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Policy pointers

Artisanal and small-scale mining (ASM) in Colombia is a largely informal traditional activity. Its potential to contribute to sustainable rural development could be unlocked by formalisation processes that fully include ASM miners and entrepreneurs.

The time is right for the inclusive formalisation of ASM in Colombia: positive drivers for change include a new national formalisation policy, peace talks to end the internal armed conflict, and global initiatives for sustainable and ethical supply chains.

Existing formalisation efforts and insights from ASM stakeholders provide valuable lessons about what works and about what we need to do to achieve inclusive formalisation, in Colombia and elsewhere.

The government must provide financial, legal and technical support to help the sector formalise, with locally identified ASM needs and priorities and the rights of ethnic groups at the forefront of all efforts.

Participation as policy: time to formalise artisanal and small-scale mining in Colombia

Widely regarded as unsustainable and dangerous, Colombia's artisanal and small-scale mining (ASM) sector is largely informal — characterised by poor working conditions and inadequate regulation. With only one third of operations legally licensed, hundreds of thousands of miners lack legal and social protections. Although successive governments have recognised ASM's potential for sustainable rural development and pursued formalisation, this has often excluded the voices of the informal ASM sector and had limited effect. Now, as national and global drivers align to make this a time of possibility for inclusive ASM formalisation, we examine current barriers, opportunities and learnings to recommend policy-level action.

Colombia's mining sector is growing significantly: gold exports alone increased by 156 per cent between 2001 and 2011.¹ The National Development Plan 2010–2014 establishes mining as an 'engine of economic growth' and aims to triple the area dedicated to it. But this policy has chiefly benefited large-scale mining (LSM), with the majority of concessions granted to foreign companies. ASM remains on the sidelines, despite official estimates that 314,000 people are directly involved in medium- and small-scale mining in Colombia, with the reality likely to be far greater.²

ASM is a difficult business to be in: poor rural people have made use of mineral resources on common land since colonial times, but today exploitation rights are only available to those with titles recorded in the national mining register. A recent census revealed that only 45 per cent of ASM miners had a formal employment contract and the protections that might entail.³ In addition, surges in the price of gold have increased illegal mining activity by armed groups, leading to a government crackdown on 'illegal' mining.

Because Colombia's mining glossary⁴ classifies all informal mining as illegal, people reliant on ASM are indiscriminately criminalised, further eroding their social rights.

How the land lies

There have been numerous attempts to formalise ASM in Colombia since 1988 and a raft of mining legislation has been introduced. Some has been positive for ASM: recognising traditional and 'de facto' miners and the diversity of the mining sector; creating special mining zones⁵ for ethnic communities; encouraging better leadership by environmental authorities; and creating opportunities to apply for licences.

But the ASM sector isn't always included in the decisions made for and about it. Previous 'top down' models for formalisation have proved too costly and complex for miners to engage with. Formalisation has been treated as a one-off event rather than a progressive process: governments offered incentives that were not delivered, while miners received little support.

The time is right to make progress in formalising ASM

For example, opportunities to apply for licences allowed too little time for informal operations to submit the documentation required. This lack of consultation has left small-scale operations with a legacy of barriers to attaining legal status.

However, the time may have come for more inclusive formalisation efforts to succeed. One barrier to ASM participation has been the armed conflict that has ravaged

Colombia for over 50 years. ASM communities and other rural civilian populations have been subjected to violence and expelled from their lands,⁶ disrupting opportunities to participate in formalisation efforts. But talks are underway between the national government and FARC (Revolutionary Armed Forces of Colombia) guerrillas to end the conflict, with rural development and restitution of lands high on the agenda.

More localised conflict, caused by criminal networks linked with armed groups entering the mining sector, is also getting some attention. The Andean Policy Against Illegal Mining is an intergovernmental initiative that supports improved regional coordination and efforts to formalise ASM as key to tackling illegal mining and mineral trading. But although the policy supports formalisation, it fails to protect miners: by including informal ASM within its definition of 'illegal mining' the policy allows police to treat ASM miners as criminals.⁷

Colombia's 2013 National Formalisation Policy provides further timely support. This offers new incentives for fully inclusive formalisation and sets out plans to revise regulations that have hindered progress to date. The policy aims to see 40 per cent of all mining formalised by 2019 and full formalisation by 2032. The policy has state support: the Ministry of Mines and Energy has established a Formalisation Office and a coordinating body to oversee institutions carrying out formalisation plans.

