Artisanal and small-scale mining (ASM) in sub-Saharan Africa: Re-conceptualizing formalization and ‘illegal’ activity

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A B S T R A C T

This article contributes to the debate on the formalization of artisanal and small-scale mining (ASM) – low-tech, labour-intensive mineral extraction and processing – in developing countries. A unique sector populated by an eclectic group of individuals, ASM has expanded rapidly in all corners of the world in recent years. Most of its activities, however, are informal, scattered across lands which are not officially titled. But growing recognition of the sector's economic importance, particularly in sub-Saharan Africa, has forced donors, and to some extent, policymakers, to 'rethik' development strategies for ASM. As part of broader moves to improve the regulation of, and occasionally intensify the delivery of assistance to, the sector, many are now searching frantically for fresh ideas on how to bring operations into the legal domain, where, it is believed, they can be regulated, monitored and supported more effectively. A challenging exercise, this entails first determining, with some degree of precision, why people choose to operate informally in this sector. Drawing on analysis from the literature and findings from research conducted in Ghana and Niger, it is argued that the legalist school (on informality) in part explains how governments across sub-Saharan Africa are 'creating' bureaucracies which are stifling the formalization of ASM activities in the region. A more nuanced development strategy grounded in local realities is needed if formalization is to have a transformative effect on the livelihoods of those engaged in ASM in the region and elsewhere in the developing world.

1. Introduction

In sub-Saharan Africa, the informal sector reigns. Since Hart (1973) coined the phrase in the early-1970s, countless assessments have emerged which paint a comprehensive picture of the region's fragmented labour markets and structures. The broad consensus is that the informal sector employs an estimated three-quarters of the active working population of sub-Saharan Africa (ILO, 2009). The literature identifies a host of interrelated reasons as to why this is the case, including structural adjustment, which has caused unprecedented retrenchment and unemployment; a sizable gulf between the rich and poor; and disappointing economic growth (Crisp and Kelly, 1999; Pegg, 2003; Verick, 2004; Heintz and Valodia, 2008). If harnessed effectively, however, the knowledge, skills and entrepreneurial spirit found in the region's informal economy could transform the lives of millions of people.

One industry which, if formalized, could make an immediate impact, economically, in the region is artisanal and small-scale mining (ASM): low-tech, labour-intensive mineral extraction and processing. Although estimates vary, in sub-Saharan Africa, there are at least 20 million people employed directly in the sector, and an additional 100 million individuals who depend upon its activities indirectly for their livelihoods. But whilst productive and vibrant, the region's ASM operations are mostly unlicensed and confined to informal 'spaces'. For more than two decades, scholars, donors and policymakers have cited reasons why, in the process building a case for formalizing the sector's activities (Davidson, 1993; ILO, 1999; Maconachie and Hilson, 2011). The discussions put forward mostly focus on the challenges facing individual miners, specifically the difficulties they often encounter when attempting to obtain the requisite permits to operate legally.

The purpose of this article is to further this analysis by drawing attention to how legislation, policy frameworks and donor agendas are impeding the formalization of ASM across sub-Saharan Africa. In doing so, it reengages with and attempts to revive what many believe to be obsolete and/or ambitious ideas put forward by the Peruvian economist Hernando De Soto (De Soto, 2000, 2002), and the legalist school on informality more generally. Knowledge of the dynamics of ASM in sub-Saharan Africa, specifically information on the backgrounds of its
participants, the breadth of technology now found at sites and the organization of operations, has enhanced considerably since publication of what is now regarded to be landmark paper on ASM by Siegel and Veiga (2009). Engaging with ideas put forward by De Soto, the authors argued ‘that the key to alleviating poverty and preventing conflict between the dual economies … is to expand property rights systems to absorb the extra-legal economy’ (p. 53). As a recipe for formalizing ASM, the authors’ analysis could quite easily have been dismissed as highly-conceptual and idealistic at a time when, as indicated, the debate focused squarely on individual operators. It is argued here, however, that, in the case of sub-Saharan Africa, where formalization of ASM is now garnering considerable attention in regional development dialogues, plans and programs, the authors’ ideas and more broadly, those of De Soto, are in a position to wield influence in policymaking circles. The heightened attention being paid to formalizing ASM in the region has coincided with greater appreciation of the factors fueling the sector’s rapid, and at times, unpredictable, growth, and the situations in which these apply, as well as generally, a better understanding of the economic importance of its activities and ‘rootedness’ in rural areas, in particular, their links to subsistence agriculture. The expanded ASM agendas of the World Bank, African Development Bank and United Nations Economic Commission for Africa (UNECA) are telling signs of growing donor interest in this subject.

