



# Formalizing artisanal and small-scale mining: Whither the workforce?



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## ABSTRACT

This article develops a critique of ongoing formalization efforts in the Artisanal and Small-scale Mining (ASM) sector. By departing from erroneous assumptions about a homogeneous ASM-sector, and by focusing on the recognition of mineral property rights, these formalization efforts tend to overlook the massive informal ASM workforce, and the complex sets of organizational arrangements in which it is involved. On the basis of a critical case study in the Southern Philippines, the article then identifies some of the opportunities and challenges associated with moving towards more inclusive formalization efforts, which target both mineral tenure- as well as labor-relations.

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## 1. Introduction

In recent years and decades, artisanal and small-scale mining (ASM) has witnessed a massive expansion worldwide. Commonly defined as “labour-intensive, low-tech mineral exploration and processing” (Hilson, 2011: 1032), the sector now employs an estimated 15–30 million people producing 15–20% of global mineral output (Buxton, 2013; Seccatore et al., 2014). Despite this expansion, most ASM-activities continue to take place outside the regulatory control of host governments. Policymakers and analysts alike consider this a major problem, with “illegal ASM” being mentioned in the same breath with social and environmental woes like child labor, crime and conflict, mercury pollution, and soil erosion. Conversely, there is now “an emerging consensus that formalization must be part of any strategy to develop the ASM sector” (Siegel and Veiga, 2009: 51), and many host governments have undertaken efforts to formalize the sector.

It will be argued in Section 2 of this article that existing legal frameworks put a premium on the recognition of mineral tenure rights, i.e. on granting ASM-operators formal rights to mine in a particular piece of mineral-bearing land through the issuance of concessions, permits and/or licenses. Most academic analysis, meanwhile, has focused on understanding the fiscal, administrative and political barriers that prevent the lion's share of ASM-operators from actually obtaining formal mineral tenure rights

(e.g. Hentschel et al. (2002) and Hilson (2013)). Instead, this article builds on a more fundamental critique of formalization frameworks for the ASM-sector, namely that they tend to depart from simplistic assumptions about a homogeneous ASM-sector, thus glossing over the complex organizational arrangements in a sector composed of an entire range of stakeholders (Fisher, 2007). In particular, it is argued that existing formalization efforts fail to address the needs and concerns of a massive informal workforce that consequently risks falling prey to exploitation and hazardous working conditions.

Moving beyond this critique of existing policy interventions, the third section aims to identify some of the opportunities and challenges associated with the development of a more inclusive approach to formalization, i.e. one that seeks to recognize both mineral tenure- as well as labor-rights. While relying primarily on empirical data from a case study in the Southern Philippines, where the province of South Cotabato is attempting to develop such a more inclusive approach to formalization, our findings also speak to the situation in other regions in the Philippines, and even in other countries.

## 2. Informality in mineral tenure- and labor-relations

### 2.1. (In)formalizing mineral tenure

As noted in the introduction, in response to the dramatic expansion of ASM, many host governments have undertaken efforts to recognize and regulate the sector. While the resulting legal

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frameworks often encompass environmental and safety regulations, policy implementation and evaluation usually revolve around the recognition of mineral tenure rights, which are seen as a sine qua non for the orderly development of the sector (Siegel and Veiga, 2009; Freudenberger et al., 2013). These mineral tenure rights usually take the form of permits, licenses and/or concessions, issued either to individual ASM-operators (e.g. Tanzania, see Jönsson and Fold (2009)) or to ASM-collectivities like cooperatives (e.g. Bolivia, see Salman et al. (2015)). The situation in the DRC is slightly different, as existing ASM-policies – which are severely hampered by weak state capacity – are geared in the first instance towards the certification of ASM-operators (through so-called *cartes d'exploitant artisanal*), who then become authorized to operate inside artisanal mining areas (*zones d'exploitation artisanal*) (Geenen and Radley, 2014).

This now widely shared view that ASM-operators require strong mineral tenure rights as a basis for their emancipation harks back to economic theories of property rights (Clausen et al., 2011; Geenen, 2012), which were most famously articulated in a developing country context by Peruvian economist Hernando de Soto (2000). According to these theories, private property is the most efficient way of allocating resources: in addition to providing people with incentives to invest and develop (mineral) resources, private property can act as a collateral for loans, thus improving people's access to credit markets. Essentially building on a similar logic, different scholars have made efforts to understand why in different countries, formalization efforts have hitherto failed to provide the lion's share of ASM-operators with secure, state-sanctioned mining rights. For one, it has been observed that in countries like Sierra Leone (Maconachie and Hilson, 2011a, 2011b) and the DRC (Geenen and Radley, 2014), where government agencies simply lack the capacity to enforce existing laws and regulations, ASM-operators have limited incentives to comply with existing legislation because the state is unable to offer them anything in return, including basic mineral tenure security. Furthermore, as Cartier and Bürge observe in the Sierra Leone case:

“Operating without a license offers many gold miners greater mobility and flexibility in their search for commercially viable gold deposits and also suits more rudimentary, temporary and seasonal mining activities, thereby facilitating the undertaking of complementary agricultural and mining activities” (Cartier and Bürge, 2011: 1089).

