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## Research Report

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### Sustainable Markets

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Colombia's mining sector is characterised by widespread informality, with two-thirds of all mining operations lacking any legal title. This not only prevents improvement in the working conditions and human rights of miners, but perpetuates environmental degradation and poor quality of life in mining communities. Yet government formalisation initiatives have had limited success to date.

This paper assesses these past formalisation processes, analysing the barriers to formalisation for artisanal and small-scale mining (ASM) and offering approaches to overcome them. It highlights that now is a critical moment for Colombia's mining sector as positive drivers align for change: the government's 2013 formalisation policy; evolving relationships between ASM and large-scale mining; global drivers such as mercury elimination, conflict-free mineral sourcing and investment in traceable certified gold; and the peace negotiations currently underway to end more than 50 years of armed conflict, of which formalisation of ASM is a key component.

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# 'What is legal?' Formalising artisanal and small-scale mining in Colombia

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### About the authors

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The Sustainable Markets Group drives IIED's efforts to ensure that markets contribute to positive social, environmental and economic outcomes. The group brings together IIED's work on market governance, business models, market failure, consumption, investment and the economics of climate change.

The International Institute for Environment and Development (IIED) is planning a five-year knowledge programme for the ASM sector, linked with its work on the informal economy. The programme seeks to support more secure and dignified livelihoods for miners, by promoting increased collaboration among the sector's stakeholders to address its challenges and create an enabling environment for ASM.

The ASM Knowledge Programme will incorporate country-based learning groups. One of these learning groups is convened by IIED and ARM in Colombia. This paper is part of that initiative.

### The Alliance for Responsible Mining (ARM)

ARM is a global initiative that works for the sustainable development of artisanal and small-scale mining (ASM) with a worldwide network of miners, experts and other partners. ARM has developed the Fairmined Standard for gold as an incentive to drive formalisation processes in ASM and to promote better quality of life for mining families.

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Cover photo: Ancestral miner in Chocó © Ronald De Hommel

# 'What is legal?' Formalising artisanal and small-scale mining in Colombia

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Cristina Echavarría

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# Abbreviations and acronyms

ACOPI	Colombian Association of Micro, Small and Medium Enterprises
AICO	Traditional Indigenous Authorities of Colombia
ANAFRO	National Afro-Colombian Autonomous Association
ANLA	National Environmental Licensing Agency
ARM	Alliance for Responsible Mining
ASGM	artisanal and small-scale gold mining
ASM	artisanal and small-scale mining
ASMO	artisanal and small-scale mining organisation
ASOMINA	Association of Small-Scale Miners of Northeastern Antioquia
ASOMINEROS B C	Association of Small-Scale Miners of Bajo Cauca
BACRIM	Criminal Bands
Conalminercol	National Confederation of Colombian Miners
CSR	Corporate social responsibility
CUT	Central Union of Workers
DANE	Colombian National Statistics Department
DCCA	Colombian Department for the Control of Arms, Ammunition and Explosives
ELN	National Liberation Army
FARC	Revolutionary Armed Forces of Colombia
FDI	foreign direct investment
FPIC	free, prior and informed consultation and consent
GCG	Gran Colombia Gold
IDB	Inter-American Development Bank
IIAP	Environmental Research Institute of the Pacific, Colombia
IMO	Institute for Marketecology
Indumil	<i>Industria Militar</i> , arms, munitions and explosives supplier to the Colombian armed forces and national security entities, and industry

LBMA	London Bullion Market Association
LSM	large-scale mining
MADS	Colombian Ministry of the Environment and Sustainable Development
MINMINAS	Colombian Ministry of Mines and Energy
MSM	medium-scale mining
ONIC	Colombian National Indigenous Organisation
PCN	Afro-Colombian Community Process
PNDM	Colombian National Mining Development Plan
SENA	Colombian National Occupational Training Service
SIB	Biodiversity Information System
SILA	Environmental Licensing Information System
SMGE	Large-Scale Mining Sector Association
SWOT analysis	strengths, weaknesses, opportunities and threats analysis
UAEOS	Administrative Unit for Solidarity Organisations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNIDO	United Nations Industrial Development Organization
UPME	Colombian Mining and Energy Planning Department

# Executive Summary

**Colombia’s mining sector is characterised by widespread informality. A recent census revealed that 72 per cent of all mining operations in Colombia are classed as ‘artisanal and small-scale mining’ (ASM), and 63 per cent are ‘informal’, lacking a legal mining concession or title. Large-scale mining (LSM) comprises only one per cent of operations. Over 340,000 Colombians depend directly on ASM and medium-scale mining (MSM) for their income. This informality deprives the state of important financial resources, while the current poor conditions (environmental, social, health and safety, labour, technical and trading) prevent the sector from delivering on important social objectives, such as generating formal employment and improving quality of life in mining communities.**

## Legislation to formalise ASM

Successive governments have introduced numerous initiatives over the last 26 years to formalise the sector. However, these efforts were not effective for a number of reasons, including the weak state capacity to manage the sector, the short timeframes provided for miners to apply for legal titles, inadequate support for local miners, a pervasive culture of informality, and widespread violence and human rights violations by armed groups in mining areas.

The 2001 Mining Code created an asymmetric scenario for granting mining concessions, prioritising large-scale mining companies while leaving the different needs of artisanal, small-scale and medium-scale miners unrecognised by the law. Exploration and mining concessions have been granted to LSM and investors in traditional ASM areas through simplified, online requests over the past 15 years, attracting foreign direct investment to Colombia, but undermining the rights of traditional informal miners. This has fuelled conflict between ASM and LSM.

The last decade’s rise in gold prices enabled both informal and legal ASM to mechanise and grow, but also led to illegal armed groups diversifying from drug dealing to mining, often in the same mining regions. The government’s response – a prohibition of unlicensed mining – has led police authorities to destroy equipment and confiscate gold from informal miners who could not produce the required legal documentation. This confusion between criminal and informal mining triggered protests by miners, and strengthened their representative associations. It led to the creation of a new National Formalisation Policy in 2013.

## Barriers to formalisation

Government itself recognises that the main barriers to formalisation in the past include poor public administration and governance and weak decentralisation. Stakeholders interviewed for this paper, researchers and the government (MINMINAS 2013a; Pardo 2013) have identified a number of additional barriers to overcome. For instance, the Mining Code does not differentiate between different scales of mining operation, leaving artisanal and small-scale miners at a disadvantage when requesting mining concessions. And areas for which ASM can obtain legal titles are scarce, since so much land is ‘frozen’ under exploration concessions for prospecting and mining companies who may not actively use them for years at a time. Another barrier is the high entry bar to formalisation, given that informal miners often have little education, lack operating capital, and have little access to credit. Miners also work within a longstanding culture of informality that can make formalisation seem unattractive. And more importantly, irregular armed groups continue to carry out human rights violations in Colombia, especially in mining areas.

Miners’ demands in recent protests were for:

- a special statute to differentiate between informal and criminal mining
- a protocol of protection for miners against indiscriminate police action
- simplified technical and environmental requirements for ASM
- the creation of special ASM reserves
- the protection of the rights of ethnic groups.<sup>1</sup>

## Drivers for formalisation

The government’s 2013 National Formalisation Policy seems to represent a positive new direction. Its strategic objectives aim to address many of the identified barriers, including enabling ASM to work under legal title; adjusting regulatory mechanisms and guidelines in formalisation; providing occupational training and education for ASM miners; enabling social inclusion and development in mining communities; ensuring relevant, timely and quality information for miners on formalisation processes; deliver on technical, organisational and entrepreneurial strengthening of ASM; and securing resources and effective incentives.

Significantly, the National Formalisation Policy recognises formalisation as a process, not a one-off action or law, for which ASM experts around the world have been advocating

<sup>1</sup> From an agreement signed by government and the miners’ association Conalminercol (Conalminercol and Government of Colombia 2013).

(Barreto 2011 and 2012). The government also acknowledges that the policy may only deliver positive outcomes if effective coordination is guaranteed between institutions.

Valuable lessons are also emerging through regional 'multi-stakeholder' mining dialogues taking place between the Ministry of Mines and regional stakeholders over the past two years, enabling agreements about formalisation and mining in ethnic territories in a way that recognises diversity and incorporates local input. Mining is an emerging issue in the peace talks currently underway between the government and the Revolutionary Armed Forces of Colombia (FARC), because the democratisation of access to natural resources is a crucial part of building a more inclusive society and some ex-combatants are likely to turn to mining as a livelihood. The new formalisation policy is increasingly important as a component of peace-building in Colombia.

A number of important drivers for formalisation are aligned; there is an opportunity now for the state to build on this critical mass. Most ASM and MSM miners are willing to formalise to be able to work with security and stability; LSM is increasingly willing to enable formalisation in their areas of influence, including through 'formalisation sub-contracts'; and jewellers and other supply chain players are investing in supporting ASM organisations to produce responsible certified ethical gold. Given the current government's goal of becoming part of the OECD, global instruments such as the Minamata Convention on Mercury, the International Labour Organization's (ILO) elimination of child labour programme, the ILO's decent work agenda, and, potentially, the OECD's conflict-free minerals guidance have the potential to drive real change in the sector.

## Recommendations

Successful, effective engagement of ASM in state initiatives has occurred when miners are able to work under legal title and participate in defining policies. This requires coordinated state support and dialogue. Government should:

- **Prioritise and fund the National Formalisation Policy.** This programme has the potential to include vulnerable mining groups' rights and incorporate regional priorities in decision-making.
- **Develop an inclusive post-conflict vision for the role of the mining sector in peace-building and reconstruction.** This vision must be developed collectively, be inclusive of ASM and ethnic groups and address social inequalities.
- **Secure rights for miners and protect the human rights of artisanal and small-scale miners in mining regions.** Significantly reduce government processing times for mining title applications. Make more viable areas of land available for ASM by inspecting current exploration concessions, and create a 'formalisation

title bank' for ASM. Enable stronger governance by ethnic organisations within their collective territories.

- **Define a progressive and step-wise approach to formalisation.** This policy sees a legal mining title as the base of a pyramid of step-wise formalisation. This approach must be reflected in detailed guidance and regulation for legal, technical, and environmental licensing procedures, inspections, and worker formalisation requirements.
- **Take a differentiated approach.** Incorporate the different scales of mining and the perspectives of ethnic groups into the mining code to properly recognise diversity. Apply differentiated inspections according to the capacity and type of mining operation.
- **Promote ASM and MSM business development.** Seek to strengthen ASM and MSM producer organisations to enable supply chain approaches. Enable ASM-certified conflict-free gold pilot projects with international gold consumers. This has great potential to generate decent work and improve quality of life in mining communities.
- **Strengthen miners' associations.** Engage with formalised ASM enterprises and organisations in regional dialogues and formalisation projects. ASM and MSM associations can bring down the cost of supplies through economies of scale and help miners to access state services for formalisation.
- **Support transparent and fair relations between ASM and mining companies.** Collaborative formalisation programmes between LSM, ASM and regional mining authorities have allowed ASM miners to work legally on LSM leases. Define good practice guidelines for such contracts and develop model contracts that can be adapted to different situations. Ensure greater transparency in LSM-ASM relationships.
- **Deliver legal, financial and technical support.** Informal miners cannot comply with the current formalisation requirements without help. Consider creating training centres and promoting banking systems for ASM, tied to formalisation commitments; efficient, safe and legal access to explosives; and linking formalisation programmes to ethical certification initiatives.



Transporting ore from the tunnel, Narino, © H Guerrero

# 1

## Background to artisanal and small-scale mining in Colombia



*What is legal? We have been mining here since 1636. Mining is not so much an economic activity for us. It is our culture: through mining we are educated, we understand the principles of honesty and loyalty, and something that people do not understand today, solidarity. If my mine is poor today, but yours is rich, we all benefit from your mine, because for us ancestral mines are for the service of the community.*

Lisifrey Ararat Ancestral miner and President of the Community Council of La Toma, Suarez, Cauca<sup>2</sup>

Sixty-three per cent of Colombia’s mining operations are ‘informal’, lacking any legal mining lease or title. Artisanal and small-scale mining (ASM) is a widespread traditional practice and livelihood for many; over 340,000 Colombians depend directly on ASM and medium-scale mining (MSM) for their income (MINMINAS 2013a). The practice is based on the principle of ‘first in time, first in right’ – whoever finds minerals first is entitled to them – which has historically enabled the rural poor to exploit natural resources without formal permits on government lands. Today, however, the rights to minerals belong to those who appear in the Mining Register as legal concession holders – leaving informal miners on the margins. This informality deprives the state of important financial resources, while the current poor environmental, social, health and safety, labour, technical and trading conditions prevent the sector from delivering on important social objectives, such as generating formal employment and improving quality of life in mining communities. Successive governments have tried to address the situation by introducing initiative after initiative to formalise the sector, with limited success.

This paper provides a review of the legal processes over the last 26 years to enable artisanal and small-scale miners to formalise in Colombia, and assesses the impact of this legislation. It describes how these processes have evolved within a political economy marked by conflict, complex human rights issues, and a mining policy that prioritises large-scale mining developments. It analyses the barriers to formalisation for miners, and the approaches that could overcome them, offering policy recommendations for formalising Colombia’s ASM sector based on what has worked, and what hasn’t. This paper is based on an extensive review of policy and legislation, academic studies, press reports and ASM public statements and declarations, and with interviews with key stakeholders including government officials, ASM leaders, MSM leaders, LSM representatives and mining companies, practitioners and NGOs engaged with ASM and human rights in Colombia.

<sup>2</sup>From an interview on 1 April 2014

This introductory chapter provides a brief outline of ASM in Colombia. It seeks to illustrate the nature of the sector’s informality and the organisational, technical, labour, health and safety, and environmental challenges involved, as well as providing a context for the dynamics of ASM formalisation in Colombia.

## 1.1 Key characteristics of Colombia’s ASM sector

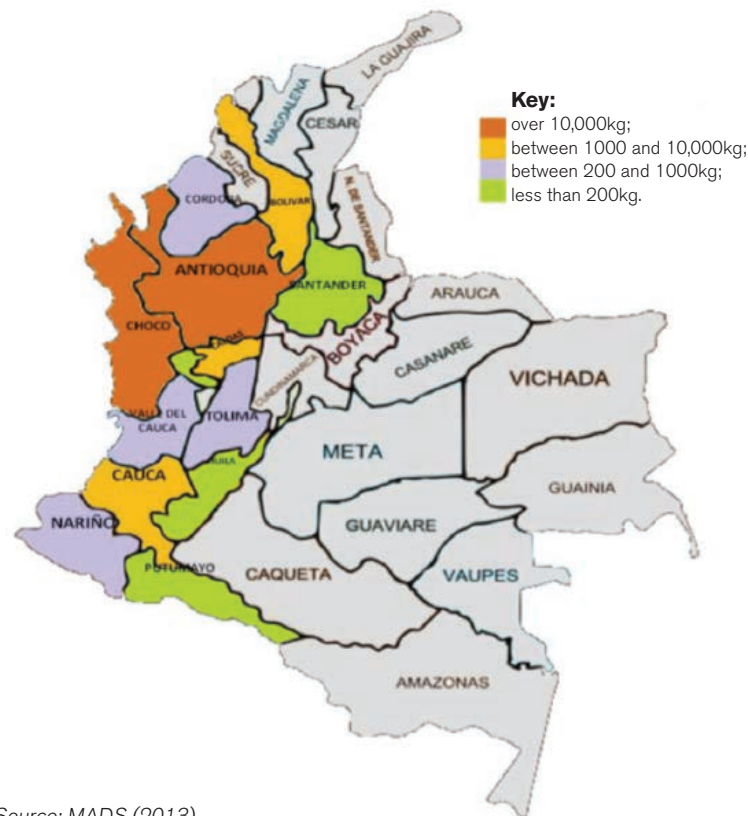
### 1.1.1 Rapid growth

Over the past decade the mining sector in Colombia has grown significantly. Its contribution to GDP increased from 1.7 per cent in 2001 to 2.9 per cent in 2012. Gold exports grew by 156 per cent between 2001 and 2011 (CIDER 2013), totalling around 70 tonnes in 2012 (MINMINAS 2013c: 5).

