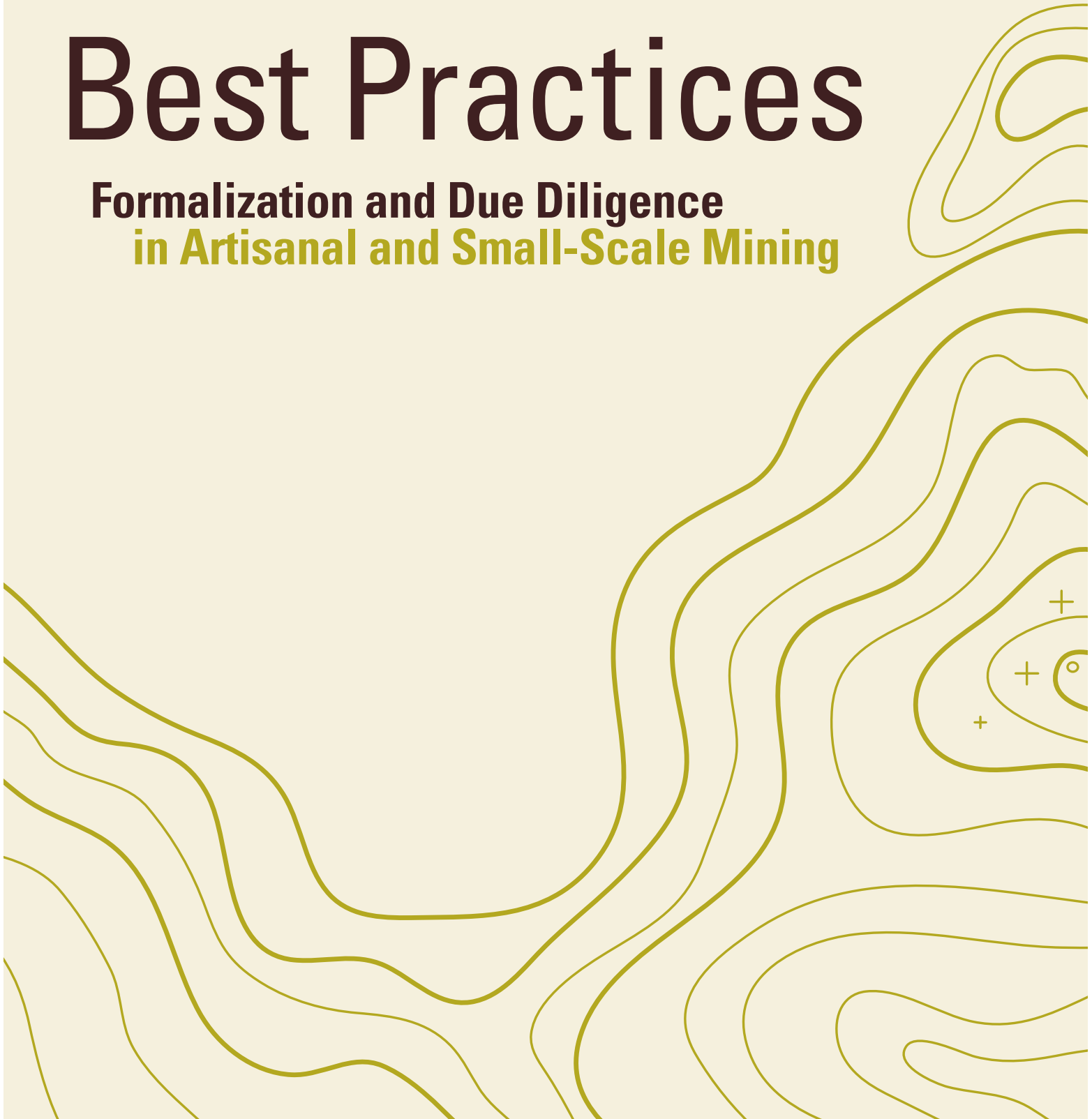


Best Practices

Formalization and Due Diligence
in Artisanal and Small-Scale Mining



Best Practices: Formalization and Due Diligence in Artisanal and Small-Scale Mining

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INTRODUCTION

Artisanal and small-scale mining (ASM) presents both opportunities and challenges for governments worldwide. When the economic benefits from artisanal mining are returned to the local communities—women and men, girls and boys—the sector supports development and poverty-reduction.

The informality of the sector—with many working without legal access to the minerals and land they mine—poses risks to governments attempting to establish good governance, peace, and security. These challenges are exacerbated in conflict-affected and high-risk areas, where artisanal miners and communities have been exploited by armed groups. Artisanally-mined minerals have been linked to money laundering, financing illegal armed groups, and human rights violations. Additionally, as the sector is most often unregulated, artisanal miners and their communities face significant environmental, health, and safety risks.

These challenges have drawn international concern and led to increased calls for both companies and governments to engage in and promote effective due diligence processes. By undertaking due diligence to effectively identify and respond to risks in their supply chain, companies can help contribute to breaking the link between minerals and conflict, while also creating environments that promote the formalization of the ASM sector—and ultimately, equitable peace and development.

Over the past decades, governments around the world have taken different approaches to working with artisanal miners and managing the sector. Policy measures have been introduced in various countries in attempts to legalize or formalize ASM, with varied results.

This paper introduces various formalization and due diligence efforts within the ASM sector. We provide a general overview and explore examples of three countries—looking at the positive and negative impacts of these processes—to provide key lessons on ASM formalization and due diligence. The paper outlines specific ways in which governments can create an enabling environment for the ASM sector, incentivizing miner and trader participation in the formal economy, while providing businesses with the tools for engaging in proper due diligence. We provide policymakers who are planning new legislation or reforms targeting ASM, with a comprehensive view of the sector and lessons they can apply.

1. Formalization of Artisanal and Small-Scale Mining

Artisanal and Small-Scale Mining

According to the World Bank, the estimated number of artisanal miners working around the world has tripled in the last 20 years, with almost 30 million people directly engaged in the sector.¹ When the African Mining Vision was adopted in 2009, almost 3.7 million people were directly working in the artisanal and small-scale mining (ASM) sector across the continent. A further 30 million people depended on the sector for their livelihoods at the time.² Reliable, up-to-date, and accurate statistics on ASM—and those who participate in it—are difficult to find, posing a challenge to governments seeking to formalize the sector.

Around the world, ASM remains informal. This means that legal or regulatory frameworks may not exist, and that legal access to minerals, and access to capital, equipment, and technical assistance may be limited. The lack of reliable

data and the sector's informality poses challenges to informed policymaking that would support and incentivize miners to enter the legal economy, improve working conditions, decrease insecurity, and promote equitable development. However, the ASM sector has several general characteristics that should be considered when governments approach formalization.

The ASM sector is generally characterized by very basic technical skills and low levels of mechanization.³ It typically entails hard physical labor with minimal occupational, health, and safety standards. This can result in dangerous working conditions at mine sites, leading to injuries, and deaths.⁴ These factors often decrease miner productivity and overall mineral recovery.⁵

Artisanal miners often engage in mining practices that have negative impacts on the environment, most notably the use of mercury in gold processing.⁶ This is often due to a lack of capacity, minimal

