed mining sector that effectively garners and deploys resource rents and that is safe, healthy, gender & ethnically inclusive, environmentally friendly, **socially responsible** and appreciated by surrounding communities
- Key Tenet IV “...A mining sector that harness the potential of **artisanal and small-scale mining** to stimulate local/national entrepreneurship, improve livelihoods and advance integrated rural social and economic development

(Source: African Union, 2008)

ASM PROVISIONS – COMPARATIVE ANALYSIS

Comparative analysis to o highlight provisions for ASM

Provisions	DR Congo	Tanzania	Sierra Leone	Ghana	South Africa
Law	Mining Code 2002	Mining Act 2010	Mining Act 2008	Minerals and Mining Act, 703	Minerals and Petroleum Resources Development Act, 2002
Categories of license	1. Artisanal: Artisanal Mining (AM) Exploitation Card 2. Small-scale Mining (SSM)	Primary mining license (covers all ASM activities)	1. AM 2. SSM	SSM (covers all ASM activities)	Mining Permit (covers all ASM activities)
Eligibility	1. AM only for nationals. 2. SSM entity applicant must be owned 25% by nationals	Only nationals	1. AM only for nationals. 2. SSM entity applicant must be owned 25% by nationals	Only nationals	No restrictions
Where license/permit can be issued	1. AM Miners card to be issued for working only in specific designated AM areas. 2. SSM no restrictions	No restrictions, can mine any area where licensed	1. AM licenses to be issued for areas only in specific designated areas. 2. SSM no restrictions	No restrictions, can mine any area where licensed	No restrictions, can mine any area where licensed
Validity	1. AM 1 year renewable as long as designated area for which it is granted exists, 2. SSM <10 years including all renewals	7 years renewable indefinite times	1. AM 1 year renewable 3 times, 2. 3 years renewable	<5 years renewable at Minister's discretion	2 years, renewable 3 times for a period 1 year each time
Aerial extent	1. AM - determined by provincial head of Mining, 2. Determined by size of preceding exploration licence area	Not specified n=in the law	1. AM 0.5ha 2. SSM <100ha	<21 ha	<1.5 ha

ASM PROVISIONS – COMPARATIVE ANALYSIS (CONT'D)

Comparative analysis to highlight provisions for ASM

Provisions	DR Congo	Tanzania	Sierra Leone	Ghana	South Africa
Depth restrictions	1. AM - 30m 2. SSM - none	None	1. AM - <10m 2. SSM - <20m	None	No restrictions
Number of licenses allowed	1. AM - Not specified 2. SSM - 50 non-contiguous	Not specified	Not specified	Not limited	Not limited
Restrictions on level mechanisation, use of chemicals etc.	ASM 1. AM–Artisanal tools and methods; sell to authorised traders & trading houses 2. SSM–semi-industrial or industrial processes; use of explosives allowed	<USD100 000 investment, explosives only allowed with special permission; use of mercury permitted only with retort	1. AM–not specified 2. SSM–not specified	Not to use explosives without permission. To buy mercury from authorised suppliers only	No restrictions
Right to prospect	1. AM–Includes prospecting and exploitation 2. SSM–Has to be preceded by an exploration license	Includes prospecting and exploitation	1. AM–Includes prospecting and exploitation 2. SSM–Has to be preceded by an exploration license	Includes prospecting and exploitation	Includes prospecting and exploitation
Number of employees	1. AM–Not restricted 2. SSM–Not restricted	Not specified	1. AM–; <50 workers 2. SSM–no restrictions	Not specified	Not specified
Transferability/ Leasing	1. AM–Not transferable 2. SSM–Transferable; Can be leased	Transferrable in part or whole	1. AM–not transferrable 2. SSM–Transferable	Transferrable only to citizens	Not transferrable, Not leasable

INSTITUTIONAL ARRANGEMENTS

- Sometimes decentralized or devolved to a more local structure
- Government support through a special purpose structure like a Department or Directorate
- Support may be financial with a special fund set-up, special skills development programmes, and in the most developed schemes an integrated support framework for the who value chain.

CHALLENGES: ASM REGULATORY PROVISIONS AND RESPONSIBLE SOURCING

- Development process not evidence based, usually driven by political imperatives
- Processes neither transparent no inclusive
- Tendency for ASM to be treated as a downscaled version of LSM
 - Hence provisions not responsive to the needs of the sector
- Conflict between ASM as livelihood for poverty alleviation versus ASM as a business
- Conflict between informal/illegal/criminal/extra-legal/legal
- Negative impacts that are difficult to mitigate (e.g. child labour, illicit trade, health and environmental degradation)
- Limited capacity (financial, skills and knowledge etc.)
- Cost of compliance

IMPACTS OF RESPONSIBLE SOURCING INITIATIVES ON MINERS IN THE ASM SECTOR

- Lessons from the past
 - Defacto embargo, leading loss of livelihoods
 - Driving trade underground, perpetuating illicit and exploitative practices
 - Cost of compliance too high

WHAT DOES THE FUTURE HOLD FOR ASM IN AFRICA WITH NEW EU RULE ON CONFLICT MINERALS

- How is the introduction of the EU regulation on conflict going to be different
 - How well does it complement and build on local regulation?
 - How will the unintended consequences be mitigated?

RECOMMENDATIONS TO OPTIMISE POSITIVE IMPACTS

- Compliance schemes must be aligned to national and regional regulatory frameworks
- Capacity building interventions to ensure good governance, and organisational sustainability
- Supporting with financial sustainability models
- Sectoral organisation – to raise the voice of ASM communities
- Link into continental structures for peer learning.



THANK YOU