Gold is found in 44 per cent of Colombia’s departments (regional administrative jurisdictions) (Defensoría del Pueblo 2010). The departments of Antioquia and Chocó produce most of the country’s gold, followed by Bolivar, Caldas, Cauca, Córdoba, Tolima, Valle del Cauca, Nariño, Santander, Huila and Putumayo (MADS 2013). Alluvial ASM has developed mostly along the country’s Pacific coasts in the departments of Chocó, Cauca, and Nariño, while hard-rock ASM takes place in Antioquia, Santander and Huila.<sup>3</sup>

<sup>3</sup>See glossary for definitions of alluvial and hard-rock mining, and their main environmental impacts.

Figure 1. Annual average gold production (2007–2011)



Source: MADS (2013)

### 1.1.2 Census data on mining

The latest data available to characterise the ASM sector in Colombia is the 2011–2012 mining census (MINMINAS 2012). The census included the formal and informal mining of four minerals, at all scales of mining: coal, precious metals, precious stones, and non-metallic minerals. It covered 23 of Colombia's 32 departments. It did not include specific variables for ASM. Some highlights are:

- Of the 14,357 operations included in the census, 63 per cent lacked legal mining title in the National Mining Registry.
- In 10 of the surveyed departments, over 80 per cent of operations had no legal mining title.
- Only 1 per cent of operations are large (208).

- 26 per cent are medium scale (3748).
- 72 per cent are small (10,401).<sup>4</sup>
- It is estimated that some 314,000 workers are directly involved in MSM and ASM (MINMINAS 2013a:44).<sup>5</sup>

In a nutshell, artisanal and small-scale mining accounts for around 70 per cent of Colombian mining. However, it is likely that these numbers are underestimates.<sup>6</sup>

There are low **levels of compliance with legal obligations and payment of taxes** among miners in Colombia, even among legal title-holders:

- 65 per cent of mining operations pay no royalties.
- Of these, 37.2 per cent have legal leases.
- However, 18.5 per cent of operations without legal title do pay royalties.

Low levels of **managerial and technical organisation and low productive efficiency** characterise Colombia's mining sector:

- Only 20 per cent of operations have an accounting system in place.
- 30 per cent manage inventories.
- 72 per cent have no health and safety and occupational health procedures or policies.
- Among those with legal title, only 50 per cent implement health and safety and occupational procedures or policies.

**One quarter of the workers** employed in formal and informal mining operations depend on the smallest mines. The share of mine workers' employment across all sizes of mine is broken down as follows:

- 25.6 per cent in large-scale mining
- 48 per cent in medium-scale mining
- 26.4 per cent in artisanal and small-scale mining.

<sup>4</sup> Size estimations were based on the number of workers, counting as 'large' those with over 70 workers, 'medium' with 6–70 workers and 'small' with up to 5 workers.

<sup>5</sup> Conalminercol, the National Confederation of Colombian Miners, claims that approximately two million Colombians depend directly or indirectly on ASM (Valencia 2012).

<sup>6</sup> Interviewees point to deficiencies in the census, indicating the lack of specific variables for ASM and the exclusion of mines located far from main roads in remote areas (Oseas García, interview 17/3/2014).

Highly **informal employment conditions** prevail in the sector:

- Only 45 per cent have a formal work contract.
- The rest work under temporary, short-term contracts.
- In 54 per cent of operations workers were affiliated to the subsidised government health programme (with no contribution from employers or workers).
- 20 per cent had no health cover at all.

Form of **payment to workers:**

- In 64 per cent of operations payment is made in cash.
- Only 10 per cent of the mining sector overall has access to credit, mainly in the medium and large-scale operations for minerals other than gold.

### 1.1.3 Level of organisation and association

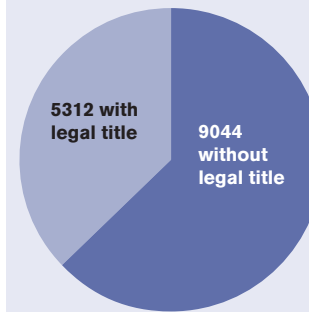
Individual miners who join a work team or enterprise are said to belong to a 'first level' organisation. These first level groups may form cooperatives and associations, or 'second level' organisations, to request mining concessions and access to supplies such as explosives. There is now a growing tendency in the ASM and MSM sectors to organise more broadly around common interests, in response policies that have marginalised MSM and ASM workers. This is done through second or third level organisations – such as federations and confederations – in order to lobby the government for inclusive policies.

- Only 21 per cent of the first level organisations included in the census are also affiliated to second or third level organisations.
- However, 52 per cent of individual informal miners are affiliated to second or third level organisations operating at regional and national levels, such as associations, federations and confederations.

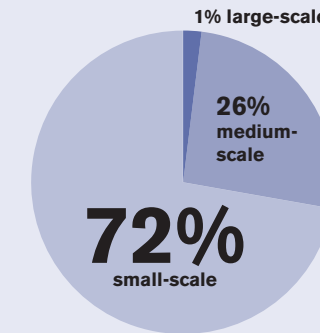
These census results bring into focus the daunting challenge for government, ASM and MSM miners, large-scale mining companies and civil society in addressing the current levels of informality in Colombia's mining sector.

## Census on Colombian mining sector 2011–2012 (Minminas 2012)

**63% of mining operations in Colombia are informal**

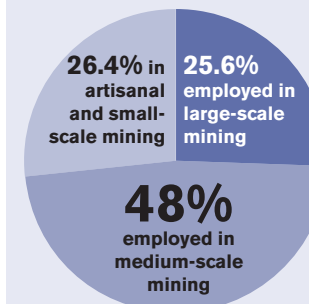


**Most mining operations in Colombia are small-scale**



**314,000**  
estimated number of workers directly involved in small and medium scale mining

**A quarter of workers depend on the smallest mines**

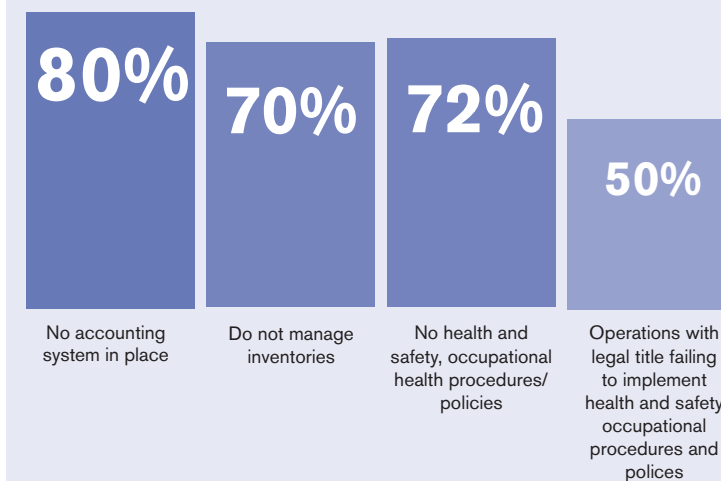


**Informal employment conditions prevail**



**Low level of compliance with legal obligations and taxes**  
**65%** pay no royalties  
10% of mining sector has access to credit

**Low levels of managerial and technical organisation**



**Growing level of organisation among informal miners**  
**52%** affiliated to a cooperative or association

## 1.2 Key issues for Colombia's mining sector

The challenges and opportunities in formalising ASM in Colombia are complex and wide-ranging. Key issues and trends for Colombian ASM include armed conflict in mining regions, rights of ethnic groups, biodiversity, criminal mining, access to mining titles or concessions, and the clash between national and local priorities. These are outlined below.

### 1.2.1 Armed conflict, peace building and ASM

Colombia has an internal armed conflict that has lasted for over 50 years, creating over six million victims since 1986 (Semana 2014). Most mining areas affected by armed conflict have seen the human rights of local communities, workers and small producers extensively violated, as well as extortion by armed groups in small, medium and large extractive and infrastructure projects.

Today, government programmes are underway to provide restitution of lands to over five million people affected and displaced by Colombia's armed conflict (Ministry of the Interior and Justice 2011). The government's recently launched formalisation programme recognises that many artisanal and small-scale miners were – and still are – the victims of conflict over natural resources. In the spirit of restitution, the process aims to enable artisanal and small-scale miners and ethnic groups to access legal mining titles through various channels. There are also plans to resettle some ex-combatants in rural areas in the mining and agricultural sectors. The most recent ASM formalisation programme is therefore a key component of peace building in Colombia, especially in the light of current peace talks between the government and the Revolutionary Armed Forces of Colombia (FARC).

### 1.2.2 The constitutional rights of ethnic groups

Communities of Afro-Colombians (Colombians of African descent) and some indigenous peoples involved in ASM consider mining an 'ancestral' activity, as it forms part of their traditional way of life. (Colombia is said to have the fourth largest black population in the western hemisphere, many of whom are descended from enslaved Africans brought to Colombia to work in the mines.) Colombia's 1991 constitution recognised the rights of ethnic groups to five core collective rights: identity, territory, autonomy, participation and self-development, and it ratified International Labour Organization Convention 169 on indigenous and tribal peoples' right to free, prior and informed consultation and consent (FPIC) through Law 21 of the 1991 constitution. However, according to Gladys Jimeno, a recognised expert on the matter, 'those rights are not exercised, or guaranteed in practice' (2012).



Artisanal miner working at small vein Los Andes Nariño © H Guerrero

While ethnic groups are formally granted priority rights (the right of first refusal) over mining inside their collective lands, regulation has not provided them with differentiated or culturally appropriate mechanisms to enable them to exercise these rights. To do so would require a level of expertise beyond the community's organisational and financial capabilities. Information regarding the titling processes inside their collective territories is also hard to come by. Although this information is public, inadequate official information platforms and the central location of many of the government offices make it difficult for community leaders to access information and support. To obtain a licence to explore for minerals on their own lands they must pay the same surface tax (*canon*) as any other concession holder, making it virtually impossible for them to secure their own mining titles. They are therefore forced into joint ventures with investors from outside the community, whether Colombian or foreign, as the only way to retain some level of control over their collective lands. As Jimeno indicates (2013:1):

*... 30.4 million hectares are designated as indigenous reserves. Of these, 5.4 million hectares are affected by mining titles. Titles have been granted to indigenous peoples in 89 reserves; 27 have mining titles in more than 50 per cent*

*of their area and 14 have been completely granted through mining concessions. In the case of both ethnic groups (Afro-Colombians and indigenous people) titles have been granted without consulting the community, without free, prior and informed consent, and without informing the communities. Eighty per cent of the mining licences granted are not consulted with the indigenous communities either.*

### 1.2.3 Biodiversity

Colombia is home to 10 per cent of the world's biodiversity. Fifty-six per cent of its territory is still covered by natural forest; it has 314 different types of ecosystems; it ranks first globally in its diversity of birds and orchids, second in its diversity of plants, amphibians, butterflies and freshwater fish, third in palms and reptiles, and fourth in mammal diversity (SIB 2014). This 'megadiversity' is characterised by a high level of endemic species with a small geographic distribution that makes them highly vulnerable to extinction. Most of them are located on indigenous and Afro-Colombian territories: the Amazonia, Chocó and Orinoquia regions (Fierro 2012: 136).

Due to widespread opposition by environmental groups and local communities to the development of mining projects, including ASM activity, in *páramos*,<sup>7</sup> recent regulations have excluded *páramos* from mining activity. The granting of mining concessions on some *páramos* catalysed a growing social movement against any type of mining (Fierro 2012).

According to Luz Helena Sarmiento (Minister of Environment and Sustainable Development), 'development in Colombia cannot be at any cost...we have the highest biodiversity per square metre on the planet, but we also have other natural resources so we must make them all compatible' (Ospina Valencia 2014).

### 1.2.4 Illegal mining, criminal mining and traditional ASM

The rise in gold prices during the past decade has enabled many informal and formal ASM operations to mechanise and grow, from 'artisanal' to 'small' and even to 'medium-scale' gold mining.<sup>8</sup> This rapid transformation of the gold mining sector has coincided with illegal armed groups expanding their operations from drug dealing into mining, often in these same mining regions.

Authorities estimate that the FARC obtain some 20 per cent of their resources from mining gold, coltan and tungsten illegally. Over the past decade several demobilised paramilitary groups have retrenched into criminal bands, many dedicated to gold mining. It is estimated that 14 per cent of the 53 tonnes of gold produced in Colombia in 2011

<sup>7</sup> See glossary.

<sup>8</sup> These categories are distinguished by quantity of ore processed, level of organisation and mechanisation as well as size.

was mined illegally, while the remainder was from formal and informal miners (Rivas and Echeverry 2012).

Armed groups have used the mining business to launder money and finance conflict. The involvement of armed groups and criminal networks in the gold supply chain – from mine through processing, trading and transport – is reported in a number of studies (Giraldo and Muñoz 2012; Eslava 2014; Pardo 2013). These miners often pay royalties and become strategically interlinked with the formal local economies (Massé and Camargo 2012). Some have called this the 'illegal mining engine' (Pardo 2013).

The government responded with a decree in 2012 (Decree 2235) prohibiting illegal mining. The law used the same definition for 'informal' and 'illegal' mining, a confusion that over the last two years has resulted in police authorities destroying equipment and confiscating gold from informal miners who could not produce the required legal documentation (see also Section 2.3.1 below.) It triggered strikes and protests by ASM and MSM community members that led to the creation of the current National Formalisation Policy in 2013, outlined in Section 3.

### 1.2.5 Speculative licence dealing and ASM rights

Like many countries, Colombia was affected by the financial crisis of 2008. After the 2001 Mining Code was established, government policy shifted to attracting foreign direct investment (FDI) by simplifying requests for mining exploration concessions: requests can be made online with no need to demonstrate technical, financial or administrative capabilities. Together with rising commodity prices, the policy was successful. In 1996 FDI flows for oil and mining represented 2.2 per cent of all FDI in Colombia; by 2002 it was 43 per cent; and in 2010 FDI for mining and oil development represented 71 per cent of all FDI (Valencia 2012).