Verbrugge (2015) correctly points out how nuanced ASM informality can be, and how, in many cases, the ‘fiscal, administrative and political barriers’ which legalists such as De Soto would argue prevent operators ‘from obtaining access to mineral-bearing land through existing formalization schemes’ fail to explain fully the sector’s confinement to unregulated spaces in certain countries (p. 1024). But as naive as it would be to assume that De Soto’s solution to poverty – specifically, believing that the ‘asset-less’ poor’s informal deeds/permits or so-called ‘dead capital’ can be readily converted to collateral which would have immediate currency in the formal economy – is as straightforward as prescribed, it would be equally premature to dismiss the ideas of his legalist camp altogether in the context of ASM. In fact, a revisiting of De Soto could prove timely, given the impoverished state of the ASM development agenda in sub-Saharan Africa at present. De Soto’s – at times, largely implicit – ideas on how governments ‘create’ informality have resonance here. A critical unpacking of these ideas could yield strategies capable of bringing ‘order’ to the region’s ASM economy. Experiences from Ghana and Niger, two ASM landscapes in sub-Saharan Africa which receive very different policy treatment, are used to illustrate both the value of adopting, perhaps as a starting point, a legalist ‘lens’ to study and respond to the nuances of the sector’s persistent informality in the region, as well as the limitations of a formalization strategy which solely seeks to transform ‘dead capital’ into assets.

2. Formalizing artisanal and small-scale mining: resetting the agenda

Before examining the case of sub-Saharan Africa specifically, it is instructive to provide a critical overview of the issue in question. As noted, in recent years, interest in formalizing ASM has risen rapidly. The United Nations and World Bank in particular have embraced the challenge, the former building on a series of disparate policy interventions made across its many divisions over the past four decades and the latter making the subject a focus of its mining sector reform projects.

Initially, the response of governments to calls for giving greater priority to ASM issues in policy (e.g. Davidson, 1993; Kumar and Amaratunga, 1994; Labonne, 1994) was pedestrian. The recent explosion of informal ASM activity in all corners of the developing world, however, has caught the attention of donors, and in some cases, policymakers. Many are now scrambling for new ideas on how to bring the sector’s operations into the legal domain, where, it is believed, they can be regulated, monitored and supported more effectively. There is now a sizable literature on ASM formalization which could provide decision-makers with much-needed guidance. On the one hand, the studies that comprise this intriguing body of analysis are, for the most part, insightful and engaging, sharing, inter alia, details about the organizational structures of selected ASM activities and fresh ideas about why operators choose to work in informal spaces. Notable examples include the work of Verbrugge (2015) on the Philippines, Geenen (2012, 2014) on the DR Congo, and Lahiri-Dutt (2012, 2014) on India. But on the other hand, there is surprisingly little engagement here with the overarching policy context.

This section of the paper weighs in on two significant points – (1) the policy context, and (2) the causes of informality – to ensure that scholarly debates on ASM formalization remain aligned with, and are best-positioned to inform, the policy dialogue on the subject moving forward.

2.1. The policy context

The importance of research which explores the formalization of the ASM sector remaining in tune with the overarching policy dialogue, specifically its orientation and objectives, cannot be overstated. The bulk of analysis produced thus far on the subject has not done so, its most glaring shortcoming being a failure to disaggregate ‘mining titling’ from other types of property rights. This is significant, given the unique position ‘mining titling’ occupies in the policy frameworks of many developing countries in which resource extraction is now heavily prioritized. Grouping it together with other property rights in critiques on access and entitlement to land, therefore, could yield a convoluted and unrepresentative picture that is heavily disconnected from the overarching policy dialogue and economic agendas of these countries. A greater appreciation of, and continued focus on, the weight and influence ‘mining titling’ carries in these settings is a key to producing scholarship that is aligned more closely with the central development objectives of mineral-rich economies.

This requires viewing the ‘exploitation/mining title’ as ‘an immovable property right’ which, as Blanc (2015) explains, is ‘dually registered as a mining title and an immovable property title’. Significantly, it ‘overrides rights that the land owner or other third parties may hold in respect of the land surface covered by the mining title, such as farming, hunting, agricultural rights, land occupation or even land ownership rights and easements that also qualify as immovable property rights’ (p. 338). This is reflected very clearly in the legislation of a number of developing countries. For example, the constitutions of both Kenya and Ghana empower officials to exercise ‘the authority to acquire privately-held land in a compulsory manner’ for the ‘purpose of conducting mineral operations’ (Veit et al., 2013, p. 3). Similarly, in Ecuador, where oil extraction has become a focal point, economically, ‘the state retains subsurface mineral rights on all land’, which means that ‘indigenous groups possess access and withdrawal rights to surface resources, while oil companies can lease subsurface rights from the government’ (Bremmer and Lu, 2006, p. 508). In declaring the control of minerals a matter of national interest, and establishing mining titles to facilitate extraction and access to the lands which contain economic deposits, these, and other, governments have managed to attract significant foreign investment. When this economic objective is taken into consideration, discussions on formalizing other types of property rights (e.g. Benjaminsen et al., 2008; Sjøaastad and Cousins, 2008), although insightful and which no doubt should feature much more prominently in decision-making processes affecting mining titles, become redundant.

The formalization of ASM – specifically, its embodiment within a reformed minerals policy and regulatory apparatus, or, as Geenen (2012) puts it, ‘a standardized legal framework that is registered in and governed by a central state system’ – should be integral to any mining titling process. In recent years, there has some been attention
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