Yet our own experience in the Philippines, and that of several of our colleagues in other countries (e.g. van Bockstael (2014) on Liberia), suggests that most ASM-operators do want formal mining rights. However, a combination of (amongst others) a range of fiscal-administrative barriers, rent-seeking behavior on the part of government officials, low literacy rates, the remoteness of government offices, ... prevents them from actually doing so (e.g. Hentschel et al. (2002) and Van Bockstael (2014)). At the same time it has been demonstrated that the expansion of large-scale mining in countries like the DRC (Geenen, 2014), Burkina Faso (Luning, 2008) and Ghana (Hilson and Potter, 2005) limits mineral-bearing land available for ASM-operators, leaving them with no option but to operate “illegally” inside company concessions. In Ghana, ASM-legislation has been described as a “legislative afterthought”, introduced long after large-scale mining has monopolized access to mineral-bearing land (Maconachie and Hilson, 2011a, 2011b). Ultimately, therefore, it is only the happy few who command the financial capital and political connections necessary to surmount these various barriers to entry into the formal mining economy (Fisher, 2007).

## 2.2. Moving beyond mineral tenure: Whither the ASM-workforce?

Building on broader academic debates on formalization and land titling (for overviews see Sjaastad and Cousins (2009) and

Bromley (2009)), other authors have developed a more far-reaching critique of the “formalization canon” in the ASM-sector (for overviews see Clausen et al. (2011) and Geenen (2012)). Particularly relevant for our purposes is the observation that existing formalization frameworks erroneously assume “that artisanal miners are a homogeneous group with similar licensing requirements” (Fisher, 2007: 752). Instead, as Fisher rightly observes in the Tanzanian case, the ASM-sector is now “highly differentiated: according to mineral type, scale of operations, geographical location, miners' socio-economic backgrounds, and individuals' social identity and role within the labour process.” (ibid.). Indeed, it has been firmly established in other countries as well that the ASM-sector now harbors a heterogeneous array of stakeholders, which may include outside investors and -traders; permittees or concessionaires; pit- or shaft-owners; team leaders; and ordinary diggers and haulers. These different actors find themselves entangled in wider (transnational-, see Duffy (2007)) networks that boast their own regulatory logic, and are firmly embedded in the economic and sociopolitical fabric of society (Geenen, 2011).

For the purposes of this article, we are primarily interested in the lower ends of the commodity chain, namely the ASM-workforce, and the complex organizational arrangements that tie these workers to one another and to other – usually more powerful – stakeholders. While these stakeholders and arrangements exhibit a high degree of variation across mining localities, there are also important similarities, both within and between countries. For one, scholars working in mining areas across the globe have exposed complex arrangements for risk- and revenue-sharing within the workforce (Grätz, 2003; Heemskerk, 2004). This workforce is usually organized into groups, sometimes (but not always, see Thornton (2014) on South Africa) along ethnic- or kinship-lines (Cartier, 2009). Examples include the mining *gangs* in Anglophone African countries like Ghana (Hilson, 2010), the *équipes* in Francophone countries like Benin (Grätz, 2003), and the *corpos* in the Philippines (Verbrugge, 2014). In most cases, and depending on the type and size of the operations, there exists a degree of specialization within these groups, which are invariably headed by a *team leader* (who may again have different names depending on the specific context e.g. *patron*, *chef d'équipe*, *foreman*), who often stands out among his peers due to his (or her) exceptional skills and experience (Grätz, 2003). Finally, in an increasing number of cases across the globe, ASM-activities are being financed by outsiders, like the *garimpeiros* in Brazil (Graulau, 2001), the *supporters* in Sierra Leone (Zack-Williams, 1995; Ojukutu-Macauley and Keili, 2008) and Ghana (Nyame and Grant, 2014), or the Asian investors in countries like Cameroon (Weng et al., 2015). In some cases the roles of financier and team leader merge, as is the case for some (but not all) of the *shaft-* or *pit owners* in the DRC (Geenen, 2014) and in Tanzania (Fisher, 2007). These investors are connected with the workforce through highly complex arrangements that often involve the provision of subsistence needs and/or cash advances by the financier, and some kind of piece-rate sharing. And while these arrangements have been described as a mutually beneficial form of ‘risk-sharing’ (Godoy, 1988), they often exhibit unequal and exploitative traits as well, with revenue-sharing skewed decisively in favor of the ‘capital interests’ (Verbrugge, 2014). In the Philippines, one encounters sharing arrangements whereby the financier retains up to 70% of the *net* revenues, i.e. those revenues remaining after the operational costs have been deducted. Furthermore, the mobility of the workers – which is crucial for success in the sector (Nyame and Grant, 2014) is often constrained due to the debts incurred to investors (Perks, 2011). It is for these reasons that Maconachie (2011) describes the infamous ‘tributor-supporter arrangement’ in Sierra Leone as “a highly unequal system of mining governance”.

The critical point here is that existing (and severely hampered) formalization efforts, which focusing overwhelmingly on the

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