This licensing policy – and the speculative licence dealing by venture capital investors that ensued – has led to growing inequality in the granting of concessions over mineral rights, according to Colombia's Ombudsman's Office. Many investors bought mining leases and retained them, sometimes for years, in order to sell at inflated prices to prospectors or miners later. By late 2009, nearly 60 per cent of the country's territory was under concession or had applications pending (Garay 2013a).<sup>9</sup> Colombia's 1.1 million titled hectares for exploration and mining in 2001 rose to 8.4 million in 2009 (Velásquez et al. 2013).

<sup>9</sup> Colombia has one of the highest rates of inequality in land ownership in the world; 0.43 per cent of land owners possess 63 per cent of the land (Valencia 2012:5).

This extensive granting of mining concessions<sup>10</sup> over large areas of traditional ASM and rural communities led to deepening conflict. In the last decade paramilitary groups have displaced many people in rural communities who opposed exploration and large-scale mining in their lands, leaving a legacy of massacres, displacement, and intimidation of victims (Weitzner 2012; CINEP 2012). Some believe this was a covert government response to those resisting their policy, and that the paramilitary groups expected financial rewards for their actions.

In effect extensive areas still remain 'frozen' under inactive mining concessions, preventing ASM miners from accessing legal mining titles as part of a formalisation process (interview, Cadavid, 26/3/2014).

### 1.2.6 Local and national priority clashes

Between 1994 and 2011, mining royalties<sup>11</sup> were mostly paid to the municipalities where mining, processing, transport and shipping of natural resources took place; but these revenues neither boosted growth significantly nor reduced poverty, while corruption has been widespread (OECD 2013a citing Ministerio de Hacienda y Crédito Público 2011b).

In 2011<sup>12</sup> the Santos government re-centralised royalty payments, which are now to be invested through centralised mechanisms. The reform aims to control corruption and enable a broader geographic distribution of resource revenues in order to promote productivity growth in the non-commodity economy, and to ensure that gains from the resource boom are shared more fairly across the country, rather than mineral producing regions alone. However, this policy has met strong resistance from the municipalities and departments who have to manage the impacts of mining. As well as losing income from royalties, mineral-rich regions now have less influence on decision-making in minerals development.

This clash between local and national priorities centres on the current government's 'mining locomotive' policy, which seeks to use the mining sector as an engine to drive the economy and generate income for central government spending – bypassing local and regional decision-making in the process. This has provoked dissent and mistrust among some regional and municipal authorities against mining, and open rejection by numerous civil society groups.<sup>13</sup> For instance, the municipality of Piedras held a local referendum on

<sup>10</sup> A mining concession contract in Colombia includes exploration, extracting, processing and closure.

<sup>11</sup> See glossary.

<sup>12</sup> Decree 4923 of 2011

<sup>13</sup> Some recent examples of local resistance to the proposed mining model include: the referendum against LSM in the municipality of Piedras; generalised rejection in the Cajamarca region of AGA's Colosa gold mine (Tolima Department); the Bucaramanga committee for water and for the preservation of the Santurban Andean Páramo (moorland) opposing the Greystar/Eco Oro plan to develop an open cast gold mine (Santander Department); the committee opposing the displacement of the Ranchería River by Cerrejón (Guajira Department); and numerous community-based movements such as those defending local aqueducts and traditional food-producing regions inhabited by *campesinos* (smallholders) and ethnic groups (Pardo 2013).



No to mining campaign in SE Antioquia Department © C Echavarría

the proposed establishment of a large-scale gold processing plant, whose result was a majority 'No' by the local population. National government questioned the referendum's legality, arguing that municipalities are not legally competent to undertake referendums on issues of national importance. According to Article 37 of Law 685/2001, 'no regional, district or local authority may establish areas within their jurisdictions that are permanently or temporarily excluded from mining'.

Ruling C-123/2014

In response, a lawyer Zulma Tatiana Blanco Buitrago requested a legal action for review of the constitutionality of Article 37 of the Mining Code, in light of new legal and economic developments since its initial approval in 2001. The lawyer argued that the principles of autonomy and environmental protection were being violated. The Constitutional Court declared the article constitutional but qualified its application by adding:

*In the process of authorising exploration and mining activities national authorities must reach agreements with the respective (regional and local) authorities on the measures necessary for environmental protection, in particular the conservation*

*of watersheds, the economic, social and cultural development of communities, and the health of the population, through the application of the principles of coordination, concurrency and subsidiarity included in the Constitution.*

The Court further highlights the principles of autonomy and decentralisation held by regional and local jurisdictions in managing their own interests. It thereby orders that national authorities are obliged to enable the regions' active and effective participation in decisions on minerals development.

In summary, these issues represent formidable hurdles for both the mining sector and government. The continued presence of illegal armed groups in mining regions and the violation of ASM miners' human rights demand continued attention by government. Low educational levels and high illiteracy, weak producer organisations, limited business skills, and the informal nature of payments and accounting, represent big challenges for achieving formalisation and traceable supply chains. Informality deprives the state of important financial resources, while the current poor environmental, social, health and



Gold and platinum at the bottom of a pan © R De Hommel

safety, labour, technical and trading conditions prevent the sector from delivering on important social objectives, such as formal employment generation and improved quality of life in mining communities.

The next chapter looks at the government legislation introduced by successive governments to address this situation.



Goldworking tradition endures in Narino © G Tavernier

# 2

## A historical review of mining formalisation in Colombia

**This chapter starts with a brief outline of Colombia's mining history. It then describes selected policy instruments used over the past 15 years in Colombia to formalise the ASM sector, and the impact of those instruments. It also discusses the human rights issue of policies that have confused informal ASM with illegal mining.**



## 2.1 Historical background

Comprising a national territory of almost 1.5 million square kilometres, Colombia has enormous ecosystem and cultural diversity. Its population today is almost 48 million, and in 2012 its gross domestic product (GDP) was USD7752 per capita – but marked by deep inequalities. Colombia gained its independence from Spain in 1810. Yet, after 200 years as an independent republic, government authorities are still struggling to effectively control the illegal extraction of minerals, and enable the development of a sustainable mining sector (MINMINAS 2013a; Pardo 2013).

Historically, Colombia's mining sector has been characterised by informality. There is a long-standing tradition rooted in Colombian culture that whoever finds minerals has the right to exploit them. This principle of 'first in time, first in right' is the basis for the informal social practice of small-scale mining, but is also enshrined in law and policy. It has enabled the rural poor to exploit natural resources without formal permits on government lands for several centuries; and ASM remains an important economic activity for many communities today. Since 2001, however, this principle has been interpreted by law as being the first to make a formal request for a legal concession, and be inscribed in the National Mining Register, regardless of the presence of traditional informal miners in the area specified. Mining and minerals played a defining role in how Colombia was conquered, colonised and settled between the 16th and 18th centuries, leaving its legacy in the sociocultural, economic and ethnic configuration of mining regions (Fierro 2012). Some of today's artisanal and small-scale miners are descended from slaves brought to work on large-scale mines during the 17th and 18th centuries, or who worked for 19th century industrial mines and bought their freedom with gold (Gärtner 2005). Relations between LSM and ASM have been evolving ever since. It is helpful to recognise the tradition and origins of ASM, its relations with LSM, and how these have shaped current relationships in their present form.

During the 19th century gold mining was central in financing the War of Independence from Spain. Agreements between national entrepreneurs and European companies led to the first industrial gold mines in Caldas and Antioquia Departments (Molina 2011).

Many of Colombia's towns were founded on the country's mineral wealth, and the exploitation of its extensive alluvial and hard-rock gold deposits. Unfortunately, mineral wealth did not contribute to local development but flowed to major urban centres (such as Medellín, capital of the Department of Antioquia), playing a crucial role in their industrial development. Gold mining, refining and trading have contributed to the development of industry, engineering, and commerce, while the accumulation of gold formed the basis for the national banking system and the early development of engineering and mining schools in Antioquia Department (Molina 2011).

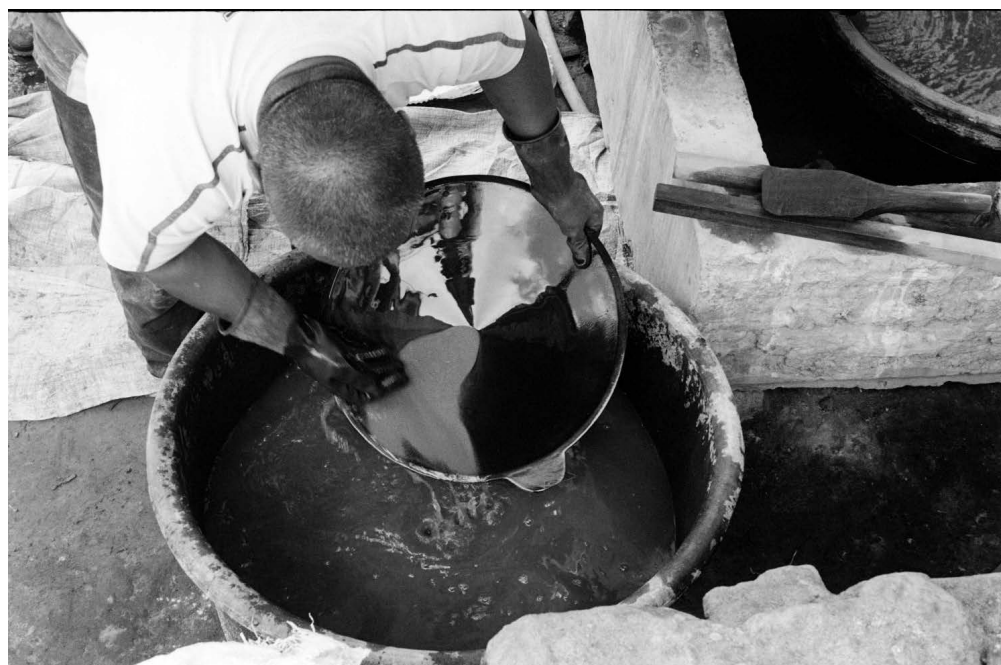
At the turn of the 21st century, in response to rising commodity prices, government policy focused on making Colombia's natural resources sector an attractive destination for foreign direct investment (FDI) as described in Section 1.2.5 above. Despite ongoing internal armed conflict and serious human rights violations by both left and right wing armed groups (US State Department 2013), the Uribe government of 2001–2009 decided to simplify the requirements for granting exploration leases in order to attract FDI. Leases were granted for traditional ASM areas and in the collective lands of indigenous and Afro-Colombian peoples, whose own requests for legal mining title were awaiting state replies (Guerrero Home 2012).

By 2010 the Colombian mining sector was at the centre of social and environmental conflict. Criminal bands continued to extend their control over mining regions, and artisanal and small-scale miners were subject to human rights violations from armed groups in areas requested for exploration by international mining companies, but traditionally mined by community groups (Weitzner 2012).

*Here in Nariño, and in many other regions of Colombia, large-scale mining has immense areas frozen under mining concessions. There are no areas available for ASM. That is why ASM miners invade leased areas or refuse to abandon the traditional areas where they have been working long before large-scale miners were given a concession. Many miners here requested legalisation as de facto mining, but their areas were later granted to large-scale mining. We found this out much later, because large-scale mining doesn't speak to us.*

(Interview with Harbi Guerrero, 25 March 2014, Coodmilla Cooperative, Nariño)

Weak governance, continued human rights violations, and corruption underpin the generally negative perception of mining by Colombian society. Influential opinion leaders writing for the National Comptroller's Office direct strong criticism at Colombia's mineral policy. In seeing the mining sector as the 'engine' that drives the economy, successive governments over the past 15 years have privileged the export of raw materials for state revenue, but have been weak in their implementation of regional and local development, in the inclusion of ASM and MSM, industrialisation, and generation of added value through formal employment (Garay 2013a, 2013b).



Panning concentrates Nariño © G Tavernier

## 2.2 Government formalisation initiatives

In seeking to bring some order and control over mining activity in Colombia, successive governments have introduced various formalisation initiatives, starting with what is known as the 'first mining code' in 1988. Table 1 introduces each initiative (see Appendix 1 for a more detailed table of these policy and legal instruments).

Table 1. Government initiatives to formalise ASM from 1988

Year	Law or initiative	Key features
1988	Mining Code of Colombia (Decree 2655)	First mining code. Recognised diverse types of mining including 'subsistence mining' (see glossary). Created special mining zones for ethnic groups. Promoted formalisation and organisation of ASM and MSM.
1994	Legalisation of De Facto Mining (Law 141; Decree 2636/1992)	Subsistence and informal miners now considered 'de facto' rather than 'illegal'. ASM hard-rock mining titles available for up to 100 hectares, and titles up to 10 hectares exempt from surface tax.

Year	Law or initiative	Key features
1997	National Mining Development Plan	Policy shift favoured formal industrial sector and FDI. Only proposed certain types of mining, but not applied in practice.
2001	New Mining Code (Law 685)	Prioritised FDI through tax incentives and online applications – with no recognition of different sizes of mining operation. However, special ASM reserves introduced and 'operation contracts' (see glossary) for ASM to work under LSM concessions.
2002	Regulatory Decree for the Legalisation of De Facto Mining (Decree 2390/ regulatory Decree of Article 165 of the Mining Code)	New formalisation programme for 'de facto' (informal) miners. Miners exempt from prosecution while requests processed. Community-based associations or cooperatives given priority in applying for mining concessions.
2002–2006	National Mining Development Plan	Guidelines for implementing the new mining code. 'Mining districts' represent innovation.
2010	Legalisation of traditional mining programme – reform of the 2001 Mining Code (Law 1382)	Entry requirements to formalisation raised significantly, triggering protests, but informal ASM distinguished from illegal criminal mining. 'Operation contracts' regulated, recognising ASM presence in areas where mining concessions granted to investors.
2012	(Decree 2235) Regulatory Decree for Art. 6 of Decision No. 774/2012, and Art. 106 of Law 1450/2011	Severe penalties for illegal mining. No differentiation between 'illegal' and 'informal'. Response to 2012 Andean Policy Against Illegal Mining and Prosperity for All National Development Plan.
2013	Formalisation decree (Decree 933)	Redefined traditional mining as 'informal'. Procedures for concession owners to cede to ASM.

## 2.2.1 Early legislation to formalise ASM

### The first mining code, 1988

The Mining Code of Colombia, 1988, was based on a census carried out in the same year (DANE 1988), providing technical, social and economic information on a national scale for the first time. While probably under-representing the extent of ASM,<sup>14</sup> it showed that informality prevailed in the Colombian mining sector, and was causing significant environmental degradation. ‘In 1988 90,278 people were employed in the mining sector, of whom 20,271 were involved in subsistence mining, another 40,685 in informal mining, and only 28,322 in formally established mining companies’ (Pardo 2013:151, citing Arango 1988).

