

# Artisanal and small-scale mining: the enabling environment for sustainable communities

# Artisanal and small-scale mining: the enabling environment for sustainable communities

What conditions have enabled poverty reduction in ASM communities? What can help ASM generate sustainable economic development?

In this session, we would like to focus on 3 main aspects of this environment :

1. the legal aspects,
2. the formalization process,
3. and the financial mechanisms.

# Agenda, 9/9/9 from 9:30 AM to 1 PM

9:30	<b>SETTING THE SCENE</b>	
	Legal aspects and formalization of ASM	Remi Pelon
	Financing mechanisms in ASM	Karen Hayes
10:00	<b>COUNTRY CASE STUDIES</b>	
	Senegal	Lamine Sy
	Uganda	Jennifer Hinton
	Peru	Manuel Reinoso
11:00	<b>COFFEE BREAK</b>	
11:30	Burundi	Gilbert Midende
	Madagascar	Olivier Razafimandimby
	Bolivia	Daniel Lafuente

# Agenda

Sharing about different countries:

1. Is the law for or against ASM? Why?
2. Is there any incentive for ASM workers to formalize?
3. What financial mechanisms can allow the ASM miners to increase their level of income?

# Setting the scene: ASM legal aspects and formalization

To allow ASM to enter the formal economy, and generate economic development, the legal framework must encourage formalization

1. Is there a legal framework for ASM?
2. Why is ASM still called illegal?
3. What do we mean by formalization?
4. How can the law encourage formalization?

# 1. Is there a legal framework for ASM?

Examples in the countries with biggest estimates of ASM workers  
(source: mapping ASM / [www.artisanalmining.org](http://www.artisanalmining.org))

	Country	Estimated number of ASM	Legal framework
1	DRC	2.000.000	Mining Code Law No. 007/2002
2	China	1.500.000	2009 Mineral Resources Law of The People's Republic of China (draft)
3	Tanzania	550.000	Mining Act of 1998, review under consideration in 2009, ASM strategy in 2006
4	Brazil	500.000	Law 7.805 of 1989, Constitution of 1988
5	India	500.000	1986 MMRD Act (?) but no legal status for artisanal mining

# 1. Is there a legal framework for ASM?

Examples of ASM-dedicated laws  
(source: mapping ASM / [www.artisanalmining.org](http://www.artisanalmining.org))

Country	Estimated number of ASM	Law / Act
Mongolia	100.000	Temporary regulation, ASM law under prep. In 2009
Peru	120.000	Law for the Formalization and Promotion of Artisanal and Small-scale Mining No. 27451-2002
Philippines	200.000	Philippines People's Small-scale Mining Law, 1991
Zimbabwe	350.000	Zimbabwe Alluvial Gold Mining Act, 1991

# 1. Is there a legal framework for ASM?

The ASM legal framework in the other countries of the session  
(source: adapted from mapping ASM / [www.artisanalmining.org](http://www.artisanalmining.org))

Country	Estimated number of ASM	Legal framework
Mozambique	100.000	Mining law 2002
Bolivia	70 <> 80.000	Mining Code of 1997
Burundi	50 <> 80.000	Mining code under rev. in 2009
Madagascar	300.000	Mining Code of 2005, Decree of 2006
Uganda	150.000	Mining Act of 2003
Senegal	10 <> 50.000	Mining Code law N° 2003-36 (special regime in 1988, new recommendations 2008)



## 2. Why is ASM still found illegal?

### For governments

- They are outside the reach of tax collectors
- They have possible links with other illicit activities (Great Lakes)
- They provoke uncontrolled environmental impacts (Indonesia, Mongolia)
- They create security issues (China, South Africa)

### For companies

- They intrude onto mine properties to remove ore (Guinea, Venezuela, Ghana)
- They occupy claimed perimeters (Brazil, Indonesia)

### For other stakeholders (NGOs, OIs...)

- They operate in protected areas (DRC)
- They employ children
- They are associated with other health/safety issues

## 2. Why is ASM still found illegal?

Law enforcement in ASM :

1. Government capacity
2. Dissemination
3. Education / training

## 2. Why is ASM still found illegal?

AM sometimes supply companies / counters that transform and export legally

- DRC, Mongolia

AM are sometimes compensated in case of resettlement by private companies

- DRC

Governments very rarely use force against AM

*AM is mainly informal*

### 3. What do we mean by formalization?

Usual definition:

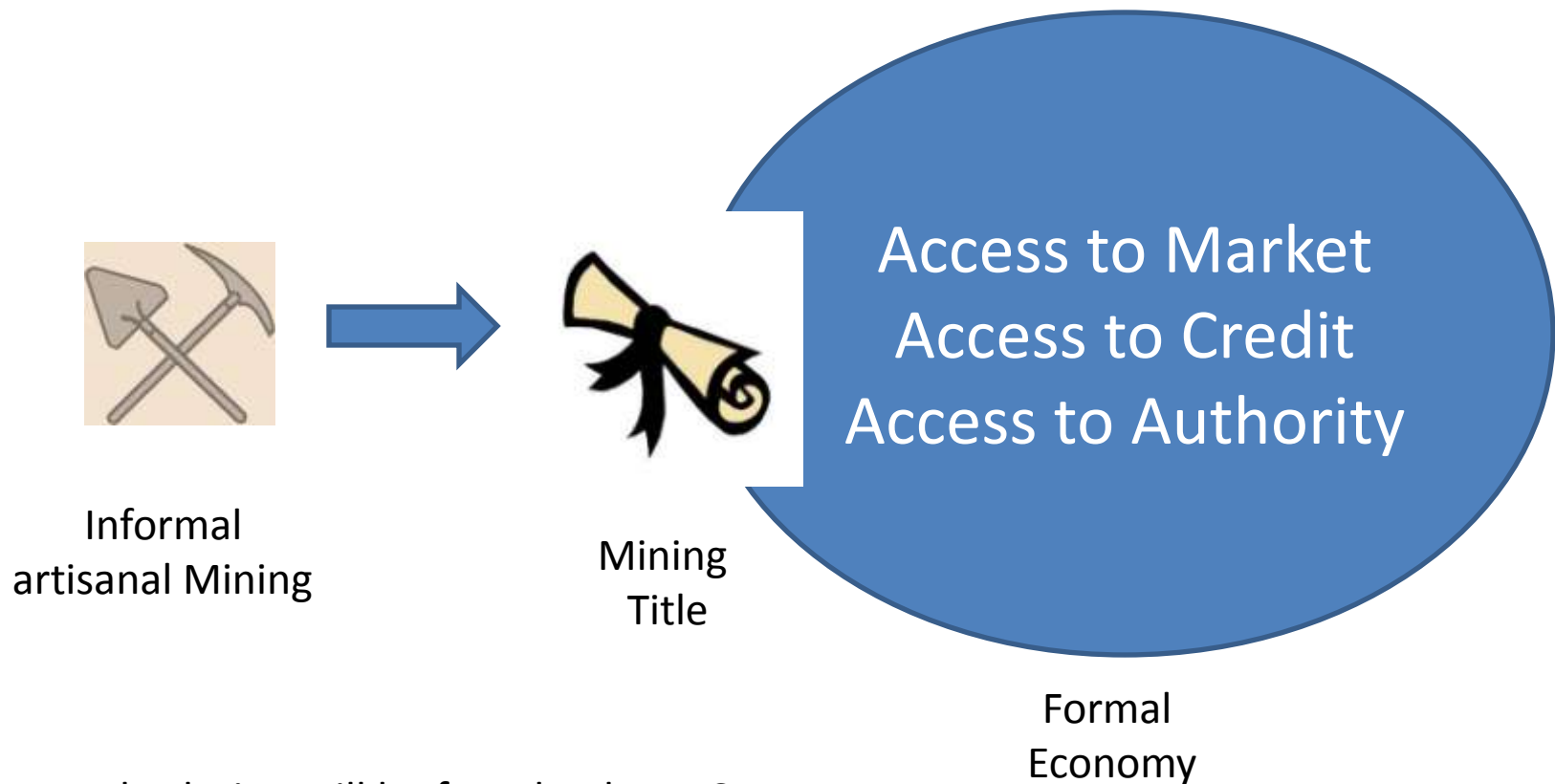
Process of registering and organizing mining in the field; an intervention strategy to transform the sector and attract it into the formal economy

Organization still a priority:

Peru, Madagascar, Senegal, DRC, Mozambique...

### 3. What do we mean by formalization?

To enter the formal economy, the miners need a **title** that recognizes their **right to mine**



No real solution will be found unless ASM are given full legal and transferable mining titles...

# 4. How can the law encourage formalization?

Review of most common options, with their limitation in terms of encouraging formalization

## Authorization except in designated areas

- The “free digging” model (PNG 1992, Venezuela?): more usually not for metals, only on un-owned lands/ivers, not formal

## Authorization in designated areas

- Quite common (incl. Mozambique), no conflicts on overlaps
- Resource quality (grade, geological work need), accessibility, size (Brazil), still some eviction risks (Burkina Faso), social risks (“ghetto”), renewal (exhaustion of reserves)... and often not associated with real title (legal<>formal)

## 4. How should the law encourage formalization?



### Artisanal Mining License

- Little conditionality (technical, financial, environmental),
- Restricted to nationals, individuals and/or associations or cooperatives,
- 1 or 2 years renewable, usually 5 to 10 ha (with exceptions like Peru and sometimes not specified),
- Single licensing, often exclusive , but limited to non-mechanized means, a max depth (15 to 30 m) , one substance ,
- And not transferable, not leasable



### Small-scale Mining license

- Mid-way between artisanal and industrial mining,
- Usually no or limited participation of foreign investors,
- 2 to 5 years renewable, variable perimeter (50 to 1000 ha),
- Sometimes single licensing (other times prospecting required before), exclusive, but some limitations on techniques (explosives, cyanide...) or investment/workforce, usually not granted to individuals, sometimes limited to pre-designated areas
- And transferable, leasable, mortgageable ... and significant taxation

# 4. How should the law encourage formalization?

Even when the titles are appropriate, there are a lot of barriers to entry



Minimize administrative barriers



Prevent property / land-use conflicts



Border

River

LSM  
Exploitation  
Permit

LSM Exploration  
Permit



To allow ASM to enter the formal economy, and generate economic development, the legal framework must encourage formalization

1. Is there a legal framework for ASM? Usually yes
2. Why is ASM still found illegal? The law is not enforced and/or does not reflect ASM reality
3. What do we mean by formalization? Organization and / or allocation of a formal title
4. How can the law encourage formalization? Especially by designing realistic mining titles accessible to miners

## Formalization of ASM within exploration permit areas

- Impossible > conflicts (ASM preexisting or not)
- Allowed until exploitation permit is granted , and then compensation / employment (Liberia?)
- Allowed with LSM agreement
- Allowed with LSM agreement byt LSM must justify refusal (Zambia)
- Priority to ASM when area relinquished?

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## Question of resource ownership

- The “claim” model (USA 1872, Australia):  
question of eligibility... you find it you  
claim it... a “physical cadastre”
- Ultimately a question of mineral resource  
ownership (discoverer <> state)