- 1 "Artisanal and Small-Scale Mining," World Bank, November 21, 2013, <http://www.worldbank.org/en/topic/extractiveindustries/brief/artisanal-and-small-scale-mining>.
- 2 United Nations Economic Commission for Africa (UNECA), *Africa Mining Vision*, February 2009, p. 26, http://www.africaminingvision.org/amv_resources/AMV/Africa_Mining_Vision_English.pdf.
- 3 Michael Priestler et al., *Mechanization of Alluvial Artisanal Diamond Mining: Barriers and Success Factors* (Ottawa: Diamond Development Initiative, 2010), <http://www.ddiglobal.org/login/resources/mechanisation-alluvial-artisanal-diamond-mining.pdf>.
- 4 For more on working conditions at ASM mine sites at countries around the world, see: Deborah Bryceson and Jesper Bosse Jonsson, "Gold Digging Careers in Rural East Africa: Small-Scale Miners' Livelihood Choices," *World Development* 38, no. 3 (March 2010): p. 379-392, <https://doi.org/10.1016/j.worlddev.2009.09.003>, Niladri Basu et al., "Integrated Assessment of Artisanal and Small-Scale Gold mining in Ghana—Part 1: Human Health Review," *International Journal of Environmental Research and Public Health* 12, no. 5 (May 2015): p. 5143-5176, <https://doi.org/10.3390/ijerph120505143>, Myriam Elenge et al., "Occupational accidents in artisanal mining in Katanga, D.R.C.," *International Journal of Occupational Medicine and Environmental Health* 26, no. 2: p. 265-274, <https://doi.org/10.2478/s13382-013-0096-0>, and Eva Vingård and Kaj Elgstrand, "Safety and health in mining" in *Occupational Safety and Health in Mining: Anthology on the Situation in 16 Mining Countries*, (Kompendiet: University of Gothenburg, 2013), p. 1-22.
- 5 Saleem Ali et al., "Human health and safety in artisanal and small-scale mining: an integrated approach to risk mitigation," *Journal of Cleaner Production* 129 (2016): p. 43-52, <https://doi.org/10.1016/j.jclepro.2016.04.124>, and World Bank Communities and Small-Scale Mining Secretariat, *Final Report, Program for Improvements to the Profiling of Artisanal and Small-Scale Mining Activities in Africa and the Implementation of Baseline Surveys*, March 2004, p. 15, <http://documents.worldbank.org/curated/en/425371468192844301/pdf/471000WPOAFR0B1ing0surveys01PUBLIC1.pdf>.
- 6 Gavin Hilson, "Small-Scale Mining in Africa: Tackling Pressing Environmental Problems With Improved Strategy," *Journal of Environment & Development* 11, no. 2, (June 2002): p. 149-174, <https://doi.org/10.1177/10796502011002003>, United Nations Environment Programme, *Environmental assessment of mercury pollution in two artisanal gold mining sites in eastern Democratic Republic of Congo: Technical Report for Partnership Africa Canada's Just Gold Project*, November 2016, https://wedocs.unep.org/bitstream/handle/20.500.11822/22445/UNEP_DRCongo_ArtisanalGoldMining_2016.pdf?sequence=1&isAllowed=y, and Louisa Esdaile and Justin Chalker, "The Mercury Problem in Artisanal and Small-Scale Gold Mining," *Chemistry: A European Journal*, no. 24 (2018): 1-13, <https://onlinelibrary.wiley.com/doi/epdf/10.1002/chem.201704840>.

access to improved mining techniques, and a lack of awareness and understanding of the potential harm being caused.

In artisanal mining, women are an important part of the work force. In the Great Lakes region, IMPACT's research at seven mine sites across Democratic Republic of Congo, Rwanda, and Uganda highlighted the important role that women play at artisanal mine sites, where in some cases they made up to 75 percent of the workforce.⁷ Yet, gender inequality is prevalent within the sector. Research shows that women are particularly vulnerable to the risks associated with mining, including those affecting health, safety, and environment.⁸ They also often earn much less than their male counterparts, though what they do earn can help them to contribute to their households, access new economic opportunities, and improve their economic, social, and political status in the community.⁹

Artisanal mining is an important source of income and employment, especially for poor, rural populations. Miners—especially women—often turn to artisanal mining because they can earn more than through other livelihood activities, such as farming.¹⁰ Income made through mining is often used to supplement income from other sectors.¹¹ Despite this, those working in ASM typically have low incomes and are subject to economic insecurity.¹² The ASM sector is largely

poverty-driven, meaning that many individuals are pushed into artisanal mining because of a lack of alternative livelihoods that can sustain themselves and their families.¹³ This is especially true as conflict and climate-change related effects, such as drought, impact traditional sources of livelihoods.

Formalization of Artisanal and Small-Scale Mining

The definitions of formal, informal, and illegal mining vary across countries and contexts, and are often not clear-cut. Informal mining and illegal mining are often used synonymously. However there are important distinctions that need to be understood in order to develop effective policies and laws for the ASM sector.

Informal mining often refers to individuals or collectives who are engaged in ASM, but operating outside of a legal framework that grants them rights to mine. Informal mining is often tolerated by many governments and may also be considered as legitimate by local communities. While informal mining is technically done without legal access to land or minerals, it is not necessarily associated with illicit or criminal activity—though informal miners are more vulnerable to illicit actors looking to take advantage. Informal mining can also be often linked to traditional or customary mining activities.¹⁴

7 IMPACT, *Women in Artisanal and Small-Scale Mining in Central and East Africa: A Snapshot of Challenges and Opportunities for Empowerment*, April 2017, <https://impacttransform.org/wp-content/uploads/2017/09/women-mining-snapshot-central-and-east-africa-3.pdf>.

8 Ali et al., p. 45 and also see Doris Buss et al., "Gender and Artisanal and Small-Scale Mining in Central and East Africa: Barriers and Benefits" *Growth and Economic Opportunities for Women Working Paper Series*, July 2017, https://impacttransform.org/wp-content/uploads/2017/10/GrOW-Working-Paper_2017.pdf.

9 Buss et al., p. 31-33, 39.

10 Ibid, p. 39, and IMPACT, *Just Gold: Bringing Responsible and Conflict-Free Gold from Artisanal Mines to International Markets*, April 2018, https://impacttransform.org/wp-content/uploads/2018/04/IMPACT_Just-Gold_April-2018-EN-web.pdf.

11 Sadia Mohammed Banchirigah and Gavin Hilson, "De-agrarianization, re-agrarianization and local economic development: Re-orientating livelihoods in African artisanal mining communities," *Policy Sciences* 43, no 2 (June 2010): p. 157-180, <https://doi.org/10.1007/s11077-009-9091-5>.

12 Thomas Hentschel et al., *Artisanal and Small-Scale Mining: Challenges and Opportunities*, (London: International Institute for Environment and Development, 2003), p. 25, <http://pubs.iied.org/pdfs/9268IIED.pdf>.

13 Ibid, and IMPACT, *Just Gold: Bringing Responsible and Conflict-Free Gold from Artisanal Mines to International Markets*.

14 The Global Initiative Against Transnational Organized Crime and Estelle Levin Ltd, *Follow the Money: Financial Flows linked to Artisanal and Small-Scale Gold Mining*, March 2017, p. 9-17, <http://www.levinsources.com/assets/pages/Illicit-Financial-Flows-Artisanal-Gold-Mining.pdf> and Organisation for Economic Co-operation and Development (OECD), *FAQ on Responsible Supply Chains in Artisanal and Small-Scale Gold Mining*, 2016, p. 6, http://mneguidelines.oecd.org/FAQ_Sourcing-Gold-from-ASM-Miners.pdf.

The term illegal mining is more often associated with ASM that is taking place on the concessions of other rights-holders, including large-scale mining companies, protected areas such as national parks, and bodies of water where the use of chemicals is prohibited. Illegal mining can also include more organized forms of criminal elements, which has been a challenge in many countries such as Colombia and South Africa, as well as mining that is linked to armed groups and human rights violations.¹⁵

Incentivizing and supporting the formalization of the ASM sector can be part of an effective strategy to break the link between the ASM mineral trade and armed groups or illicit actors—whether they are benefitting from or engaged directly in the mineral supply chain. Formalization serves to render the informal sector less vulnerable to illicit actors, while also serving to introduce greater transparency, which can ultimately help to more easily identify illicit actors involved in ASM sector.

Formalization of artisanal mining is a process that can include the introduction of legal and regulatory frameworks, providing legal access to minerals, information about geological data, organizing miners into flexible and dynamic organizations, and providing access to capital, equipment, and technical assistance.