Unlike some subsequent legislation, the first mining code recognised the diversity of the mining sector, and enabled differentiated policies and plans. It included a definition of the sizes and scales of mining according to volumes of extracted ore and sterile materials, installed capacity, number of jobs and degree of mechanisation. Definitions were developed for underground and open-cast mines, and for four mineral groups: precious metals and stones; coal; building materials; and others. Highlights regarding ASM included:

- A definition of subsistence (artisanal) mining as the superficial washing of alluvial sands. It established that subsistence mining could be freely undertaken, except in areas excluded from mining.
- Exploration licences for ASM comprised up to 100 hectares, while medium-scale mining licences covered up to 1000 hectares.
- Special mining zones: 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.

It promoted the organisation of ASM and MSM into associations, pre-cooperatives and cooperatives, by offering incentives such as access to mining titles; rights to extraction, processing, manufacture and trading of mineral products; technical assistance and training by mining authorities; a simplified environmental impact declaration; and a mining promotion fund for activities including, mining, processing, collateral for credit, and financing local community projects.

This opportunity to formalise was open for six months only; after the deadline informal miners would be considered illegal, and subject to penalties. However, the code

<sup>14</sup> Security considerations limited the territorial scope of the census, since many ASM areas were even then controlled by the insurgency.

established that miners involved in the legalisation process had priority over any other parties requesting the same area during that period.

Unfortunately, there is no hard data on the quantitative impact of this early initiative. However, the state had limited capacity to deliver on the ground, armed conflict prevented access to some remote mining regions, and the people involved in ASM were mostly based in poor rural communities; many were not informed, and were unable to comply with formalisation requirements.

### Legalisation of ‘de facto’ mining, 1994

In 1994, to address the mining sector’s continued informality, the government introduced a new process to legalise ‘de facto’ mining (mining without a legal title or permit) as part of the Royalties Law. The use of the ‘de facto’ concept reflected the state’s recognition of a social reality of people who had been mining for some time as a means of livelihood, and had not been able to regularise or legalise their activity due to difficulties in complying with requirements of the mining authorities, and technological, educational and location barriers (remoteness).<sup>15</sup> This represented a change, considering that previous norms referred to mining without legal title as ‘illegal mining’, and to operators as ‘illegal miners’.

Its main points included:

- Miners had six months to formalise if they could demonstrate that they had been continuously mining up to November of 1993.
- ASM mining titles equal to or smaller than 10 hectares were exempt from surface tax (*canon*).
- ASM hard-rock mining titles were available for up to 100 hectares.
- The state was obliged to finalise legalisation procedures within one year and cover the cost of legalisation.
- Miners had the right to request and obtain all the technical and legal support required for legalisation.

Despite extending the timeline for compliance, only 3006 requests were made for formalisation under this new legislation, of which only 900 were approved – mostly for coal mines (MINMINAS 2013a:14). Pardo (2013:152) argues that in not enforcing legalisation, while maintaining a tolerant approach, the state created perverse incentives for the miners to remain informal. This legalisation plan failed, not only because of the lack of commitment of miners, but also because of the unrealistic terms under which it was regulated, the ineffectiveness of the mining authority in securing funding,

<sup>15</sup> Article 58 of Law 141/94. De facto in practice is synonymous with informal.

and failure of the state to respond to legalisation requests by miners. Most of the requests for legalisation of this period went untouched by mining authorities of the time (INGEOMINAS), until the arrival of the Santos Government in 2011.

Ramiro Restrepo of Conalminercol (National Confederation of Colombian Miners)<sup>16</sup> agrees that miners neglected to make use of these opportunities, and describes this law as 'the most generous of formalisation processes' – but miners were too preoccupied by armed conflict to apply, and were in any case used to operating informally.

In 1995, Regulatory Decree 501 included for the first time a requirement for an Environmental Licence and registration in the National Mining Register. This reflects the growing importance of environmental aspects, as mandated by the recently created Colombian Environmental Law (Law 99 of 1993).



Ancestral Afro-Colombian miners rush to find gold and platinum ore © R De Hommel

## 2.2.2 A shift in policy to attract foreign investment

The end of the 1990s saw a new wave of exploration and mining, and developing countries in Latin America were vying to attract investment from multinational corporations through extensive policy and legal reform (UNCTAD 2007). The lack of response by miners to formalisation programmes, and the continued informal

<sup>16</sup> President of Conalminercol (representing MSM and ASM), from an interview on 7 April 2014.

development of the sector, led to calls from the formal mining industry and mining experts for the state to stop protecting informal mining – and instead direct policy towards the growth of the formal and large-scale sector and attracting FDI. This led to a major shift in policy and laws that effectively marginalised informal MSM and ASM, despite being the sectors that provided livelihoods for the greatest number of people and produced the majority of the gold. This strategic shift evolved through the 1997 National Mining Development Plan to a new mining code.

## National Mining Development Plan, 1997

The new National Mining Development Plan (UPME 1997) eliminated the previous more differentiated mining classification, replacing it with just three groups: G1 – subsistence or informal mining, G2 – predatory mining, and G3 – organised mining.

It retained the 'subsistence' or 'informal' classification, contrasting it with 'predatory'. The predatory concept described illegal mining operated by armed criminal groups, which used exploitative working conditions and degraded the environment, without paying taxes. This proposed classification showed the state's increased concern about the expansion of criminal mining, a shift which was reflected in the new mining code.

## A new mining code, 2001

In 2001 the government set out its strategy for attracting FDI, including a new mining code (Law 685). The strategy sought to strengthen the state institutionally to administer mineral resources, promote Colombia as a mining country, and implement policies to boost productivity and competition. In 2002 the recently elected Uribe government<sup>17</sup> reduced the size of the mining authority<sup>18</sup> by fusing together several mining agencies and reducing the number of officials in the sector's administration. It also unified all licensing under a single mining concession title, which included exploration, extraction, processing and closure. Furthermore, it applied the 'first in time, first in right' principle to requests for mining concessions. Colombia's new mining code – again, in a bid to attract FDI – also eliminated the scales of mining and established a standard procedure for requesting all mining concessions, regardless of the operators' size and capacity. This meant that artisanal, small-, medium- and large-scale mining were not properly differentiated, nor was the diversity of the mining sector incorporated in the letter of the law to inform policy and regulation. In seeking to establish a level playing field the 2001 Mining Code actually helped to deepen an already asymmetric scenario, leaving artisanal, small-scale and medium-scale miners at a disadvantage since they lacked the resources of large-scale mining operations to undertake studies and prepare the documentation for mining leases.

<sup>17</sup> President Uribe governed for two consecutive terms, between 2002 and 2010.

<sup>18</sup> Refers to the Ministry of Mines and Energy and a number of institutes dependent on it, including the Geological Survey (INGEOMINAS) and the state mining company (MINERCOL) among others.

This fuelled the growing conflict between ASM and LSM, despite the establishment of legal tools for informal ASM to operate inside LSM mining titles.

This shift coincided with several converging challenges: the sharp rise in mineral commodity prices (especially gold), which resulted in a new period of growth in the minerals sector starting in the late nineties, but rising sharply in the mid-2000s (UNCTAD 2007); extensive granting of mining concessions; the intensification of human rights violations, especially in mining regions, linked with the new Democratic Security Policy (Weitzner 2012; CINEP 2012; Rivas and Echeverry 2012);<sup>19</sup> and illegal armed groups (including guerrillas, paramilitaries and illicit drug traders) expanding their criminal mining operations over many mining areas, seeking to profit from the high price of gold (Pardo 2013:153; Giraldo and Muñoz 2012).

By November 2013, a total of 3114 applications had been made for formalisation under the 2001 code: 80 per cent were rejected, and only 5 per cent registered in the National Mining Register. The cost of the programme was estimated at around USD25 million, for a success rate of 4.74 per cent (MINMINAS 2013a: 14; Pardo 2013: 157). Yet large areas of Colombia, including those traditionally occupied by ASM, had been granted as exploration licences to investors during the 2003–2012 commodity boom. Today, some 19,500 applications by artisanal and small-scale miners from previous formalisation processes are still awaiting replies from the National Mining Agency.

Although the new mining code made no differentiation between sizes of mining operation or type of mineral, it made other concessions to ASM and MSM:

- 'Association contracts' enabled joint ventures between ASM miners and mining concession-holders and investors.
- 'Operation contracts' allowed concession-holders to accommodate pre-existing informal miners to work legally within areas of LSM and MSM titles. Due to the scarcity of areas for ASM to formalise on, operation contracts have become increasingly common (see Section 3.3).
- The creation of special ASM reserves where traditional mining communities had been regional suppliers of minerals. Government would be responsible for exploration and, if feasible, for developing strategic programmes with traditional mining communities (Article 257). By 2013, however, less than half of the requested 89 special reserve areas had been approved.<sup>20</sup>

<sup>19</sup> The Democratic Security Policy involved civilians through vigilante groups, payment of rewards to informants, units of *campesino* soldiers, and a sharp increase in the defence budget, as instruments for the government's fight against insurgent and other illegal armed groups.

<sup>20</sup> By August 2013, 24 of them were approved, 29 rejected, 11 under evaluation, 10 addressing non-compliances, 4 delimited without studies, 3 with PTO and PMA (technical and environmental plans), 3 in process, 2 cancelled, 1 to be declared and 2 pending technical visits (MINMINAS 2013:24).

- The Mining Districts Policy, which implemented a territorially based approach to minerals development through planning and management of natural resources and human capabilities, with a view to increasing FDI and positive local/regional development outcomes.

## National Mining Development Plan, 2002–2006

This plan, Public Management for Enabling Mining Activity (UPME 2002), built on the new mining code to implement the policy shift that had started in the late 1990s to attract FDI. It focused on large-scale mining, and its discourse promised to promote sustainable development and employment through mining projects that would reduce poverty in mining areas, while enhancing social security and worker protection. The plan proposed consolidating a mining information system; better environmental management through strategic environmental evaluations; and the incorporation of minerals into municipal land-use plans. The Mining Districts programme (see Section 5.6.2) was its most innovative policy, with a strategy to enable mineral-rich regions to become competitive through the creation of mining clusters (Buitelaar 2001) and supply chain integration. Implemented in selected regions, this was supported through improved coordination among state and private sector institutions, aiming at exporting to international markets. However, Ramiro Restrepo of Conalminercol claims that the government did not deliver on promises of inclusion for ASM in mining districts, and it was mainly LSM that benefitted from the programme (interview, 7 April 2004).

## Regulatory Decree for the Legalisation of De Facto Mining, 2002

In an effort to stem the growing informality and exclusion of ASM at the turn of the 21st century (due to extensive concession-granting for ASM areas), this decree offered informal miners a new opportunity to request mining concessions over a term of three years (as opposed to the six months provided back in 1994).<sup>21</sup> Incentives included:

- The cost of legalisation would be borne by the state.
- Miners were exempt from prosecution, allowing them to continue operating and selling minerals while their requests were being processed.
- It granted community-based associations or cooperatives priority over the concession of mining leases, as well as technical, legal, and financial assistance, organisational training, and credit programmes for equipment.

This was the first mining legislative programme to involve environmental authorities. While the mining authority would undertake the work plan to define the feasibility of a

<sup>21</sup> The regulation of the new mining code made use of the 'de facto mining' concept of 1994.

project, environmental authorities were to produce environmental management plans and approve them. This came with the application of environmental mining guidelines, aimed at improving mining and environmental performance. Authorities had a six-month term to undertake this work after requests had been submitted.

### Legalisation of Traditional Mining Programme, 2010

This legalisation programme was a reform to the 2001 Mining Code, created in response to repeated calls by artisanal miners. Despite numerous formalisation programmes by government, many applications for mining concessions were still pending (this is still the case at the time of writing in 2014). Yet their traditional areas were now overlapping with mining concessions granted to investors and LSM operations.

Under this programme miners continued to be protected from legal action while their requests were being processed; miners were exempt from prosecution for 'illegal' extraction of minerals, including having equipment confiscated or mines closed, and they could continue to trade. The programme recognised the presence of ASM in areas where mining concessions were granted to investors, by regulating the operation contracts (see Section 3.3) created by the 2001 Mining Code.

Regulatory Decree 2715 of 2010 developed the concept of 'traditional mining'. While traditional miners were considered the same as de facto miners and illegal miners because they worked without legal registration, they were given the opportunity to formalise if they could demonstrate that they had been mining for ten years (Defensoría del Pueblo 2010). The entry bar for formality was drastically raised for ASM and MSM:

- In order to accept legalisation requests by traditional miners the law required them to produce evidence that the mine had existed for ten years prior to the law (9 February 2010), and of uninterrupted mining activity for five years, through commercial receipts (for sales of minerals, payment of royalties) and technical documentation from the previous five years.
- Joint audits were mandated by mining and environmental authorities on health and safety, social security of workers, and environmental conditions to identify non-compliance, based on the same requirements that regulated LSM.
- Miners had three months to take corrective measures or their application was rejected.
- If approved, a technical mining plan and environmental management plan had to be submitted within one year, and registered with the National Mining Register.
- Environmental restoration and decommissioning were required.

This marginalised informal (or 'de facto') miners further, and triggered organised protests from miners in several mining regions. According to the *Defensoría del Pueblo* (Colombia's human rights ombudsman) (2010:26), this initiative failed due to the heavy burden of documentation required from informal miners to demonstrate their 'traditional nature' – while trying to survive in a context of conflict and displacement. By July 2012, of the 8125 formalisation requests received under this new legislation, 39 per cent were rejected, one mining title was granted, and 4959 were still pending resolution. The fundamental problem of the unequal distribution of mineral rights remained unresolved.



Artisanal tunnel © W Batista

This law (1382/2010) was abrogated by the Constitutional Court due to lack of free, prior and informed consultation and consent with ethnic groups, bringing the 2001 Mining Code back into force (Ruling C-366 of 2011).

### 2.2.3 Summary of formalisation processes until 2010

The various formalisation and legalisation processes undertaken by the state over the past decades have not been successful in terms of the number of ASM mines legalised through mining titles or contracts. However, some ASM organisations engaged in formalisation processes that received effective support from mining authorities have been able to achieve a significant level of formalisation. At the same time, many ASM miners remained 'in the process of formalisation' for long periods. This status allowed them to continue operating and trading, while protecting them from legal action if they could demonstrate that they were awaiting a reply from the mining authorities to their request for legalisation.

The impact of these processes is assessed in more depth in Sections 4 and 5.

## 2.3 Government policy from 2010

The Santos government that came to power in 2010 brought a significant shift in policy, with less emphasis on security and military strengthening and more on 'prosperity for all' and peace building. However, it also carried out a stringent crackdown on the growing problem of illegal mining, which impacted on its approach to formalising ASM.

### 2.3.1 Conflating informal ASM and illegal mining: a human rights issue

The government's crackdown from 2010 was a response to the uncontrolled expansion of illegal mining, financed and controlled by criminal and armed groups, driven in turn by the continuing rise in gold prices from 2003. Government formalisation policy also changed, from offering incentives and legal titles to informal miners – accompanied by technical, financial and legal support – to outright criminalisation of informal ASM and MSM.