Helpfully, the policy acknowledges that obtaining a legal title on which to operate is a prerequisite for formalisation, but that it is only the first step in a longer process. It also distinguishes between illegal and informal mining and recognises that ASM and LSM require different approaches. It focuses on regional development, aiming to improve conditions for ASM's vulnerable groups, including child labourers, women and elderly miners, and indigenous and Afro-Colombian mining communities.⁸ However, although some of aspects of the policy are already being implemented and are yielding positive results, they can be undermined by the police's treatment of informal ASM miners as criminals.

Beyond Colombia, a number of developments are indicating that the time is right to make progress in formalising ASM (see Box 1).

Barriers to overcome

Although the national and international situation looks favourable, formalising ASM in Colombia is not going to be easy. Success will require voices from ASM — a diverse group in itself — to be heard and historical mistrust between ASM, LSM and government to be resolved. Stakeholders across the sector have begun by identifying the main barriers to formalisation, including: an inefficient bureaucracy, which fails to effectively govern mining; excessive centralism; and lack of ASM involvement in designing the process. The barriers are further detailed in Box 2.

What we need to succeed

The barriers are significant, but some existing initiatives are helping to indicate how they can be overcome. The success factors described here — gathered from literature and our interviews with a wide range of stakeholders — offer lessons about what needs to be in place to move an inclusive ASM formalisation agenda forward.

Local participation. Continuous local input is crucial, as demonstrated by the 'permanent mining dialogues' established between the Ministry of Mines and Energy and Afro-Colombian community councils. The dialogues look at rolling out formalisation locally, using a culturally sensitive approach that differentiates

Box 1. International instruments and initiatives driving formalisation

As a signatory to UNEP's **Minamata Convention on Mercury**,⁹ Colombia has committed to regulating the informal ASM sector to reduce mercury emissions.

In its **Due Diligence Guidance for Conflict-Free Mineral Supply Chains**, the OECD recommends that governments implement formalisation plans for gold mining. This is particularly relevant because Colombia is seeking OECD membership, and because its minerals may be boycotted if conflict-free supply chains cannot be guaranteed.

Ethical certification casts ASM in a more positive light. Ethical jewellery supply chains are supporting ASM organisations to produce certified ethical gold: a traceable, responsibly mined product for the international market. Ethical certification offers incentives such as premium payments, fair prices and access to credit through long-term trading relationships. Certification and formalisation requirements are aligned, lessening the burden on miners.

Two successful certification schemes that highlight how the ASM sector can lead innovation have developed in Colombia: 'Oro Verde' (Green Gold[®]) — the first global initiative for social and environmental certification of precious metals, established to support Afro-Colombian communities in the Chocó bioregion — and the Fairmined certification standard, developed by the Alliance for Responsible Mining as an incentive to formalise and improve ASM.¹⁰ These have been replicated elsewhere in Latin America, West Africa and Mongolia.

between scales and types of mining. In the Chocó Permanent Mining Dialogue, for example, environmental protocols are developed locally between community councils and miners, with an independent facilitator. Formalisation pilot projects that are designed by ethnic communities and draw on their traditional values include 'Mining for Peace' in Cauca Department, which is helping Afro-Colombian miners to preserve natural resources.

Clear mining rights for traditional ASM and ethnic communities. The 2001 Mining Code established 'Special ASM Reserves' to protect traditional mining, and under the 1988 Mining Code special mining zones were created for ethnic groups. If more land were made available these special zones and reserves could be expanded and, with technical support from the government, formalisation could take place. The Secretary of Mines of Antioquia Department, among others, has suggested the creation of a 'formalisation mining title bank' to help areas returned to the state to be reallocated to ASM.

Stronger ASM organisations. ASM miners in Northeast Antioquia have joined forces to lobby more effectively for rights, reduce supply costs through economies of scale, ensure regular access to legal explosives, and increase their bargaining power when negotiating contracts with LSM. These organisations play a key role in promoting formalisation: if represented at international level they could help ensure better policy alignment among neighbouring countries and develop common agendas for issues such as technology, credit, mercury reduction, traceable supply chains and addressing criminal mining.