15 Kgothatso Nhlengetwa, “Why it doesn’t make sense that all informal mining is deemed illegal,” *The Conversation*, April 12, 2016, <http://theconversation.com/why-it-doesnt-make-sense-that-all-informal-mining-is-deemed-illegal-57237> and “Illegal Gold Mining,” *Amazon Aid Foundation*, accessed April 25, 2018, <https://amazonaid.org/the-issues/gold-mining/>.

16 Intergovernmental Forum of Mining, Minerals, Metals and Sustainable Development, “Six Key Factors for Successful ASM Formalization,” January 22, 2018, <http://igfmining.org/six-key-factors-successful-asm-formalization/>, Alan Martin and Hélène Helbig de Balzac, *The West African El Dorado: Mapping the Illicit Trade of Gold in Côte d’Ivoire, Mali and Burkina Faso*, Partnership Africa Canada, January 2017, <https://impacttransform.org/wp-content/uploads/2017/09/2016-Jan-The-West-African-El-Dorado-Mapping-the-illicit-trade-of-gold-in-Cote-DIvoire-Mali-and-Burkina-Faso.pdf>, Offah Obale, *From Conflict to Illicit: Mapping the Diamond Trade from Central African Republic to Cameroon*, Partnership Africa Canada, December 2016, <https://impacttransform.org/wp-content/uploads/2017/09/2016-Dec-From-Conflict-to-Illicit-Mapping-the-diamond-trade-from-Central-African-Republic-to-Cameroon.pdf> and IMPACT, *Just Gold: Bringing Responsible and Conflict-Free Gold from Artisanal Mines to International Markets*.

In order to formalize and legalize the ASM sector, governments should carry out a number of steps,¹⁶ including:

- » Creating conducive and appropriate legal and policy frameworks;
- » Providing legal access to minerals for the ASM sector, including through the designation of specific ASM areas;
- » Adopting a flexible approach to ASM structures that allow artisanal and small-scale miners to create dynamic associations that are tailored to their realities, including cooperatives;
- » Mainstreaming ASM into country or regional economic programs;
- » Providing artisanal and small-scale miners with geological information in support of more efficient mining for ASM actors;
- » Providing or supporting access to capital and equipment, including technical assistance and transforming ASM supply chain actors into recognized professionals through education, training, and other activities;
- » Creating an enabling environment for ASM supply chain actors to access formal mineral markets;
- » Establishing clear institutional mandates and decentralizing roles and responsibilities with local and regional governments so that services can be brought directly to miners;
- » Creating space for effective participation and engagement of different ASM stakeholders in policymaking that impacts them, with special attention being paid to vulnerable and marginalized stakeholder groups, such as women and indigenous populations.

Why Undertake Formalization of the Artisanal and Small-Scale Mining Sector

Governments are increasingly looking to formalize artisanal miners, as informality means that governments are losing out on important revenues from mining. The process for formalization is an opportunity to start capturing revenues from the sector and reinvesting these revenues into important social services.

The lack of a formalized sector also makes it very difficult for governments to put into practice effective strategies, policies, and regulations for minimizing potential negative environmental and health impacts that are common in ASM.

The informal nature of the sector has also left those working in the sector vulnerable to criminal and illicit networks, making it difficult for businesses to engage in effective due diligence and responsible sourcing practices. In many countries, minerals have been used as a source of conflict financing by armed groups. Gold and diamonds are particularly favoured because they are high in value and easily portable.

International attention on the responsible sourcing of minerals, including regulatory initiatives in the United States and European Union, means that informality in the ASM sector can make it difficult to draw in international buyers. African governments are under increasing pressure to formalize the sector and meet the standards of the international market.

To address these challenges, many governments are trying to engage in formalization or improve existing processes. In recognizing the socioeconomic position of most of the ASM sector, governments can design and implement strategies for encouraging formalization processes that are feasible and effective, serving to support the economic development of those working directly or indirectly in the sector, while promoting security and human rights.

2. Due Diligence in the Artisanal and Small-Scale Mining Sector

Due Diligence

The Organization for Economic Co-operation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas¹⁷ has become broadly recognized as international best practice for businesses engaged in responsible sourcing and trading of minerals. Conducting due diligence in mineral supply chains is a private sector responsibility. However, governments can play a role in requiring companies to engage in due diligence efforts and creating enabling environments for due diligence to be carried out.

Due diligence requires companies to put in place a system for identifying and mitigating risks in their supply chains to ensure that they or their suppliers are not contributing to harm, including human rights violations or support to armed groups. This includes asking suppliers for information on their own policies, management systems, and risk mitigation strategies, and ensuring that they too are asking the same information of their own suppliers.

Due diligence is an ongoing process that companies or individuals should undertake to ensure that the extraction and trade of minerals do not contribute—directly or indirectly—to conflict and human rights violations. It should be conducted along the entire mineral supply chain, from mine site to end product.

Given the vulnerabilities of those working in the ASM sector, including extreme poverty and risks

of human rights violations, and that it is providing an important source of livelihood in conflict-affected and high-risk areas, the OECD recommends that companies should take a progressive approach to due diligence. It encourages improvements to ASM and trading practices, incrementally working towards formalization and legalization.¹⁸

While the private sector is responsible for conducting due diligence on their mineral supply chains, governments are responsible for creating a supporting and enabling environment for effective due diligence. This includes creating, implementing, and monitoring appropriate policies and regulatory frameworks, including those that promote and support formalization and legalization of the ASM sector. Increased transparency in the sector and clarity around the regulatory and legal framework will make it easier for companies to access the information they need to carry out effective due diligence, which will ultimately lead artisanal miners to have greater access to international markets.

¹⁷ Referred to as the OECD Due Diligence Guidance from this point forward.

¹⁸ Organisation for Economic Co-operation and Development (OECD), *FAQ on Responsible Supply Chains in Artisanal and Small-Scale Gold Mining*, p. 6.

The KEY PRINCIPLES Underpinning the OECD Due Diligence Guidance:¹⁹

- » Due diligence is an on-going, proactive and reactive process. Information and due diligence systems should be progressively built on and improved over time.

- » Adequate due diligence should be risk-based: the higher the identified risk, the more intensive the due diligence and monitoring that is expected. Companies should furthermore document their decision-making about risk levels to be able to explain their due diligence choices.

- » Identifying, assessing, reporting, and mitigating risks can demonstrate and support reasonable and good faith due diligence efforts; constructive engagement with suppliers will enable companies to progressively improve due diligence practices.

- » Due diligence is not intended to provide 100% certainty on the conflict-free status of minerals, but rather focus on the processes to identify, prevent, and mitigate risk based on available information, and making improvements over time. Companies should work with their suppliers to cut off the harmful parts of the trade.

- » Industry and multi-stakeholder initiatives are encouraged to take on activities that help members to assess the circumstances of their supply chains while sharing costs and lessening the burden of data collection. While collaboration, including with local partners, is hence encouraged, ultimate responsibility that appropriate due diligence on supply chains has been carried out lies with the company itself.

19 OECD, FAQ on Responsible Supply Chains in Artisanal and Small-Scale Gold Mining, p. 4.

3. Case Studies on Artisanal and Small-Scale Formalization

This section describes the experiences of three countries—Colombia, the Democratic Republic of Congo and Mongolia—in formalizing the ASM sector. The case studies provide a high-level overview of the challenges faced and the approaches taken by different governments, as well as some key lessons learned from each example. While not exhaustive, they illustrate common themes seen across different countries seeking to formalize the ASM sector. They also demonstrate that each country has a unique and dynamic context that needs to be thoroughly understood and acknowledged for ASM formalization efforts to be effective, leading to responsible and legal mineral trade.