Other Andean countries faced similar challenges from criminal mining, leading in 2012 to Decision 774 by the Andean Council of Foreign Affairs Ministers, approving the Andean Policy Against Illegal Mining. The object of this policy was to enhance regional coordination and information sharing on illegal mining, and related activities that threaten security, economy, natural resources, human health and the environment. The policy also called on governments to formalise ASM (Ministry of Foreign Affairs 2012).

In 2012, a new law (Decree 2235) imposed severe penalties on illegal mining, involving confiscation and destruction of machinery and cancelling mining leases without environmental licences. To identify 'illegal miners', Colombian police authorities used the definition in the Ministry of Mines' Technical Mining Glossary: 'Mining developed without registration in the National Mining Register, that is, without mining title. Mining that is developed in an artisanal and informal manner, outside of the Law...' (MINMINAS 2003:108). Although legislation did distinguish between informal and illegal miners, such as the 'de facto' law of 1994 and regulatory decree 2390 in 2002, the Mining Glossary had not been updated to reflect that distinction.

Police action was therefore directed against all miners without legal title, including traditional informal ASM and MSM miners. Many of these miners were artisanal and small-scale miners with pending formalisation applications under the 2001 Mining Code (Law 685) and later formalisation initiatives (Defensoría del Pueblo 2010). This generated strong protests from mining communities and worsened the violence against informal artisanal miners who for many years had also been victimised and displaced by armed groups.



Mine entrance in Buritica destroyed by police © A Santa Maria

### 2.3.2 A new formalisation decree, 2013: shifting to a progressive approach

In 2013 a decree (933) was enacted to address the legal void for almost 4000 requests for formalisation from Law 1382 of 2010, which was abrogated by the Constitutional Court (see 'Legislation of Traditional Mining Programme' above). It demonstrated that the authorities were aiming to combat illegal mining, while recognising the traditional nature of informal ASM.<sup>22</sup> This decree redefined traditional mining as a form of informal mining. It set out formalisation procedures for ASM in LSM mining concessions and titles, notably including procedures for concession-owners to cede areas to ASM, and included tax incentives. For the first time it also provided options for areas returned to the state to be reserved for ASM formalisation.

<sup>22</sup> Decrees 933, 934, 935 and 943 of 2013 regulated the formalisation of traditional mining, the presentation of concession leases and competencies in the exclusion of areas from mining activity, among other aspects, which had been left void due to overruling of Law 1382 of 2010 (intended to be a new mining code) because of the lack of free, prior and informed consultation and consent with ethnic groups.

However, according to Ramiro Restrepo, President of Conalminercol: 'This decree is restrictive of MSM and ASM, the most common forms of mining today, as it establishes that we may only request mining titles of a maximum 150 hectares for one time only. It also ignores the reality of mechanised alluvial miners who have high mobility and need to plan in advance to prevent operation stoppages' (interview, 4 April 2014).

### 2.3.3 National Development Plan: 'Prosperity for all'

The current National Development Plan was issued in 2011 (Law 1450) and set out three strategies:

- sustained growth based on a more competitive, proactive and innovative economic sector, driven by specific sectors – including mining – which the plan refers to as 'engines of the economy'<sup>23</sup>
- equal opportunities to level the playing field: introducing mechanisms to enable social inclusion for all, without regard to race, gender, ethnic origin, social position or place of origin
- consolidation of peace through better security, full protection of human rights and an efficient judicial system.

This plan defines the mining sector as a key engine of Colombia's economy (DNP 2010:204). Mining in Colombia is considered a 'public good and social interest' sector, a principle intended to 'drive national industrialisation, generate national and local development, promote exports of intermediate and finished goods, substitute imports, and generate employment and income for the government'. In practice it means that central government prioritises mining over other economic activities, with power to overrule departments and municipalities in order to make decisions considered to be in the 'public good and social interest' (Pardo 2013:147). This policy has proved controversial in mining regions, as described in Section 1.2.6.

Current government policy has also renewed efforts to formalise ASM:

- It incorporates the formalisation of ASM as a strategic objective, emphasising the need to define it correctly.
- It differentiates between illegal and informal mining as a mechanism to protect informal mining, again recognising that traditional small-scale and medium-scale mining require specific approaches to enable a decent living standard.
- It implements mechanisms to control illicit mining and trading, by prohibiting specific equipment used in alluvial mechanised operations (for example backloaders), and the creation of the Unique Register of Mineral Traders (RUCOM).

<sup>23</sup>The 'engines' of the Santos government are: infrastructure, housing, agriculture, mining and innovation.

- It returns to regional development approaches incorporating small and medium enterprises in mining district supply chains.
- It sees mercury management as a key driver for formalisation.
- It determines areas for environmental conservation to be excluded from mining.

The government's current approach to formalisation is set out in the National Mining Formalisation Policy (MINMINAS 2013a), which is looked at in detail in the next section.





# 3

## Formalising ASM in Colombia today

This chapter describes the key actors, policy tools, programmes and approaches used to engage artisanal miners in current formalisation programmes (see Appendix 2 for a list of the main stakeholders in the current process). It also looks at how artisanal and small-scale miners have been involved in defining or demanding policies to recognise them; the role of large-scale mining in formalisation and its relationships with ASM; and key civil society initiatives that promote formalisation. Finally, it looks at how new global rules are influencing the current formalisation process.

Condoto goldmine © R De Hommel

Today, the government's formalisation efforts are driven by four main factors:

- the control of illegal mining by criminal networks
- the national implementation of the Minamata Convention for the elimination of mercury in artisanal and small-scale gold mining (ASGM)
- the lack of available areas in which to formalise ASM
- the need to create incentives for LSM and exploration concession-holders to allow artisanal and small-scale miners to continue working inside their mining areas

### 3.1 The National Formalisation Policy, 2013

The current National Formalisation Policy (MINMINAS 2013a) represents a promising turning point in the Colombian government's approach to formalisation. It aims to achieve 40 per cent formalisation of ASM by 2019, and full formalisation by 2032.<sup>24</sup> It is based on the premise that working under legal title is the foundation for any successful formalisation process; therefore providing miners with a legal basis for working is the first priority. It also establishes grades of formalisation to enable miners to progressively comply with technical, environmental, economic, tax, social and labour requirements (see Figure 2).

Addressing the formalisation of ASM as a process – of which obtaining legal title is only the first step – is significant progress for government policy, and is in line with international experience (Barreto 2011). This contrasts with all the previous legalisation, which gave deadlines for formalisation to be finalised.

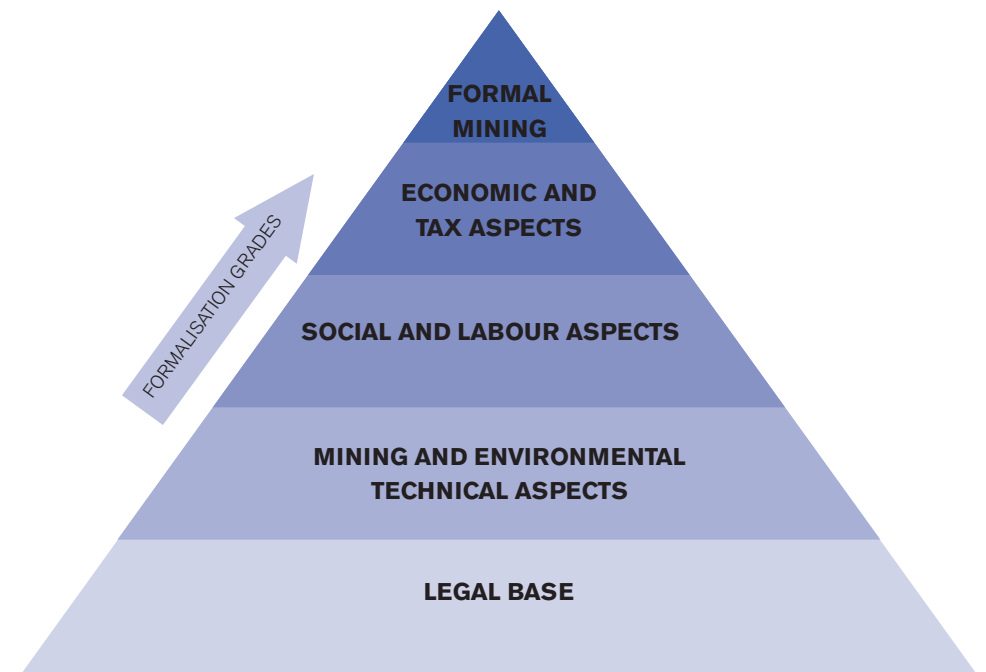
The government has recently restructured the Ministry of Mines and Energy to create a Formalisation Office under the Vice Ministry of Mines – a move reflecting the weight it gives to formalisation. The office hosts two working groups, one responsible for producing guidelines for policy, plans and programmes and the other focused on implementation.

On paper the plan sets out what seems to be a feasible programme for formalisation, while establishing better state sector architecture and clear coordination roles by different agencies to deliver the plan's objectives. In particular, it is the first time that a formalisation plan has incorporated a progressive approach with a long-term vision and working plan. Its inclusion of a comprehensive, community-based quality of life approach is also positive, in so far as it aims to improve the situation of vulnerable groups in ASM, such as children, women, elderly people and ethnic groups.

The plan's main objectives include better coordination between institutions; occupational training and education for mine workers; social inclusion and development in mining communities; improving the state's information management for formalisation in the

<sup>24</sup> Appendix 3 summarises the National Formalisation Policy's strategic lines and main actions.

Figure 2. Grades of formalisation



Source: Adapted from MINMINAS (2013a)

sector; technical, organisational and entrepreneurial strengthening of ASM; improving economic incentives for formalisation; enabling miners to work under legal title; and adjusting the regulatory mechanisms for formalisation. Each of these objectives is described in more detail below.

The current formalisation policy requires the collaboration of diverse government offices and ministries, as well as of other stakeholders. Appendix 2 provides further details on their roles and perspectives.

#### 3.1.1 Coordination between public institutions

According to the 2013 National Formalisation Policy, there are several main causes for the continuing high levels of informal mining:

- weak coordination among relevant state agencies
- poor administration and management of the mining sector
- poor information management
- delays in government processing of legalisation and titling.

To address this structural weakness a Formalisation Coordination Body has been created under the leadership of the Ministry of Mines and Energy. It includes the National Mining Agency (ANM), the Energy and Mining Planning Unit (UPME), and the Environmental and Social Office of the Ministry. Other ministries and state agencies involved are: Ministry of the Environment and Sustainable Development (MADS), Ministry of Labour, Ministry of the Interior, Ministry of Transport, Ministry of Finance, National Planning Department (DNP), and Ministry of Defence.

This coordination body will oversee the formalisation process, with special responsibility for:

- creating financial and non-financial incentives, and monitoring their effectiveness
- implementing an action plan to reduce delays in legalisation and titling
- revising and adjusting current norms and regulations to enable formalisation
- developing projects and programmes to promote formalisation.

### 3.1.2 Occupational training and education for miners

Another key weakness identified by government is the low level of knowledge and understanding among artisanal and small-scale miners of the legal, technical, environmental, economic, taxation, social and labour aspects of formalisation. In consequence, poor mining practices and low economic productivity have had a negative impact on the environment, society and quality of life in ASM regions. The main objective of this aspect of the formalisation policy is to professionalise mine workers and improve miners' capacity to formalise, while increasing productivity in ASM through training. The Formalisation Office is taking the lead in carrying out this objective, with support from the National Occupational Education Service (SENA), the Ministry of Education, and state universities. Miners' associations and federations are also called upon to support the process, which includes:

- a training needs assessment of the sector
- training programmes to be delivered by the Ministry of Mines in partnership with third parties (universities, NGOs and technical cooperation partners), accompanied by robust monitoring
- more and better access to formal mining-related education programmes.



ARM training and exchange visit © C Echavarría

### 3.1.3 Social inclusion and development in mining communities

ASM is characterised by the Formalisation Policy as a subsistence livelihood, with small profit margins that may not guarantee financially sustainable operations or community wellbeing. According to Juan Guillermo Castro of the National Mining Agency, 'It is not feasible to formalise all existing informal miners, because they are too many' (interview, 1 April 2014). One objective of the policy is therefore to try to retrain some miners to diversify into other economic activities, and also to enable greater social inclusion through:

- eliminating child labour in ASM
- understanding and acting on conditions for women in ASM, to improve their participation in the sector
- identifying corporate social responsibility (CSR) actions by LSM in support of ASM formalisation
- understanding and acting on sexual exploitation in mining regions
- understanding and acting on elderly people's conditions in the ASM sector, to provide them with comprehensive attention and support
- implementing occupational retraining programmes in mining communities, to reduce the number of people directly working in ASM

- enabling economic diversification and integrated local development plans for mining regions, through incorporating small and medium enterprises into minerals-based supply chains linked to renewed 'Mining Districts' programmes
- Supporting and strengthening mining projects carried out by ethnic groups.

The Formalisation Office is directly responsible for social inclusion outcomes. The Formalisation Office will coordinate with the Ministry of Labour and Social Wellbeing, the Colombian Institute for Family Wellbeing (ICBF) and the National Planning Office (DNP), as well as leverage programmes with international cooperation and specialist NGOs.<sup>25</sup>

### 3.1.4 Relevant, timely and quality government information

The chronic absence of timely, up-to-date and reliable information about the mining sector, and in particular about ASM, was identified as a barrier to government managing and responding more efficiently to formalisation requests. The main actions planned for the Ministry of Mines and its Formalisation Office are to:

- undertake a new census (2015) including specific variables related to formalisation
- update all mining application formats to include the new formalisation approach
- update the online mining information system<sup>26</sup> to include information on formalisation.

### 3.1.5 Technical, organisational and entrepreneurial strengthening of ASM

The weakness of organisations and associations in the ASM sector was identified as a major obstacle to competitiveness, productivity and social development in mining regions. The following actions are intended to address this situation, under the responsibility of several offices within the Ministry of Mines, including the Formalisation Office, the Environmental Office (for working with ethnic groups) and the National Mining Agency, while the Administrative Unit for Solidarity Organisations (UAEOS) will train artisanal and small-scale miners in organisational strengthening, forming associations and cooperatives and business development, with the support of the local Chambers of Commerce. This will include:

- adjusting legislation and providing support to create and strengthen mining SMEs

<sup>25</sup> For example, the US Department of Labor has approved a USD9 million grant for a National Programme for the Elimination of Child Labour in mining, with the participation of several ministries, Pact USA, Fondo Acción and Colombian NGOs. For more information see <http://tinyurl.com/child-labour-bulletin>.

<sup>26</sup> SIMCO (Colombian Mining Information System) is an online facility to provide information about the mining sector in Colombia including statistics, laws, policies, mining register and other information of interest to investors ([www.simco.gov.co](http://www.simco.gov.co)).

- strengthening associations for mining formalisation among ethnic groups in collective territories
- creating centres for technological development and innovation to serve the formalisation process
- enabling mining clusters and supply chain projects as proposed in the Mining Districts model
- carrying out training needs assessments and technical support for ASM formalisation
- carrying out technical support programmes tied to mercury reduction
- running formalisation pilot schemes in selected areas.