The Alliance for Responsible Mining (ARM) supports local and national-level organisations to increase their policy impact. Miners in ARM networks in Latin America have recently formed the Regional Miners' Network.

Partnerships for technical and environmental support. ASM stakeholders report examples of successful partnerships with mining and environmental authorities, NGOs, technical cooperation programmes and academic institutions. These all work through a coordinated, locally delivered approach, and include:

- 'Pilot formalisation laboratories' in Antioquia, where regional government provides technical and legal support through the national university's School of Mines
- The USAID-funded Bioredd Program in Chocó and Antioquia, which encourages legal and responsible mining through formalising ASM, improving degraded areas and eliminating mercury use

Box 2. Barriers to formalisation

Our interviews with ASM miners, government officials, LSM, mining experts and practitioners identified the following barriers:

Poor governance and administration. The largest barrier is the government's limited capacity to efficiently manage the mining sector, and lack of continuity in the delivery of support. Requests for mining titles to be legally recognised are delayed by weak administrative structures and information systems within the mining authority.

Armed conflict and illegality. FARC insurgents, paramilitaries and criminal gangs looking to control gold mines have targeted ASM, particularly in traditional ASM and Afro-Colombian regions, with levels of violence that challenge participation in formalisation.

A 'one-size-fits-all' approach. The mining code does not differentiate between different types and sizes of mining, so the strict compliance criteria provide no support for ASM — small operations are subject to the same requirements as large ones, regardless of the needs and capacities of particular types of miner or mining operation.

Limited local input. Decisions about mining have traditionally been made in Bogotá, with the minimal consultation of regional and local authorities and little understanding of ASM needs and priorities.

Unclear mining rights for ethnic groups. Indigenous and Afro-Colombian communities' special collective rights¹¹ are protected but unregulated. Communities lack clarity on how and where their territories can be mined.

Lack of mineable areas for formalisation. Most mineable areas are taken up by LSM concessions. Although many could in theory be reclaimed by the state and reallocated to ASM — on the grounds that they are not viable for large-scale operations or that operators are not meeting contractual obligations — government inspection and monitoring is weak and there is no legal provision to devolve areas back to the state to assist in formalisation.

Lack of access to credit and explosives. Formal and informal ASM miners find it hard to access formal bank credit and legal explosives, yet both are necessary tools if miners are to exploit their mines to cover formalisation costs.

- Environmental Mining Centres for cleaner production, led by regional environmental authorities, which strengthen ASM enterprises working under their own mining titles (rather than those of LSM) and offer technical support to improve gold recovery and reduce mercury
- ARM's Fairmined technical and organisational support projects, which work with miners in five regions of Colombia towards certification through formalising traceable and conflict-free supply chains and addressing child labour, environmental management and mercury reduction, labour, and health and safety.

Well facilitated ASM–LSM relations.

Collaborations between informal miners and LSM have resulted in various types of contract that allow ASM to operate inside large-scale concessions; formalisation is a condition and LSM provides technical support for this. Some contracts use access to explosives as an

incentive for formalisation, such as the collaboration between Gran Colombia Gold and ASOMINA, an ASM association in Antioquia.

Recently established 'formalisation sub-contracts' are tied to mercury reduction targets. These have the potential to support formalisation as well as reduce pollution. For LSM, the state's significant role in design and monitoring removes a disincentive (the burden of technical support); for ASM, market opportunities are not stifled as sub-contracted miners are not obliged to sell their gold to LSM. However, these contracts could still be open to abuse by title holders, so minimum standards and greater transparency are needed.

Policy recommendations

This is a key moment for the inclusive formalisation of Colombian ASM. The National Formalisation Policy seems a promising vehicle to achieve this, but lessons must be learnt from previous and ongoing formalisation efforts, most vitally that stakeholder insights must be meaningfully taken into account. The following recommendations — many also relevant to other countries and sectors — must be government priorities moving forward:

Resource and pursue the National Formalisation Policy. Use the policy to protect the rights of vulnerable mining groups, ensure local input into decision making, and contribute to local economic development. Formalisation must be framed as an important component in the peace process to ensure it is properly resourced, and so the difference between illegal mining and informal ASM is better understood.