Colombia

Artisanal and Small-Scale Mining in Colombia



Historically, Colombia’s mining sector has been characterized by informality. The rural poor have used the country’s abundant natural resources for centuries, often on government land and without formal permits. Today, ASM remains an important economic activity for many communities. A national census of the Colombian mining sector in 2012 revealed that 72 percent of all mining operations were characterized as small, and 63 percent of ASM mining operations were operating without legal title. At the time there were 314,000 people directly involved in the sector.²⁰

The challenges in formalizing the ASM sector in Colombia have been complex and wide-ranging, taking place against the backdrop of a prolonged conflict and the subsequent peacebuilding process. These challenges have included the involvement of armed groups and criminal organizations, including those with strong linkages to both the drug and gold trades.²¹ The formalization process has also been framed by additional challenges, such as the struggle for ethnic minorities—particularly Afro-Colombians—to exercise their rights to mining on their land, speculative license dealing by foreign investors including on land traditionally used by ASM communities, and tensions between artisanal miners and large-scale mining (LSM).²²

Successive governments have introduced different initiatives over the last three decades to formalize the ASM sector, however up until recently these have had limited success for several reasons. Generally, all levels of government had a weak

20 Cristina Echavarria, *What is Legal? Formalising Artisanal and Small-scale Mining in Colombia*, (International Institute for Environment and Development (IIED), London, September 2014), p. 16-17, <http://pubs.iied.org/pdfs/16565IIED.pdf>.

21 For more information on the links between organized crime, armed groups, and the gold trade see: Organisation for Economic Co-operation and Development (OECD), *Due Diligence in Colombia’s Gold Supply Chain: Overview*, 2016, pg. 16-25, <https://mneguidelines.oecd.org/Colombia-gold-supply-chain-overview.pdf>.

22 Echavarria, *What is Legal*, p. 20-27.

capacity to manage the sector. Miners, who had limited knowledge and capacity to engage in the formalization and legalization processes, were given unrealistic timeframes to apply for legal titles and provided with inadequate support.²³

Furthermore, government policy prioritized LSM, as evidenced by the Mining Code introduced in 2001.²⁴ The new law did not differentiate between ASM and LSM, placing artisanal and small-scale miners at a disadvantage compared to large companies who had greater capacity to meet the requirements established in the law. This fueled conflict between artisanal miners and LSM, despite the introduction of the concept of designated ASM areas, known as “special reserve areas for mining.” It also included the legal recognition of artisanal and small-scale miners the right to mine on LSM concessions through “operations contracts.”²⁵ However, areas for artisanal miners to apply for legal titles to mine were scarce, as much of the land was already designated for exploration and prospecting for LSM.

The failure of government policy to produce the desired outcomes eventually led the Government of Colombia to introduce a crackdown which resulted in the criminalization of much of the informal ASM sector and removed many of the incentives that artisanal miners had to formalize. Yet, these efforts were also largely unsuccessful, increasing conflict and tensions particularly around mining communities, which were vulnerable to armed groups. This eventually led the government to engage in a more progressive approach to the formalization of the ASM sector.²⁶

The New Approach to Formalization

Informed by a baseline study that documented and analyzed past efforts, including the government’s crackdown on ASM and the existing economic reality of ASM in Colombia, the government concluded that a renewed approach to ASM formalization was necessary. A new National Formalization Policy was adopted in 2014, promising a turning point in the Colombian Government’s approach to formalization.²⁷ The policy aimed to hit a milestone of 40 percent of miners formalized by 2019, and full formalization of the country’s ASM sector by 2032.²⁸

The policy proposed that working under a legal title was the foundation for any formalization process.²⁹ The policy established progressive levels of formalization to enable miners to progressively comply with technical, environmental, economic, tax, social, and labour requirements.³⁰ This recognized that formalization is a process rather than a one-time action.

The main strength of the National Formalization Policy was that it addressed many of the barriers for formalization such as enabling artisanal miners to work under legal title. It also committed to providing occupational training and education for miners, integrated efforts for enabling social inclusion and alternative economic development in mining communities, and ensured relevant, timely information for miners on formalization processes.³¹

23 Ibid, p. 35-36.

24 Government of Colombia, Mining Code (Law 685), 2001, accessed April 25, 2018 <https://s3.amazonaws.com/rgi-documents/b71e2b3421b4fb4e86166c95361f9eab799ddcd0.pdf>.

25 Echavarría, *What is Legal*, p. 37.

26 Ibid, p. 42.

27 For the full text of the National Formalization Policy see: Republic of Colombia Ministry of Mines and Energy, *Política Nacional para la formalización de la minería en Colombia* (National Policy for the formalization of mining in Colombia), July 2014, accessed April 25, 2018, <https://www.minminas.gov.co/documentos/10180/581708/DocumentoPoliticaVersionFinal.pdf/9fd087db-7849-4728-92ff-6e426acccf9c>. A summary in English is available at “Mining Formalization Policy,” Mines-Sector Policies- Mining Formalization, Government of Colombia, Ministry of Mines and Energy, accessed April 17, 2018, <https://www.minminas.gov.co/web/ingles/mining-formalization> and a high level overview of the strategies integrated into the policies is available at Echavarría, *What is Legal*, p. 144-145.

28 Echavarría, *What is Legal*, p. 48, 144-145.

29 Ibid, p. 48.

30 Ibid, p. 48-49.

31 Ibid, p. 49.

The government restructured the Ministry of Mines and Energy, creating a Direction of Mining Formalization under the Vice Ministry of Mines. This Office was created at the same level as the Direction for Entrepreneurial Mining responsible for the LSM sector,³² indicating that ASM formalization was being set at a similar level of priority as the industrial mining sector. Additionally, the government provided resources and a clear division of roles among different agencies to deliver the objectives stated in the policy.

The government also began working to implement a system for tracking ASM gold production and trade—referred to as the *Registro Unico de Comercializadores Mineros* or RUCOM (Single Registry for Mineral Traders), in order to provide a certain level of traceability of gold through the upstream supply chain. Progress has been slow with significant delays in launching the system, and challenges remain with respect to the ability and willingness of ASM actors to register and comply.

Key Lessons

Numerous challenges remain in Colombia with regards to the involvement of armed groups and criminal elements in the Colombian gold sector. However, the Colombian context provides a good example of how a formalization process can be a tool for breaking the link between these groups

and the gold trade. After decades of trial and error, the Government of Colombia realized that top down approaches and criminalization of artisanal and small-scale miners was not working. Instead it is placing greater emphasis on formalization as a process with appropriate incentives. Institutional mandates at high levels of government have demonstrated the resolve to formalize the sector. Progress in formalization has been made through the decentralization of roles and providing mandates to local level governments.

In July 2015, the President announced that formalization efforts resulted in 19,000 miners trained and 3,388 mine sites assessed, with 860 sites included in the formalization process.³⁴ The Ministry of Mines and Energy added that in the same period, 16 processing plants received technical assistance in clean technologies and 11,105 persons were trained in the elimination of mercury.³⁵ While it continues to be a work in progress, Colombia's motivation to encourage formalization of ASM and prevent illicit trade of minerals is proving to slowly yield results.

Existing challenges for formalization in Colombia remain, including high levels of corruption and the need to ensure that criminal elements currently involved in the ASM gold trade aren't inadvertently formalized and brought into the legal fold. To mitigate this risk, government agencies need to work together to implement appropriate checks reviews, such as background checks on individuals or entities seeking to formalize.³⁶

32 "The Ministry Structure," Republic of Colombia Ministry of Mines and Energy, accessed April 25, 2018, <https://www.minminas.gov.co/web/ingles/structure>.

33 Organisation for Economic Co-operation and Development (OECD), *Due Diligence in Colombia's Gold Supply Chain: Overview*, p. 26.

34 Presidency of the Republic of Colombia Information System, *Gobierno le declara la guerra a la minería criminal* (Government declares war on criminal mining), July 30, 2015, http://wp.presidencia.gov.co/Noticias/2015/Julio/Paginas/20150730_02-Gobierno-declara-objetivo-prioritario-de-alto-valor-la-mineria-criminal.aspx.

35 Republic of Colombia Ministry of Mines and Energy, *MinMinas fortalece su política de formalización para apoyar a los pequeños mineros de todo el país* (MinMinas strengthens its formalization policy to support small-scale miners throughout the country), July 31, 2015, <http://www.minminas.gov.co/web/10180/1332?idNoticia=6273977>.