### 3.1.6 Resources and economic incentives for formalisation

Miners lacked the financial capacity to comply with previous formalisation processes. This has been compounded by their lack of access to credit, and any effective incentives. The following actions by the Ministry of Mines through its Legal Office and Formalisation Office, the National Mining Agency, the Ministry of Finance and Public Credit, and selected financial operators, will:

- adjust the legal and policy framework to enable economic and financial incentives for formalisation
- train and support artisanal and small-scale miners to prepare and submit projects for third-party funding.

### 3.1.7 Enabling miners to work under legal title

The lack of areas where legal titles are available for artisanal and small-scale miners to formalise is a major barrier to miners working legally. In addition to regulating mechanisms for informal artisanal and small-scale miners to continue working on LSM mining concessions, the plan hopes to enable them to access mineral rights of their own by resolving pending requests; and through better inspection of mining leases, in order to free up areas for ASM formalisation.

The following actions are planned:

- Finalise all pending formalities tied to legalisation processes from the 2001 law (Law 685).
- Implement the process of formalising 'traditional' mining, by resolving the nearly 4000 pending cases under the 2010 reform to the Mining Code.
- Adjust the 2013 decree (933) on formalisation (see Section 2.3.2 above).

- Strengthen the industrial mining model so that it is more inclusive of ASM, by further enabling collaborative work between LSM and ASM.
- Monitor compliance of ASM with legal obligations through an Internet-based information system that alerts authorities when major non-compliances with legal obligations have occurred.

### 3.1.8 Adjustment to regulatory mechanisms and guidelines for formalisation

The fact that ASM is not recognised in the current mining code (Law 685, 2001) – and the profusion of (often ambiguous and contradictory)<sup>27</sup> laws and regulations – have reduced security of title for ASM, while some regulations are unclear or too general. The Ministry of Mines is adjusting technical mining regulations in response to the National Mercury Plan implementation (see Section 3.5.1). The following regulations are awaiting approval by Congress:

- Introduce a chapter on ASM in the reform of the mining code.
- Introduce a chapter on ethnic groups to articulate laws and regulations on free, prior and informed consultation and consent (Law 21), and regulations for mining in ethnic territories (Law 70).
- Regulate the 2013 law (Law 1658) on formalisation sub-contracts, enable cession of areas for the formalisation of artisanal and small-scale miners working inside others' mining concessions<sup>28</sup> and provide priority technical assistance for ASGM miners through demonstrative programmes to reduce mercury (Article 11).
- Amend health and safety provisions for ASM surface and underground mines.
- Amend mining environmental guidelines for ASM formalisation.
- Update the definitions for informal mining, ASM and MSM in the Technical Mining Glossary.<sup>29</sup>
- Formulate guidelines for controlling the illicit extraction of minerals.

<sup>27</sup> For example, giving the same definition for informal, traditional and illegal mining.

<sup>28</sup> See glossary for definitions of these terms.

<sup>29</sup> See glossary.

## 3.2 Miner participation in defining the current formalisation process

Miners from ASM and MSM are involved in shaping formalisation policies in different ways – from social protest to dialogue – depending on the time and context. Overall, there is a strong demand from both formal and informal artisanal, small- and medium-scale miners to be included in the design and implementation of the current formalisation process; while strongly rejecting being confused with criminals (Valencia 2012).

### 3.2.1 Consultation on current formalisation policy

The Ministry of Mines consulted over 1000 people for the development of the current formalisation policy, according to an interviewee in their Formalisation Office (Chamat, interviewed 1 April 2014). This included 21 local workshops throughout 2013 with the participation of miners' associations and federations, small entrepreneurs, mining companies, academic institutions, local and regional public institutions, NGOs, consultants and mining experts. A multi-criteria analysis emerged based on participatory strengths, weaknesses, opportunities and threats (SWOT) analyses, which indicated that weakness of government institutions was the main threat to effective implementation (MINMINAS 2013a: 68).

Some of the ASM organisations interviewed for this report recognised the mining authorities' efforts to involve them in pilot projects, and in workshops held between 2008 and 2013:

*Even before there was a formalisation plan, we miners of Nariño were already asking to participate. We requested differentiated treatment in line with our capacities and resources, that is, an equal treatment that recognises differences. In Nariño there were forums and round tables for the reform of the Mining Code. We sent a document with our points, which were: 'Granting of special concession contracts for mining formalisation; simplified terms of reference for the PTO [civil works and mining plan] and for PMA [environmental management plan] suitable to ASM; progress in stages monitored and supported by the environmental authority; simplified terms of reference for extraction in areas included in Law 2 of 1959 [Forestry Reserve Law] for traditional mining.' We felt we were heard and that our proposals were included in the proposal that the environmental authority brought back to us, including the simplification of the environmental terms of reference.*

(Interview with Harbi Guerrero, Coodmilla Cooperative member, 25 March 2014).

Formal ASM miners have been included in legislative reform as described above, but informal miners have not. Police have continued to take indiscriminate action on the

ground against informal miners over the last two or three years. This contradictory approach has deepened the conflict between government and informal miners, who continue to demand appropriate and differentiated inclusion in formalisation policies, laws and programmes.



Coodmilla meeting © ARM

### 3.2.2 Protests by informal miners

The recent police crackdowns on illegal mining that targeted informal MSM and ASM operations generated widespread protests and strong resistance by increasingly organised artisanal, small-scale and medium-scale miners (Conalminercol and ASOMINEROS BC 2013).

In 2011 Conalminercol (the National Confederation of Colombian Miners) held a national strike that succeeded in persuading government to reach agreements with miners. Thirty-eight mining associations, cooperatives and federations, together with the Central Union of Workers of Colombia (CUT) and the anti-mining movement RECLAME levelled strong criticism at the current 'mining engine' model led by the Santos administration for giving special privileges to international mining corporations while undermining the rights of traditional Colombian miners. Their rallying cry was: 'To defend ASM and MSM is to defend Colombian jobs and production' (Valencia 2012). Agreements were made to implement the new formalisation programme which is now in force, to suspend police destruction and confiscation of machinery, to grant mining titles and to ensure conditions that enable traditional miners to formalise.

Conalminercol marched again in 2013 with *campesinos* (subsistence farmers or smallholders) and other social movements to demand government compliance with previous agreements. According to the Minute of Agreements (Conalminercol and Government of Colombia 2013), miners called for:

- a special statute to differentiate informal ASM and MSM from criminal mining
- a protocol of protection for miners against indiscriminate police action
- simplified technical and environmental requirements, through the provision of environmental mining guidelines that recognise the capacities of ASM
- the creation of special mining reserves, according to the 2001 law on formalisation (Article 31 of Law 685/2001), and in particular the protection of the rights of ethnic groups.

At the time of writing in 2014, despite ongoing conversations and some progress in social inclusion agendas, social movements continue to march to put pressure on government to speed up the delivery of promises from previous dialogues.

### 3.2.3 Participation of ethnic groups in the ASM formalisation agenda

Afro-Colombians form 10.6 per cent of Colombia's population, according to the National Administrative Department of Statistics (DANE 2005). It is stated in the 1991 National Constitution (Transitory Law 55) that Afro-Colombian peoples have recognised special collective rights, similar to indigenous peoples. Law 70 of 1993 (developing Transitory Law 55) further defines mechanisms for the protection of the rights, collective territory and cultural identity of communities of African descent in Colombia, aiming to foster economic and social development to guarantee them opportunities equal to other Colombians.

A significant proportion of artisanal and small-scale miners are Afro-Colombian. Mining is part of Afro-Colombian communities' culture and way of life, since many of the Africans who came as slaves to Colombia were brought to work in the mines. In the context of formalisation, Chapter V of Law 70/1993 has special importance as it deals with mineral resources. This law states that community councils, as the administrative bodies of collective Afro-Colombian territories, have stewardship over the conservation and protection of collective property, preservation of cultural identity, and the use and conservation of natural resources. However this chapter is yet to be regulated,<sup>30</sup> and Afro-Colombian communities continue to demand greater self-determination over their collective territories and greater capacity to influence decisions made in Bogotá regarding minerals development. Box 1 describes their demands in more detail.

<sup>30</sup> Regulation sets out how the law is to be interpreted; without regulation it is left open to different interpretations. Afro-Colombians are calling for this law to be interpreted in accordance with their collective rights to identity, territory, autonomy, participation and self-determination.

**Box 1. Main demands of the Afro-Colombian movement**

According to Helcías Ayala of the IIAP, the Afro-Colombian movement's demands for government mining policy have four main themes:

**Apply a differentiated approach** that is responsive to the particular ethno-cultural, territorial and social characteristics of Afro-Colombian peoples.

- Waive the surface tax for Afro-Colombian communities in their collective lands.
- Define the scope of current mining concessions within Afro-Colombian community mining zones.
- Simplify processing requirements, and differentiate them according to different scales and types of mining operation.
- Enable innovative and collective approaches to minerals production, such as Oro Verde (see 4.3) or other community mining enterprises.
- Enable release of conservation lands from the Pacific Forest Reserve, in specific areas where formalisation and support for responsible community mining initiatives are feasible.

**Regulation of Chapter V of Law 70 of 1993:** to enforce the above measures the Afro-Colombian movement requests that regulations are developed to strengthen their rights and the governance in their collective territories:

- Regulate the right of first refusal in case of external request for concession inside collective territories.
- Regulate free, prior, and informed consultation and consent.
- Regulate the manner in which technical support to Afro-Colombian community miners is to be delivered.
- Regulate agreements and partnerships with external investors or miners.
- Regulate protocols and internal regulations of the community councils for mining in collective territories.
- Regulate governance inside Afro-Colombian mining areas within collective territories.
- Regulate organisation and promote the formation of miners' associations.
- Regulate access to social security and pensions for artisanal miners.

**Effective decentralisation of the mining authority:** this involves the strengthening of regional and local service offices by the National Mining Agency, with the delegation of authority for granting of mining titles to ASM and the capacity to deliver training and technical assistance, inspections, promotion and support in social and environmental management of mining.

**Environmental and mining land planning in collective territories:**

- Improve management of information and knowledge (including geological exploration)
- Delimit protected and conservation areas from mining areas
- Restore degraded ecosystems for conservation, with a sustainable development approach.

From an interview with Helcías Ayala, 4 April 2014

Current regional mining dialogues taking place in Chocó are enabling complex negotiations between local traditional Afro-Colombian authorities (community councils) and the central government on the regulation of mining in collective territories (see Section 5.1).

**3.2.4 Dialogue with non-indigenous informal miners**

Informal miners are now part of a broad social platform including *campesinos*, ethnic groups and human rights and environmental NGOs from all over Colombia. Their demands include the democratisation of land distribution and the implementation of differentiated policies for small-scale production of food and minerals, tied to the protection of the traditional territories where they are settled.

As the Santos government progresses in its peace talks with the FARC in Cuba, civil society is organising to influence peace building and post-conflict agendas, where social inclusion is central. A dynamic interplay is emerging between the issues discussed in peace talks and the demands and protests of social organisations and small-scale producers in Colombia, including ASM and MSM.<sup>31</sup>

*Zonas de reserva campesina* (smallholder reserve zones) are a central demand of *campesinos*. This is a key legal instrument for the restitution of lands to millions of *campesinos* displaced by internal conflict (Semana 2010). Artisanal miners, similarly, see

<sup>31</sup> See for example: <http://lasillavacia.com/historia/el-proceso-de-paz-se-le-atravesia-al-paro-por-ahora-47218>.

Special Mining Reserves for traditional ASM as the best legal title to develop their own mining activity.<sup>32</sup> It was mainly in response to protests from this broad platform that the government established permanent 'mining dialogue roundtables' with miners in several regions.

Ramiro Restrepo of Conalminercol (interview, 7 April 2014) reports that a dialogue consisting of monthly meetings between miners and mining authorities, established as a result of protests by miners throughout 2012 and 2013 in the Bajo Cauca Antioquia Region, has succeeded in agreeing roadmaps to formalisation. As a result miners are now taking part in 'Formalisation Laboratories'<sup>33</sup> set up by the Secretariat of Mines of Antioquia, the School of Mines (National University, Medellín) and local associations and miners' federations, reinforced through the National Strategic Plan for Mercury Elimination in Colombia. Section 5.1 gives more detail on these permanent regional mining dialogues.

### 3.3 The role of large-scale mining companies in ASM formalisation

Industrial and multinational mining companies in Colombia are starting to take some responsibility for formalisation. For instance, member companies of Colombia's large-scale mining sector association, SMGE, created the Social Alliance for Formalisation, in which each member company has committed to support the formalisation process of at least one ASM operation within its area of influence (interview with Claudia Jiménez, 2 April 2014).<sup>34</sup>

Titling policies in the recent past granted mining concessions to large-scale mining companies in traditional ASM areas, and as a result artisanal miners occupy many of these areas. This situation has forced mining companies to reach legal agreements with artisanal and small-scale miners via different types of contracts. Given the scarcity of areas where artisanal miners can obtain their own legal titles for their operations, this evolution in LSM/ASM relations has become increasingly important in formalisation strategies. The main instruments in current use are 'operation contracts', the recent 'formalisation sub-contracts' between concession-holders and ASGM miners (linked to

<sup>32</sup> Based on interviews with Ramiro Restrepo (Conalminercol), Harbi Guerrero (Coodmilla), Helcías Ayala (IIAP), Lisifrey Ararat (La Toma Community Council), Jorge Perea (Cocomacoiro), during March and April 2014.

<sup>33</sup> A term used by the Secretariat of Mines of Antioquia in the current formalisation approach, indicating that this is a test or pilot case comprising diagnostic of mines to be selected, needs assessment, training, productivity improvements, and all legalisation and formalisation aspects over a period of time. See <http://tinyurl.com/formalisation-pilot>.

<sup>34</sup> Claudia Jiménez is Executive Director of the SMGE. For further information see: [http://www.mineriaagranescala.org/media/Memorias\\_III\\_Congreso.pdf](http://www.mineriaagranescala.org/media/Memorias_III_Congreso.pdf).

mercury elimination), 'cession of areas' by concession-holders or Private Property Register (RPP) title holders, to organised ASGM (ASM associations or enterprises).<sup>35</sup>

Developed during different periods of Colombian legal mining history, the main distinction between the types of contract are the extent to which parties are responsible for complying with legal, labour and environmental regulations, access to explosives, and trading conditions. As private contracts their content varies according to the negotiating capacity of the parties involved. The main contracts are outlined in Table 2 and described in greater detail below.

Table 2. Contracts used between company title-holders and artisanal miners

Type of contract	Responsible for compliance with legal and technical requirements	Mineral trading
Endorsement contracts	Title holder	ASM free to trade
Operation contracts	Title holder	ASM obliged to sell to title holder
Formalisation sub-contracts	ASM contractors	Still undefined whether ASM is free to trade

#### Endorsement contracts

Endorsement contracts are no longer used. They involved significant responsibility by the title-holder in ensuring that ASM operations complied with technical requirements, but allowed miners to trade freely. Frontino Gold Mines in Segovia and ASM used endorsements before Gran Colombia Gold (GCG) became the title-holder of the Segovia historic gold mine in Antioquia (Arango and Gomez 2013).