Develop an inclusive post-conflict vision. Mining's role in peacebuilding, reconstruction and addressing social inequalities needs to be collectively developed so opponents to mining can support this vision. Special ASM Reserves should be expanded and protected to restore land to mining communities displaced by conflict and safeguard the human rights of ASM miners.

Devolve decisions to regional mining authorities and enable local input and participation. Expand initiatives that have successfully engaged ASM miners in

formalisation to more regions — such as the 'Mining dialogues' created in reaction to strikes and protests by miners.

Increase concessions available for ASM. Improve the auditing of exploration concessions to free up areas for small-scale operations and create a 'formalisation title bank' for ASM.

Implement the National Formalisation Policy's stepwise and differentiated approach to formalisation. Enable ASM operations of different type and scale to formalise progressively, starting with securing a licence.

Provide legal, financial and technical support. Support ASM to comply with formalisation requirements: establish training centres, banking systems and safe and legal access to explosives, linking these to formalisation commitments.

Promote business development to enable sustainable supply chains to develop. Support ethical, traceable and conflict-free mineral certification initiatives and supply chains linked to ASM formalisation.

Promote and strengthen miners' organisations. Enable miners to organise to reduce supply costs, increase bargaining power, and access state services for formalisation. Back the international-level organisation of ASM federations to support transnational government efforts to formalise.

Support transparent and fair relations between ASM and LSM. Gather and analyse different types of contract between ASM miners and LSM concessions, and establish good practice guidelines and minimum standards to ensure equity and transparency.

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Echavarria, C (2014) 'What is legal?' Formalising artisanal and small-scale mining in Colombia. IIED, London.
<http://pubs.iied.org/16565IIED>

Notes

¹ Dane (Departamento Administrativo Nacional de Estadística) (2014), 'Comercio exterior – exportaciones, Diciembre de 2013 (Preliminar)', Bogotá. / ² This figure from the mining ministry contradicts figures from Conalminercol (the Colombian miners' association), who suggest that up to 2 million people are involved in ASM in Colombia. / ³ MINMINAS (Ministry of Mines and Energy) (2012) Censo Minero Departamental Colombiano 2010-2011. / ⁴ The Ministry of Mines' Technical Mining Glossary provides the official definition for terms in mining legislation and regulations. See MINMINAS (2003) Glosario Técnico Minero. www.minminas.gov.co/minminas/downloads/UserFiles/File/Minas/Glosario2.pdf / ⁵ Under the 1988 Mining Code, Afro-Colombian and indigenous communities were granted priority rights for the development of mineral deposits inside their collective lands, for which the mining authority created a special lease exempting them from payment of royalties and taxes. / ⁶ For further information on the conflict and the peace negotiations see: <http://colombiareports.co/understanding-causes-colombias-conflict-political-exclusion> / ⁷ Ministry of Foreign Affairs (2012) Decision 774: Andean Policy Against Illegal Mining. Trigésima Quinta Reunión Del Consejo Andino De Ministros De Relaciones Exteriores En Forma Ampliada Con Los Representantes Titulares Ante La Comisión De La Comunidad Andina – 3 de mayo de 2012 – Cartagena de Indias – Colombia, 30 de Julio de 2012. / ⁸ MINMINAS (2013) Política Nacional Para La Formalización de la Minería en Colombia, second edition. / ⁹ See <http://mercuryconvention.org> / ¹⁰ For further information on Oro Verde and the Fairmined Standard see www.communitymining.org / ¹¹ Colombia's 1991 Constitution recognised the rights of ethnic groups to five collective rights: identity, territory, autonomy, participation and self-determination.



Knowledge Products

The International Institute for Environment and Development (IIED) promotes sustainable development, linking local priorities to global challenges. We support some of the world's most vulnerable people to strengthen their voice in decision making.

Shaping Sustainable Markets is an IIED research initiative exploring the design and impact of market governance mechanisms.

The Alliance for Responsible Mining (ARM) works for the sustainable development of artisanal and small-scale mining. Working with a worldwide network of miners, experts and others, ARM developed the 'Fairmined Standard' to encourage formalisation and promote better quality of life for mining communities.

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