36 Organisation for Economic Co-operation and Development (OECD), *Due Diligence in Colombia's Gold Supply Chain: Overview*, p. 33-34.

Democratic Republic of Congo

Artisanal and Small-Scale Mining in Democratic Republic of Congo



The Democratic Republic of Congo (DRC) has enormous mineral wealth and potential including major deposits of copper, cobalt, tin, tantalum, gold, and diamonds. The bulk of the tin, tantalum, tungsten, and gold are produced through ASM operations, and artisanal mining is considered an increasingly important livelihood source with approximately 15 percent of the national population directly or indirectly dependent on income from the sector.³⁷

Despite its potential, the mineral sector in DRC has garnered international attention as a source of financing for armed groups and public security forces, both of which have been tied to serious human rights violations. The Government of DRC has recognized and taken important steps to address the illicit trade of minerals. It has adopted the International Conference of the Great Lakes

Region (ICGLR) Regional Certification Mechanism into its domestic legislation, as well as taken steps to formalize ASM, and implement traceability mechanisms for conflict-prone minerals. However, a number of challenges remain and the illicit trade of minerals continues to be a key source of income for armed groups in the region.

Approach to Formalization

ASM was first recognized in the 2002 Mining Code through the creation of *Zone d'exploitation artisanales* or ZEAs (Artisanal Exploitation Zones). These zones continue to be the primary tool for providing the ASM sector access to land in the updated Mining Code, which was adopted in March 2018.³⁹ The government designates zones for artisanal mining most often in areas where industrial mining is deemed to be unfeasible. Artisanal miners must apply annually for a *carte d'exploitant artisanal* (artisanal mining card) and can only access the artisanal mining zone through a cooperative organizational structure. Artisanal miners must also comply with regulations on health, safety, and environmental protection.

ASM formalization in DRC is supported by government agencies at national and provincial levels across the country including the *Service d'encadrement des creuseurs artisanaux miniers à petite échelle* also known as SAEMAPE, formerly SAESSCAM (Service for the Assistance and Supervision of Artisanal and Small-Scale Mining), which provides technical assistance to artisanal miners and collects statistics, the Mining Police, the Mining Cadastre known as CAMI, and the *Centre d'Expertise, d'Evaluation et de Certification des Substances Minérales Précieuses et Semi-précieuses* or CEEC (Center for Evaluation,

37 International Conference on the Great Lakes Region, *Report on Development of Regional Guide on the Formalization of ASM Sector in ICGLR Member States* (unpublished), March 2017.

38 Government of the Democratic Republic of Congo, *Mining Code, Law No. 007/2002*, July 11, 2002, <http://leganet.cd/Legislation/Droit%20economie/Code%20Minier/cd-codeminier.pdf> and English translation [www.eisourcebook.org/cms/January%202016/Democratic%20Republic%20of%20the%20Congo%20\(DRC\),%20Law%20of%202002%20Relating%20to%20the%20Mining%20Code.pdf](http://www.eisourcebook.org/cms/January%202016/Democratic%20Republic%20of%20the%20Congo%20(DRC),%20Law%20of%202002%20Relating%20to%20the%20Mining%20Code.pdf).

39 The new Mining Code no 18/001 was signed into law by the President in March 2018. The text of the new Mining Code can be found at Congo Mines, accessed April 25, 2018, http://congominer.org/system/attachments/assets/000/001/467/original/J.O._n%C2%B0_spe%C3%ACcial_du_28_mars_2018_CODE_MINIER.PDF.pdf?1523182711.

40 See Articles 109 and 111 in Law No. 007/2002.

Expertise and Certification), which evaluates and certifies minerals. The national Ministry of Mines awards the artisanal mining zone and the Head of the Provincial Division of Mines issues the artisanal miner cards locally.⁴⁰ There is significant decentralization of ASM formalization to the provincial and regional offices, with authority granted to the Director of Mining Division or the Governor.⁴¹ This decentralization recognizes the limited ability of the national government to provide services, such as the sale of artisanal mining cards, throughout the entire country.

Despite having made progress, there are still many obstacles to an effective approach to formalizing the ASM sector in DRC. The slow approval of artisanal mining zones in DRC has been particularly challenging, and as a result, most artisanal miners continue to work in areas that are not legally zoned for artisanal mining or trespass on existing concessions.⁴² Compounding the problem, long-term land security for artisanal miners is not guaranteed through the Mining Code as the government can grant an industrial mining permit on an existing artisanal mining zone. According to the Code, artisanal miners have 60 days to evacuate if an application for an industrial concession is made for the land, or 30 days to submit their own application for a small-scale mining permit.⁴³ This is a significant challenge for many involved in ASM due to low literacy rates and unfamiliarity with the country's legal process.

Of the mine sites that have been designated as artisanal sites, many have not been mined due to a lack of geological knowledge, lack of capital, inaccessibility of the areas due to armed conflict, as well as tensions with LSM companies. Additionally, there is a lack of mine sites that have been inspected by government inspectors,

as required under DRC law, to determine that a mine site has met the basic criteria for being deemed “conflict-free.”⁴⁴ Without this validation, the artisanal and small-scale miners on these mine sites are considered to be operating illegally and are unable to access legal markets.

Key Lessons

The approach to formalization in DRC highlights that while political will to formalize the ASM sector is necessary, government agencies need to be well resourced and given the capacity to undertake their mandate. The country's artisanal and small-scale miners have faced numerous challenges such as limited access to legal mining sites, insecurity, high levels of corruption, and limited functioning of administrative institutions in some regions. The licensing process creates conflict between artisanal miners and industry, with industrial mining concession applications allowed for artisanal mining zones. The artisanal mining zone process itself is slow and expensive—beyond the reach of many miners.

The DRC experience demonstrates that not only is strong implementation required, but also that the regulatory expectations set on ASM actors must be realistic. In the case of DRC, the high costs expected of miners, traders, and exporters—whether for licenses or taxes—goes against the intentions of the legal framework and results in continued informality, illegal exports of minerals, and loss of revenues for the state. The smuggling of minerals, especially gold, continues to pose a significant challenge for the formalization of the sector. According to the UN Group of Experts on the Democratic Republic of Congo, 98 percent of artisanal gold produced in DRC is smuggled out of the country.⁴⁵

41 See Articles 109 to 128 in Law No. 007/2002 for relevant aspects on ASM.

42 Rebecca Cullen, “Cobalt mining in the Democratic Republic of Congo: the need for reform and regulation?” *The Best of Africa*, November 14, 2017, <https://thebestofafrica.org/cobalt-mining-democratic-republic-congo-need-reform-regulation/>.

43 See Article 110 in Law No. 007/2002.

44 “DRC Webmap Updated with Newest Mining Site Qualifications,” *International Peace Service Institute*, July 18, 2017, <http://ipisresearch.be/2017/07/drc-webmap-updated-newest-mining-site-qualifications/>.

45 Final Report of the Group of Experts on the Democratic Republic of Congo, UN Security Council, S/2014/42, January 23, 2014, para 171, <https://undocs.org/S/2014/42>.

The challenges the country is facing with formalizing the ASM sector is most evident in its artisanal gold sector. A major reason for continued smuggling are the exorbitant taxes placed on exports, including both formal and informal payments. IMPACT’s own experiences through the Just Gold project in eastern DRC, which was the first to successfully trace conflict-free and legal artisanal gold from mine site to export while applying regional and international standards applicable to conflict-affected and high-risk areas, revealed that gold exporters are required to pay an unrealistic amount of taxes and fees to the national and provincial government.⁴⁶ This not only creates a disincentive for legal trade but makes it economically unviable—particularly for small quantities of artisanal gold.⁴⁷

As a result, most of DRC’s artisanal gold ends up in the illicit market, denying the country gold revenues and taxes. A comprehensive review of the tax structure and how realistic it is, given the reality of the ASM sector in DRC would help to identify a more appropriate and realistic taxation level that would benefit miners, traders and exporters, as well as the government. As IMPACT’s Just Gold project shows, it is possible to conduct and incentivize legal, formal ASM mining, trading and exporting.⁴⁸ However, there is still work to be done in order to create an environment and framework that creates greater incentives at a larger scale to draw the ASM sector into formality.