#### Operation contracts

Operation contracts have been widely used in Colombia by large-scale gold mining companies facing conflict with informal miners inside their concessions. Operation contracts have also been used by ASM cooperatives to regulate the activities of their own members within mining concessions held by cooperatives. The 2001 Mining Code enabled joint ventures with investors as well as operation contracts with ASM within LSM exploration and mining concessions, but these are yet to be regulated for greater transparency and fairness.

<sup>35</sup> See glossary for an explanation of these terms.



In operation contracts (also called 'exploitation' or 'association' contracts) artisanal and small-scale miners are obliged to process and sell their ore at the LSM company plant, while LSM is responsible for the artisanal miners' compliance with legal registration, labour conditions, industrial health and safety, and environmental and technical requirements. According to reports by the Secretary of Mines of Antioquia (interview with Claudia Cadavid, 26 March 2014), this burden of responsibility on LSM may be discouraging new companies from entering into operation contracts with informal miners. New formalisation sub-contracts are intended to address this barrier, as responsibility for compliance is passed on to the ASM operators working inside those titled areas.

### Formalisation sub-contracts

Formalisation sub-contracts were introduced very recently both to provide an incentive for formalising ASM on LSM mining concessions and to reduce the use of mercury in the mining sector. They came about through Law 1658 in 2013, passed in response to the Minamata Convention on Mercury Abatement. A 2014 decree (480) regulated formalisation sub-contracts by linking them to mercury reduction goals.

Although only recently established, this new instrument may represent an improvement over operation contracts in helping ASM to formalise; for instance ASM operations receive differentiated inspections by the mining and environmental authorities, applying



Mine workers in LSM © Mineros SA

simpler environmental guidelines. Formalisation sub-contracts have the potential to balance LSM-ASM relationships, but it is too soon to know if the state will actively use them to bring greater fairness into the contractual relationship between artisanal and small-scale miners working on LSM concessions and Private Property Register titles. They are assessed in more detail in Section 5.4.

## 3.4 The role of ethical trading initiatives in formalisation

Ethical certification initiatives are market instruments that support and reward formalisation, while they bring legitimacy to a largely misunderstood sector. In order to apply for certification, organised ASM must demonstrate they are working under a legal mine title or contract, and that they are a legally registered organisation. Certification and ethical markets offer incentives for miners to formalise in the form of premium payments, fair prices, and access to down payments (to enable ASM organisations to purchase metals) through long-term trading relationships.

This section describes two certification initiatives created by Colombian organisations for ASM, and how they support formalising the sector. They are the *Oro Verde* or Green Gold® ethical initiative to certify precious metals, and the Alliance for Responsible Mining (ARM), a global supply chain initiative for ASM sustainable development which offers 'Fairmined' certification.

### 3.4.1 Oro Verde®

*Oro Verde* or Green Gold was the first global initiative for social and environmental certification of precious metals.<sup>36</sup> It was created in 2002 in the Chocó department as a bottom-up process between local community councils, NGOs and a public research institute, the Pacific Institute of Environmental Research (IIAP). Certification was based on compliance with ten basic social, environmental and legal criteria, and was audited by the IIAP. Green Gold miners sold their gold and platinum at a premium of 15 per cent above the market price for precious metals globally (Hablemos de Minería 2014).

Afro-Colombian communities have collective rights over their lands as a consequence of their ethnicity. In theory this gives them an advantage over others requesting titles on their lands and merits special attention in formalisation processes by the state. *Oro Verde* provided communities with a strategy for the defence of their collective territories and demonstrated that it is possible for the most vulnerable artisanal and small-scale miners to work in a formalised and legal manner, while selling to international ethical markets.

<sup>36</sup> *Oro Verde* certification pre-dates Responsible Jewellery Council certification, as it was trading in certified gold from community-based miners from Chocó with British and Dutch jewellers by 2004.



Americo Mosquera, a Green Gold miner © R De Hommel

Despite apparent legal advantages and its international market recognition, Oro Verde today faces significant challenges:

- The security and humanitarian context is particularly challenging for the consolidation and expansion of Oro Verde. Chocó Department has suffered disproportionately from internal conflict and has become a haven for criminal mining by armed groups. The historic absence of the state has led to very low levels of education, infrastructure development and health and social security provision, making it even more difficult for these mining communities to access state services (Guerrero Home 2012), including formalisation support.
- While Oro Verde did enable greater state understanding of the potential of certification as an incentive for formalisation, recognition and support came late. Oro Verde had to compete with criminal bands as a mining model for Afro-Colombian territories, under a serious humanitarian crisis caused by armed groups vying for social and territorial control.<sup>37</sup>
- The very small volumes of gold and platinum produced by the alluvial artisanal mines of Chocó make economies of scale difficult to achieve without mechanisation, while costs and security are real barriers for delivery of training and support.

<sup>37</sup> 'United Nations condemns humanitarian crisis in Chocó due to illegal mining and violence.' See <http://tinyurl.com/un-crisis-choco>.

- In addition, criminal groups who launder illegal capital often pay more than the Oro Verde price to the miners, creating a price competition that reduces the supply of Oro Verde products for international ethical markets.
- Aristarco Mosquera, leader of Oro Verde, reports that over the past few years mechanised alluvial mining has mined out the river terraces where traditional Oro Verde miners extract their produce. Many Oro Verde miners have had to turn to mechanisation, or to joint ventures with foreign investors, as the only way to obtain a livelihood (interview, 28 March 2014).

Despite the many challenges they face, Oro Verde miners and their allies created an aspirational impact on the ASGM sector and ethical markets, inspiring many artisanal and small-scale miners to seriously consider formalisation as a necessary step to access the benefits of certification. Oro Verde created the Alliance for Responsible Mining, and in this sense was the source of two important certification schemes for ASM precious metals today (Fairmined and Fairtrade).



Mechanised MSN destroy terraces where artisanal miners work © R De Hommel

### 3.4.2 Alliance for Responsible Mining (ARM) and Fairmined Certification

The Alliance for Responsible Mining (ARM) is a global supply chain initiative founded in 2004 to work for the sustainable development of ASM via a worldwide network of miners, experts and other partners. ARM develops standards for responsible ASM and provides on-the-ground support and training for miners through local partnerships in various regions. It also does advocacy work and educates consumers and society on ASM, and develops markets for Fairmined certified miners.<sup>38</sup>

ARM created the Fairmined standard in 2006 (originally known as Standard Zero for ASGM) as an incentive for the formalisation and transformation of ASM.<sup>39</sup> The standard is independently audited and certified by a third party, the Institute for Marketecology (IMO). It is based on ARM's vision for responsible ASM:

*ASM is a formalized, organized and profitable activity, that uses efficient technologies and is socially and environmentally responsible; it progressively develops within a framework of good governance, legality, participation and respect for diversity; it increases its contribution to the generation of decent work, local development, poverty reduction and social peace in our nations, stimulated by a growing consumer demand for sustainable minerals and jewellery (ARM 2007).*

The Fairmined standard includes requirements that are aligned with formalisation laws in most countries, as well as global guidelines on mercury and on conflict-free supply chains. It recognises that formalisation is a process and therefore has a progressive approach to compliance with organisational, environmental, labour and trading requirements. Fairmined ensures transparency and traceability from mine to market. Four incentives encourage miners to work towards certification:

- access to international ethical markets as independently certified Fairmined gold, platinum or silver
- a Fairmined premium paid to artisanal and small-scale mining organisations (ASMOs). Decisions regarding investment of the Fairmined premium must be made democratically

<sup>38</sup> For further information see [www.communitymining.org](http://www.communitymining.org).

<sup>39</sup> Between 2009 and 2011 ARM partnered with Fairtrade International, creating the Fairtrade and Fairmined Standard, which raised the entry barrier for miners, especially by including collective bargaining agreements and contracting for ASM workers. The partnership ended in 2011 due to differences of approach in achieving change in ASM. Fairtrade International continues to work with miners in East Africa based on ARM's work there between 2008 and 2011.

- access to mentoring, training, support and experience sharing with other miners
- legitimacy and pride in being a miner.

### 3.4.3 How certification supports formalisation

The challenges faced by miners to achieve Fairmined certification are similar to the challenges to achieve formalisation (MINMINAS 2013a). These include mining communities' marginalisation in terms of policy and rights; chronic informality; poor environmental, health and safety practices; lack of legal title; weak organisation and business development; poor administration and accounting; overall high levels of illiteracy, child labour, forced labour and violence against women; and poor quality of life in mining communities.

The government has only recently recognised the role of certification as an incentive for formalisation, according to Juan Guillermo Castro at the National Mining Agency (interview, 1 April 2014). For instance, Fairmined certification offers an approach that is aligned with the current formalisation programme's progressive approach. Certification also enables compliance with OECD Due Diligence Guidance for Conflict-free Minerals, and with mercury reduction targets, both of which are government objectives. The current formalisation programme and Fairmined certification are further aligned in terms of the responsibilities of certified ASMOs with the community and the environment.

Harbi Guerrero from Coodmilla Cooperative leads on a number of initiatives for formalisation and certification in Nariño. In his view:

*Certification is a true pathway to formalisation, it enables us to understand formalisation, it provides the roadmap. Many of the Fairmined requirements are compatible with laws. But laws do not show the way, only the goal, and do not train miners who do not understand in detail about legalisation procedures. For instance, the law says the miner has to have social security, but many miners don't know that this includes health, pension and professional risk. Fairmined makes us strong before the State, it puts us in an advantageous position since we are certified as responsible miners by an independent international certification body, which is recognised by the market of ethical products. And it also allows us to project a more realistic vision of ASM and traditional mining, which have been demonised by the media.*

Interview, 25 March 2014

## 3.5 The role of global initiatives in formalisation

Currently two global initiatives have a bearing on formalising artisanal and small-scale gold mining (ASGM): the Minamata Convention on the Elimination of Mercury<sup>40</sup> and the OECD's Due Diligence Guidance for Gold from Conflict or High-risk Areas.

### 3.5.1 The Minamata Convention on Mercury

ASGM today uses the same technology used by the industrial mining sector 100 years ago, involving the use of mercury to separate the gold from the ore. Socio-economic barriers linked to poverty and informality, and the lack of access to information and credit lines to implement cleaner technologies, mean that mercury amalgamation of gold is the best technology available for many artisanal and small-scale gold miners. It is widely used because it is 'cheap, simple, fast, independent and reliable' (Telmer and Veiga 2009: 134). It also allows immediate transactions and sharing of profits among



Amalgamating gold with mercury © W Batista

miners, and is the easiest method for processing very small quantities of gold concentrate by individuals.

Mercury is a neurotoxin that damages human health, affecting infants and fetuses, as well as pregnant mothers. It causes deformities in fetuses and neurological damage to people exposed to it in high doses. Mercury never disappears from the environment. Once emitted it enters the food chain, posing a serious threat to fish-eating populations and to those who use mercury on a daily basis, such as artisanal gold miners.

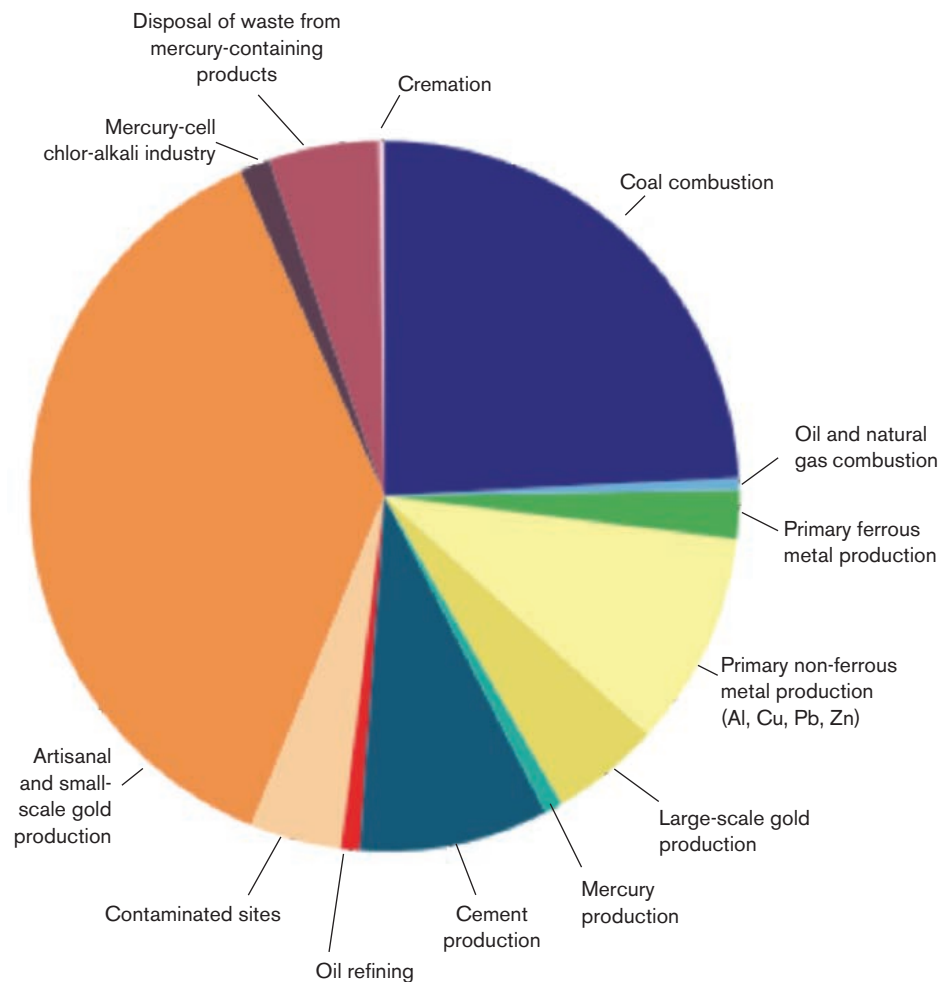
The Minamata Convention on Mercury is a global treaty to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds (Article 1). Signatories agreed to control and, 'where feasible', reduce emissions of mercury and mercury compounds, including 'control measures on air emissions, and the international regulation of the informal sector for artisanal and small-scale gold mining' (Article 8).<sup>41</sup> Signatory countries are committed to implementing National Strategic Plans for Mercury Reduction; Colombia is among them.

Telmer and Veiga (2009) estimate that artisanal and small-scale gold mining releases between 640 to 1350 megagrams (Mg) of mercury per annum into the environment, averaging 1000Mg a year (Mg/yr), from at least 70 countries. Of these, 350Mg/yr are directly emitted to the atmosphere while the remainder (650Mg/yr) are released into the hydrosphere – rivers, lakes, soils and 'tailings' or mine dumps (2009:131). ASGM is the largest contributor to global mercury emissions, causing 37 per cent of the world's total anthropogenic emissions; see Figure 3 (AMAP/UNEP 2013:19).