Mongolia

Artisanal and Small-Scale Mining in Mongolia



Mining of copper, coal, and gold is Mongolia’s economic pillar, with the ASM sector playing an important role in mineral production.⁴⁹ In 2017, the ASM sector contributed more than 50 percent of the total national gold production. ASM coal mining provides coal for household heating to those living within and around the capital city Ulaanbaatar from October to April.

Unlike several other countries, Mongolia’s ASM is entirely a non-traditional activity that developed over the last two decades following the collapse of the communist system and transition to a democratic state in the 1990s. This transition period saw an increase in social disparity and considerable unemployment as many industries and state enterprises closed. From 1999 to 2002, natural disasters, including severe winters

46 Geoffrey York, “Pioneering Canadian system ensures conflict-free gold,” *Globe and Mail*, June 25, 2017, <https://www.theglobeandmail.com/news/world/pioneering-canadian-ethical-trade-system-ensures-proof-of-conflict-freegold/article35459871/> and Eric Mongo Malolo and Jimmy Munguriek Ufof, *Trop de taxes pour peu de recettes: rapport d’enquête sur les taxes perçues du secteur minier artisanal de l’or en Ituri en 2015*, Cadre de Concentration de la Société Civile de l’Ituri sur les Ressources Naturelles, February 2017.

47 Each province in DRC sets its own tax framework and so the number and type of payments differs between provinces.

48 “Just Gold,” IMPACT, accessed April 17, 2018, <https://impacttransform.org/en/work/project/just-gold/> and IMPACT, *Just Gold: Brining Responsible and Conflict-Free Gold from Artisanal Mines to International Markets*.

49 Ministry of Mineral Resources and Energy of Mongolia and the Swiss Agency for Development and Cooperation, *Sustainable Artisanal Mining Project (SAM) 2017 Annual Report*, internal document.

(known as a *dzud*), and droughts, led to massive loss of livestock, the main source of rural income. As unemployment swelled and livelihood security risks increased, many turned to artisanal mining of gold, coal, fluorite, tungsten, and semi-precious stones.⁵⁰

ASM attracted the rural poor as well as students, traders, and civil servants during vacations. During its emergence in Mongolia, ASM was deemed illegal and the government was unprepared for managing it.⁵¹ By 2010, statistics from the Mineral Resources Authority of Mongolia suggested that 61,000 people in 18 of the country's 21 provinces were artisanal miners. Some 30 percent of the miners were women. Statistics showed that artisanal mining extended to 10 different minerals and the income generated from ASM was supporting 15 percent of the country's population.⁵²

The emergence of the ASM sector had both positive and negative impacts on society. It provided employment and livelihoods for poorer communities in rural areas, created secondary economic linkages and workplaces in local areas, enabled markets, roads, and communications infrastructure, and increased purchasing power, leading to more money circulating throughout the country. Students were able to finance their studies, while rural herders were able to restock their herds.

At the same time, there was large-scale environmental destruction, including damage to water sources and pastureland, including mercury contamination. The sector was associated with

tax evasion, illegal gold exports, conflicts with herders and mining companies, mining fatalities, human rights violations, and a range of social challenges, including gender-based violence, alcoholism, and child labor. Internal migrations by artisanal miners also created a resource burden for local administrations. The miners were called by a derogatory term, "ninja," as the green bowls the miners carried on their backs for panning resembled the cartoon characters from the television show, the Teenage Mutant Ninja Turtles.⁵³

The government's response to ASM was a heavy-handed crackdown, though efforts to prohibit the sector never succeeded. There was eventually recognition that the emergence of ASM in Mongolia was directly related to the prevailing socio-economic conditions and could not be curtailed through prohibition.⁵⁴ After more than 10 years of efforts to marginalize, criminalize, and prohibit the sector, as well as gross human rights violations, the government and legislature legalized the sector and developed a formalization framework. The creation of the legal and regulatory framework was a means to reduce poverty and increase employment opportunities, while addressing the negative social and environmental impacts of the sector. It also provided a way for the country to move towards fulfilling its human rights obligations, while upholding international treaties and conventions pertaining to the environment and human rights.⁵⁵

50 Ministry of Mineral Resources and Energy of Mongolia and the Swiss Agency for Development and Cooperation, *Project Document, Sustainable Artisanal Mining Project (SAM) Phase 3, 2011-2014*, December 2010, p. 9-10, <http://asmhub.mn/en/files/view/234>.

51 Patience Singo, "Mongolia Case Study," in *Analysis of formalization approaches in the artisanal and small-scale gold mining sector based on experiences in Ecuador, Mongolia, Peru, Tanzania and Uganda*, ed. Laura Barreto (Geneva: United Nations Environment Programme, 2012), https://wedocs.unep.org/bitstream/handle/20.500.11822/11630/Case_Studies_Mongolia_June_2012.pdf?sequence=1&isAllowed=y.

52 Ministry of Mineral Resources and Energy of Mongolia and the Swiss Agency for Development and Cooperation, *Project Document, Sustainable Artisanal Mining Project (SAM) Phase 3, 2011-2014*, p. 4.

53 Ibid, p. 20.

54 Ibid, p. 9-11.

55 Ibid, p. 60.

The New Approach to Formalization

In 2010, Mongolia passed the ASM legal framework through amendments to the Laws on Minerals and Land and developed regulation on extraction of minerals by artisanal mining.⁵⁶ The legal framework was a giant step in recognizing ASM as a legal, alternative form of employment and its role in rural economic development. It also signaled the start of a transition from artisanal miners to being recognized as “ninjas” and “criminals” to responsible citizens of Mongolian society.

In 2014, Mongolia approved its first ever State Minerals Policy for 2014-2035, which articulated the country’s medium-term strategy for ASM management and development, such as improving the legal framework and upgrading the sector.⁵⁷ In response to the new Minerals Policy, Mongolia immediately improved the ASM legal framework, formalizing ASM gold trading through the Central Bank, reducing gold royalties, and expanding the options for organizing to engage in ASM—allowing for business development and growth.⁵⁸

The ASM regulations were revised with a greater focus on mainstreaming human rights and government obligations while addressing other technical barriers such as equipment restrictions and improving mine site rehabilitation.

According to the ASM legal and policy framework, individuals engaged in ASM are organized into unregistered partnerships. Based on 2016 data,

there are 722 ASM partnerships and cooperatives—with an additional 72 non-government organizations—working in deposits that are often economically inefficient to exploit through industrial methods.⁵⁹ Land access is provided to artisanal and small-scale miners through agreements with local governments, the Mineral Resources and Petroleum Authority of Mongolia, or by LSM companies.⁶⁰ The framework stipulated provisions for occupational safety and health, frugal mining rehabilitation, child protection, gender equality, and engagement in social and health insurances. Provincial and local government offices were assigned mandates to provide support, outreach, and services to miners to fulfill the requirements.

Remarkable progress has been made during the last eight years with more than 10 percent of Mongolia’s ASM sector formalized.⁶¹ ASM is transforming from rudimentary and unorganized to well coordinated and professionalized. There are key achievements on social security, environmental protection, mercury reduction, economic contribution and accountability, respect of human rights, and women’s participation. ASM operators have invested in better productivity and safety and have increasingly entered into land use cooperation agreements with LSM companies.⁶²

Capacity of state institutions to manage ASM has increased with greater commitments in human and financial resourcing. Artisanal miners are proud of their employment and are gaining confidence that their human rights are protected. The impact of ASM’s economic contribution at local levels is evident with the livelihood transformation and economic empowerment

56 Full text of the Laws and Regulations are available on the website of the Sustainable Artisanal Mining Project, accessed on April 25, 2018, <http://sam.mn/%D0%BC%D1%8D%D0%B4%D1%8D%D1%8D%D0%BB%D0%BB%D0%B8%D0%B9%D0%BD-%D1%81%D0%B0%D0%BD/legislations/>.

57 “State Minerals Policy 2014-2025,” *Mongolian Mining Journal*, March 26, 2014, accessed April 25, 2018, <http://en.mongolianminingjournal.com/content/54797.shtml>.

58 Ministry of Mineral Resources and Energy of Mongolia and the Swiss Agency for Development and Cooperation, *Project Document, Sustainable Artisanal Mining Project (SAM) Phase 4, 2015-2018*, December 2015, p. 10-18, http://asmhub.mn/uploads/files/2014-2018-sam-project-document-phase-iv-eng_1.pdf.

59 Unregistered partnerships are informal partnerships under the civil code involving a minimum of five citizens. “Map: Statistics of Artisanal Mining,” ASM Knowledge Hub, accessed April 25, 2018, <http://www.asnhub.mn/en/maps>.

60 Ministry of Mineral Resources and Energy of Mongolia and the Swiss Agency for Development and Cooperation, *Project Document, Sustainable Artisanal Mining Project (SAM) Phase 4, 2015-2018*, p. 12 and 32.

61 “What Mongolia’s Artisanal Miners are Teaching Us: the Link Between Human Rights and Artisanal and Small-scale Mining (ASM) Formalisation,” OECD Insights, March 16, 2016, http://oecdinsights.org/2016/03/16/mongolias-artisanal-miners/#_ftn3.

62 Ministry of Mineral Resources and Energy of Mongolia and the Swiss Agency for Development and Cooperation, *Project Document, Sustainable Artisanal Mining Project (SAM) Phase 4, 2015-2018*, pg. 70.

of rural communities. There are some communities whose sole source of livelihood is mining. Communities have been empowered to engage with stakeholders and provided the capacity to undertake more responsible mining practices.

Key Lessons

Mongolia took a decisive step to mainstream ASM into their economy, alongside LSM, noting the socio-economic conditions and opportunities presented by small deposits. Mongolia had hoped that industrial mining would solve its socio-economic challenges, but the growth of industrial mining did not translate into poverty alleviation for rural communities as had been expected. Rising populations in industrial mining areas meant more competition for a limited number of jobs, which were disproportionately available to men over women, while the pressures on government and community infrastructure led to a reduction in the number and quality of services provided to local populations.⁶³

The approach taken by the government to implementing ASM formalization was to decentralize many responsibilities to local governments, while retaining policy and strategic direction at the national level. The government ensured coordination and resources to provide services to the sector, addressing the sector's multiple challenges. It instituted a broad-based approach to formalization by involving a wide-range of government institutions responsible for mining, environment, health, social welfare, taxation, and education, as well as local governments, and mining companies.

Mongolia's approach to ASM formalization included significant and wide-ranging participation, with stakeholder input enshrined in the legal framework. The government engaged in broad consultations with over 400 stakeholders prior to adopting the legal framework, including engaging Members of Parliament, central and local government officials, artisanal and small-scale gold mining representatives, non-governmental organizations, and artisanal miners.⁶⁴ This process has contributed to broad stakeholder buy-in to the legal framework that was established, as well as a framework that better reflects the needs and capacities of ASM miners and local governments.

While challenges remain in the effort to formalize the ASM sector in Mongolia, there are indications that the approach taken by the government is having a positive impact. The Central Bank of Mongolia, which has the sole right to purchase gold in Mongolia, has seen its purchases of ASM gold almost quadruple, from 3.2 tons in 2014 to over 12 tons in 2017.⁶⁵ This is an indication that the Government of Mongolia's approach to ASM formalization may be having a positive impact, though more thorough analysis is needed as there remain concerns around the extent of money laundering, illicit financial flows, and smuggling.⁶⁶ Other positive signs in Mongolia include the certification of some ASM sites by Fairmined for ethical gold production, and the introduction of a pilot for skills training in jewellery making to actors in the sector to encourage value-addition in country.⁶⁷

63 Fidanka McGrath et al., "Spirited away – Mongolia's mining boom and the people that development left behind," CEE Bankwatch Network, December 2011, p. 7, <https://bankwatch.org/sites/default/files/spirited-away-mongolia-mining.pdf>.

64 Patience Singo, "Mongolia Case Study," p. 8.

65 "Supply Chain and Economic Development," ASM Knowledge Hub, accessed April 25, 2018, <http://www.asmhub.mn/en/categories/11>.

66 United Nations Industrial Development Organization, *Follow the Money: Mongolia*, October 2017, <http://www.levinsources.com/assets/pages/Follow-the-Money-Artisanal-and-Small-Scale-Gold-Mining-in-Mongolia-GEF.pdf>.

67 "Ecological gold from Mongolia: Artisanal miners obtain Fairmined certification," Fairmined, February 25, 2015 <http://www.fairmined.org/ecological-gold-mongolia-artisanal-miners-obtain-fairmined-certification/> and "New Training Room for Jewellers Opens its Door," Sustainable Artisanal Mining Project, Swiss Agency for Development and Cooperation SDC, accessed April 25, 2018, <http://sam.mn/the-new-training-room-for-jewellers-opens-its-door/>.

4. Key Lessons and Considerations for Policymakers

The case studies in this brief have demonstrated that many governments are choosing to implement a progressive approach to formalize the ASM sector into their economies. These case studies have several common themes.

ASM is Here to Stay

ASM emergence is usually associated with poverty and poor economic growth, with mining as a last resort to sustain livelihoods.⁶⁸ In Mongolia, when hundreds of thousands of people lost their main livelihood due to a collapsed economy and recurrent droughts, they turned to ASM for a livelihood. In many countries, community members turn to artisanal mining when there are no other viable options for income or to supplement livelihood income. As long as poverty persists and economies fail to create viable employment options, people will turn to artisanal mining in mineral-rich countries, further motivated by rising commodity prices.

Geologically, there are some mineral deposits that are not economically viable for industrial production and these are well suited for artisanal exploitation. In many countries such as Ghana, Philippines, and Bolivia, industrial mining companies designate small deposits within their concessions for ASM.⁶⁹ In many countries, these areas are already being zoned for artisanal mining. With the number of ASM miners on the rise in many countries, policymakers need to understand that “ASM is here to stay.”⁷⁰

Prohibition and Criminalization are not Effective

The ASM sector is often met with government denial, criminalization, and prohibition. Most countries are usually not well prepared to manage an emerging ASM sector and the challenges that come with it such as negative environmental, social, and health impacts, as well as illicit trade. As the experiences of countries like Mongolia and Colombia have demonstrated, governments that initially criminalized ASM, generally failed to make meaningful progress in managing the sector. This is in large part due to the poverty-driven nature of the ASM sector, as those involved often have no other meaningful alternatives for their livelihood and will continue to engage in ASM mining even if the risk of law enforcement is high. While it is sometimes the case that illegal armed groups or criminal elements are engaged in or benefitting from the ASM sector, implementing a formalization process that supports legitimate ASM actors and ensuring that companies are engaging in meaningful due diligence of the actors they are involved in, can help to break the link between these illicit actors and ASM.

A Strategic Approach is Needed

A strategic approach to ASM formalization recognizes and accepts ASM, and requires developing appropriate policy and legal frameworks. These support the legal existence of ASM, promote its economic mainstreaming, provide technical assistance and capacity building,

68 Ministry of Mineral Resources and Energy of Mongolia and the Swiss Agency for Development and Cooperation, *Project Document, Sustainable Artisanal Mining Project (SAM) Phase 3, 2011-2014*, p. 9-10.

69 International Institute for Sustainable Development, *Global Trends in Artisanal and Small-Scale Mining (ASM): A Review of Numbers and Issues*, January 2018, p. 34-35, <https://www.iisd.org/sites/default/files/publications/igf-asm-global-trends.pdf>.

70 Gold Mining and Minerals Development Trust, “Small Scale Mining is here to stay”, workshop in Zimbabwe, July 2004, http://www.artisanalmining.org/Repository/01/The_CASM_Files/CASM_Meetings_National/2004_Zimbabwe/Zim04_Meeting_Report.pdf.

and support organizing of miners, all within a human rights and gender equality lens.

Countries can align their efforts to formalize the ASM sector with key international obligations such as the UN Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, regional approaches such as the Africa Mining Vision, and other agreements such as the Minamata Convention on Mercury. These agreements are relevant to the challenges and opportunities presented within the sector, effectively addressing them through a holistic approach to formalization.

Policies and Legislation are the Starting Point for Engagement

Formalizing ASM should be underpinned by appropriate policy and regulatory frameworks. In Mongolia, when the legal framework and the State Minerals Policy clearly integrated the ASM sector, the attitude and response of state actors changed towards engagement and provision of services. Private sector actors such as banks and mining companies began to engage with artisanal miners.⁷¹ The Policy provided an entry point for various ministries responsible for environment, labour, and health, as well as local governments and private sector actors to engage with the ASM sector.

Providing the Mandate and Resources to Government Agencies is Key

Best practices on ASM formalization suggest that success most often occurs where governments have provided the mandate and resources to national and local agencies for ASM management. Providing a mandate at a high level, as Colombia has done with the establishment of the Directorate of Mining Formalization under the Vice Minister

of Mines, sends a strong message that ASM formalization is a priority. Beyond being provided with the mandate however, government agencies at the national and local levels need adequate resources to fulfill their responsibilities. Otherwise, formalization can be significantly delayed and undermined. The importance of providing both mandate and resources to government agencies to implement ASM formalization has been demonstrated in all three case studies explored.

In some cases, governments have taken on a role within the mineral supply chain, including purchasing artisanal gold through State Gold Buying Programmes, such as in Mongolia. These programs have had some success in drawing the ASM sector into formal, legal sales channels.⁷² However, they need to be implemented carefully so to ensure that proper due diligence is carried out on those selling gold and ensuring that the right incentive structures are considered so as to incentivize legal trade in ASM.

Decentralization Creates Efficiencies

As ASM primarily occurs in the rural regions of the country, decentralization to regional and local agencies supports the management of artisanal mining and results in significant progress. DRC, Mongolia, and Colombia have mandated the primary role of ASM land access, provision of services and technical support to regional agencies, while policy guidance and oversight including monitoring and evaluation is provided at the national level. This leads to more efficient management of the ASM sector and more effective support to miners, as those providing services are more closely located to those they are serving.

Access to Minerals is Essential

A necessary step to ASM formalization is access to mineral resources. Various models have been explored in different countries, such as granting

71 Ministry of Mineral Resources and Energy of Mongolia and the Swiss Agency for Development and Cooperation, *Project Document, Sustainable Artisanal Mining Project (SAM) Phase 4, 2015-2018*, pg. 32-24, 70-72.

72 RCS Global, *State-sponsored gold-buying programmes. Effective instruments to reform the artisanal and small-scale gold mining sector?* IIED, London, 2016, <http://pubs.iied.org/pdfs/16610IIED.pdf>.

of mineral rights, mining rights, tribute agreements, bilateral and tripartite land use agreements, and temporary land access. Access to minerals provides for accountability and a point of contact for government monitoring. It also incentivizes responsible mining and allows for long-term investment in production and safety, as miners have an interest in sustainable practices. In Mongolia, ASM transitioned towards more responsible mining after land access permits were granted, as this encouraged mine rehabilitation and investment in safety and mine production equipment.

Efforts to understand the role that clear and effective property rights systems can have on minimizing conflict in the ASM sector have been promising. Several examples have emerged from both West and Central Africa, including through the Property Rights and Diamond Development (PRADD) program in Côte d'Ivoire, Liberia, and the Central African Republic, indicating that communities with strong property rights systems, whether customary or statutory, have shown greater resilience to conflict as community members have common understanding on land demarcation and use, and are better able to control and benefit from exercising rents from newcomers wanting to access and use land.⁷³ Communities with strong property rights systems also tend to demonstrate more sustainable land use planning, including rehabilitation and repurposing land.

Human Rights are Integral to ASM

The major driver of ASM is poverty and livelihood insecurity. According to the UN's International Covenant on Economic, Social and Cultural Rights, it is the duty and obligation of governments to ensure that their citizens have access to a

decent livelihood and income, and have reasonable health and safety.⁷⁴

ASM provides an opportunity for local community members to exercise their rights to participate in and benefit from natural resource management. Several governments are recognizing that ASM formalization falls within of their obligations to fulfill human rights. In doing so, governments should recognize that the ability for different stakeholder groups to exercise their rights is often unequal, particularly for those who are marginalized in the sector, including women and indigenous groups. Efforts should be made to take this into account and develop processes and approaches that are inclusive of the experiences and needs of marginalized populations in ensuring that they can participate and benefit equally from ASM.

Formalized ASM Contributes to the Economy

Formalization brings ASM actors into the legal economy, which in turn can increase the contribution of the sector to local and national economies through appropriate levels of taxation. The experience in the DRC is a good example of where efforts to formalize the ASM sector are thwarted by a taxation structure that is simply too high and incentivizes illegal trade. As a result, the DRC is effectively losing out on almost all government revenues from the ASM gold sector. By contrast, in Mongolia when ASM gold trading was formalized and the royalty rate for gold was reduced, gold purchases by the Central Bank increased from 5.2 kg in 2013 to 3.2 tons in 2014. Over time, artisanal gold mining has increased and by 2017, ASM accounted for more than 50 percent of the country's legal gold production—more than 12 tons.⁷⁵ Gold sales through official channels contributed an additional 2.5 percent royalty to state coffers.

73 Mark S. Freudenberger et al., *Property Rights and Artisanal Mining: Clarifying and Strengthening Rights: Options for Policymakers* (Washington, D.C.: U.S. Agency for International Development, April 2013), p. 3, <https://www.land-links.org/wp-content/uploads/2016/09/Property-Rights-and-Artisanal-Mining.pdf>.

74 United Nations Human Rights, *International Covenant on Economic, Social and Cultural Rights*, December 16, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

75 "Supply Chain and Economic Development," ASM Knowledge Hub, and "Mongol Gold campaign launched," Sustainable Artisanal Mining Project, Swiss Agency for Development and Cooperation SDC, accessed April 25, 2018, <http://sam.mn/mongol-gold-campaign-launched/>.

CONCLUSION:

Creating an Enabling Environment for the Formalization and the Due Diligence of Artisanal and Small-Scale Mining

This paper highlights a shift in policymaking in the approach towards ASM formalization and due diligence. The case studies of Colombia, DRC, and Mongolia demonstrate how a move away from a compliance-based approach, to one that creates an enabling environment for ASM miners, traders, and exporters to formalize and operate within legal trading channels can support national economies. Taking a rights-based approach to formalization, when the rights of miners to access a livelihood and decent working conditions are privileged, has been especially successful for governments seeking to fulfill their obligations to their citizens.

By creating an enabling environment for ASM formalization, governments should embrace their role in providing support services for the sector. In doing so, governments need to balance the broader needs of all ASM stakeholders by taking an inclusive and consultative approach to implementing policies that incentivize formalization while recognizing and managing the challenges with the sector, particularly with respect to environmental impacts. Attention needs to be paid to the impacts of these policies on men and women, ensuring that they do not amplify vulnerabilities, while capitalizing on opportunities for empowerment.

There is evidence that countries that have undertaken a holistic approach to ASM formalization have had economic benefits at both local and national levels. Additionally, formalization incentivizes responsible mining and participation in formal supply chains, which facilitates due diligence in supply chains that companies are expected to undertake—and ultimately supports artisanal miners in accessing international markets.

IMPACT transforms how natural resources are managed in areas where security and human rights are at risk. We investigate and develop approaches for natural resources to improve security, development, and equality. We are an independent non-profit collaborating with local partners for lasting change. IMPACT is based in Canada, with offices in Democratic Republic of Congo and Uganda.