<sup>40</sup> See [www.mercuryconvention.org](http://www.mercuryconvention.org)

<sup>41</sup> See [www.mercuryconvention.org/Convention/tabid/3426/Default.aspx](http://www.mercuryconvention.org/Convention/tabid/3426/Default.aspx).

Figure 3. Proportions of global anthropogenic mercury emissions to air from different sectors, 2012



Source: AMAP/UNEP, 2013:19

### Mercury in ASGM in Colombia

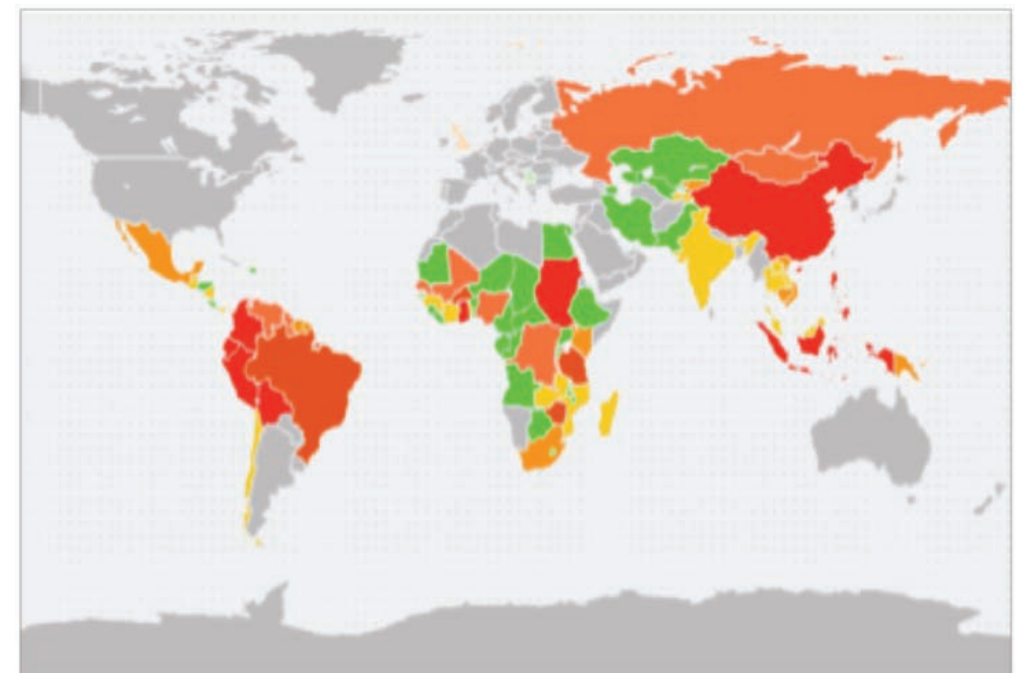
According to Mercury Watch, Colombia ranks among the world's highest mercury polluters (see Figure 4).<sup>42</sup> The Ministry of Environment and Sustainable Development (MADS) estimated that in 2011 some 698,995 tonnes of mercury were used by ASGM and MSM to produce 6225 kilograms of gold from both alluvial and hard-rock gold mines in Colombia (MADS 2013). Over the past five years UNIDO's Global Mercury Project has worked closely with mining and environmental authorities to understand the nature of the

<sup>42</sup> See [www.mercurywatch.org](http://www.mercurywatch.org).

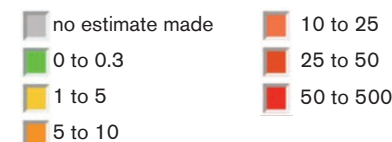
challenges, especially in Northeastern Antioquia and Chocó.<sup>43</sup> UNEP and the Colombian Ministry of the Environment jointly developed the Strategic Plan for Mercury Reduction in ASGM during 2013.<sup>44</sup>

As a signatory to the convention – and an active participant in UNEP's intergovernmental negotiations on mercury – Colombia's government has adopted its commitments, summoning the political will to implement formalisation programmes tied to mercury reduction targets. Although this is not the first time that the state has addressed mercury pollution,<sup>45</sup> it is significantly renewing its efforts to coordinate mercury reduction with the formalisation of ASGM through policy and legal instruments, such as formalisation sub-contracts.

Figure 4. Global map of mercury releases



#### Mercury released from ASGM (tonnes/a)



Source: [www.mercurywatch.org](http://www.mercurywatch.org)

<sup>43</sup> See <http://preview.tinyurl.com/unido-mercury>.

<sup>44</sup> The National Strategic Plan for Mercury Use in ASGM in Colombia (MADS 2013) is based on a national study on ASGM and mercury for Colombia (UNEP and MADS 2013).

<sup>45</sup> For example, the Environmental Mining Centres for cleaner production.

A committee to coordinate between institutions has been created to carry out the Strategic Plan for Mercury Reduction in ASGM, while large-scale gold mining companies are also involved in the process via the establishment of formalisation sub-contracts with artisanal and small-scale gold miners working in their titled areas.

Legally binding instruments for mercury elimination are closely linked to the current formalisation process – see Box 2.

**Box 2. Legal instruments for mercury reduction**

- **The Minamata Convention for ASGM** (Article 7 and Appendix C) includes implementing National Strategic Plans with reports every three years, tied to ASM formalisation commitments by governments.
- **A national law to implement the Minamata Convention** (Law 1658/2013) establishes the rules for industry on the use, importation, production, trading, register, transport, storage and final disposal of mercury, and emissions to the environment.
- **National Strategic Plan for the Reduction of Mercury** in Colombia's ASGM sector.
- **Decree 480** of 2014 establishes mechanisms for the trading and use of mercury, as well as requirements and incentives for its reduction and elimination in industrial activities. It also regulates formalisation sub-contracts, devolution of areas for ASM formalisation, and other incentives for formalisation, as a strategy to reduce mercury in ASGM.

It is worth noting that the law to implement the Minamata Convention (1658/2013) established a term of only five years for the elimination of mercury in ASGM, while allowing ten years for the elimination process in all other economic and industrial sectors. The rationale would seem to be that ASGM is the highest contributor to mercury consumption and emissions to the environment; however, this short time period is extremely challenging given the informal nature of ASGM and the vulnerable condition of many miners, who have fewer resources than workers in other sectors to access cleaner processing technologies to replace mercury. Although this ambitious term for the elimination of mercury in ASGM constitutes the key driver for government action in the context of formalisation today, it also represents a high risk for the further criminalisation of ASGM if adequate and timely support is not delivered to ensure mercury elimination in this sector in the term provided by the law.

**Box 3. The BioREDD programme: using legalisation of title and technical support to formalise ASGM and reduce mercury**

The **USAID BioREDD programme** supports government formalisation programmes through legal and technical assistance, in partnership with LSM. The programme includes economic diversification strategies for communities, improvement of areas degraded by mining, and mercury reduction practices with ASGM working inside LSM leases and titles. With the support of the National Occupational Training Service (SENA), BioREDD works through pilot projects in Antioquia – 70 informal gold processing plants to be merged into a community plant, with a processing capacity of 150 million tonnes per day – as well as Bolívar, Cauca and Chocó. Formalisation pilots are also being implemented in partnership with the Antioquia government and the School of Mines of the National University of Colombia.

The BioREDD programme aims to reduce the consumption of mercury by between eight and ten tonnes a year and to restore some 350 hectares of degraded areas. Already it is restoring 800 hectares in the Bajo Cauca region with native plant species based on profit sharing agreements between private sector forestry companies, smallholders and mining title owners. The model also includes food and honey production projects for local community members, and further plantation of native species to protect local aqueducts, titling of land for smallholders, and housing for female-headed households. Mercury consumption has already been reduced drastically through processing ore at industrial plants via operation contracts, and by providing technical support to reduce mercury (interview with Oseas García, 17 March 2014).

**3.5.2 Conflict-free minerals: The Due Diligence Guidance**

The OECD Due Diligence Guidance for Minerals from Conflict-affected or High-risk Areas (OECD 2013b) is a global supply-chain initiative that is especially significant for Colombian government policy, given that it is applying for OECD membership. The guidance was catalysed by the Dodd Frank Wall Street Reform and Consumer Protection Act, which sought to address links between armed groups and conflict minerals, and protect human rights in the minerals supply chain in the Democratic Republic of Congo (DRC).<sup>46</sup> The object of the OECD guidance is to ensure that companies operating in conflict areas respect human rights and do not contribute to armed conflict, through supply chain traceability practices. Though it is designed in particular for the DRC and neighbouring countries, its 'Supplement for Gold' (Appendix A)<sup>47</sup> recommends that governments implement formalisation policies and plans, in order to prevent the new

<sup>46</sup> See [www.sec.gov/rules/final/2012/34-67716.pdf](http://www.sec.gov/rules/final/2012/34-67716.pdf).

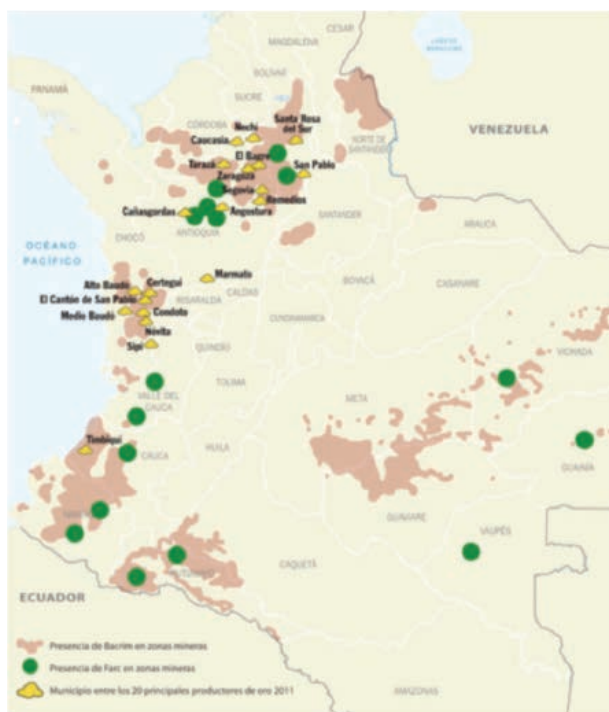
<sup>47</sup> See [www.oecd.org/fr/daf/inv/mne/goldsupplementtotheduediligenceguidance.htm](http://www.oecd.org/fr/daf/inv/mne/goldsupplementtotheduediligenceguidance.htm).

standards inadvertently causing further marginalisation and criminalisation of informal ASM in conflict or high-risk areas.

In Colombia many artisanal and small-scale miners are victims of legal and illegal armed groups in gold mining areas, which converge geographically with traditional ASGM regions (Defensoría del Pueblo 2010). Informal ASM is at risk of being controlled and co-opted in some areas by armed groups. Due to its informality, ASGM is often immersed in opaque supply chains. Lacking access to credit, financing and explosives, it is prone to becoming involved in perverse relationships of dependency with armed groups in order to operate. ASM miners are often exposed to extortion, illegal financing, kidnapping, threats and murder in these regions (Giraldo and Muñoz 2012; Massé and Camargo 2012). Lack of access to formal credit and mining titles for ASM also creates opportunities for informal miners to be financed by criminal networks, who have co-opted some legitimate informal miners and used them as shields to protect criminal operations.

In this context it is particularly difficult for informal miners to demonstrate the origin of their gold, creating a huge barrier to accessing markets for legal or conflict-free supply chains. However, according to some miners involved in Fairmined certification, they have been able to extricate themselves from extortions through strengthening internal organisation and by establishing protection and information protocols with local police authorities (interview with Harbi Guerrero, 25 March 2014).

Figure 5. Gold mining and armed groups in Colombia



The National Police Force reported in 2011 that informal mining and armed groups converge in 151 municipalities and 25 departments of Colombia.

- Key:**
- Presence of criminal bands (BACRIM)
  - Presence of Revolutionary Armed Forces of Colombia (FARC)
  - 20 main gold-producing municipalities in 2011

Source: Semana (2013)

Given that the government of Colombia is seeking OECD membership, it will need to intensify efforts to address human rights in mining regions and conflict-free supply chains. A recent OECD study on Colombia recommends that the government 'put the illegal mines on a legal footing so as to control and mitigate environmental damage, e.g. by providing small miners with incentives to become formal, such as financial support to buy equipment and contractual arrangements with larger, legal, mining companies' (OECD 2013a: 20).

The organisational strengthening that comes with formalisation has the potential to enable the establishment of conflict-free and traceable gold supply chains from conflict-affected areas and to prevent the further marginalisation of informal miners from legal markets. An important driver for government is that gold produced in Colombia in a legal and responsible manner may be sold in legal international markets.

It is too soon to know how the government will roll out this imperative on the ground. Recent meetings with the OECD's Due Diligence group, government, technical cooperation staff, industry and relevant NGOs have put conflict-free gold issues on the public agenda. Two routes may be explored in conflict-affected areas to achieve conflict-free supply chains, and prevent legal international supply chains boycotting Colombia. First, through informal gold miners working inside LSM titled areas via operation and formalisation sub-contracts, and second, through developing and testing a basic 'conflict-free' standard in titles owned by formalised ASM.

The following chapters analyse the barriers and success factors that need to be taken into account in order to see successful outcomes from the National Formalisation programme.



# 4

## Underlying barriers to formalisation

**This section looks at the outcomes of past formalisation processes, identifying failures and the barriers underlying them; while the next section will assess some positive outcomes and identify factors for future success in formalising ASM.**

Women miners in Buritica © A Santamaría



'Success' is not defined in this report solely by numbers of miners legalised, but rather by the establishment of a long-term process leading to ASM working under legal titles, and progressively complying with technical, legal, environmental, labour and trading requirements as defined in Colombian legislation and policy. Past formalisation processes have seen a clear failure on the part of government – both in addressing formalisation applications by ASM miners and in delivering the promised incentives. Interviews with stakeholders such as government officials, ASM representatives, mining companies and NGOs<sup>48</sup> provide important insights about what works – and what needs to change – to ensure sustained progress in mining formalisation in Colombia.

## 4.1 Failures in the formalisation process

The state's failure to formalise the mining sector can be seen in the low numbers of successful formalisation requests reported in Section 2.2. Today 19,500 requests for formalisation are still pending resolution. The outcomes of the main formalisation and legalisation initiatives, in terms of miners legalised and requests pending, are summarised in Table 3.

Formalisation and legalisation initiatives have repeatedly included policies to promote and protect traditional informal ASM via promises of tax incentives, free technical support, simplified licensing, organisational capacity building and access to credit – all contingent on ASM operations registering with the state and complying with varying and increasing degrees of technical and environmental standards. In most cases the timeframe was too short (and was always extended), the capacity of central authorities to deliver support on the ground was limited (with some exceptions), financing for formalisation did not materialise, and information on 'how to' was fragmented, difficult to obtain, and inadequate for informal miners, especially for ethnic groups (MINMINAS 2013a; Pardo 2013).

<sup>48</sup> See the reference section for a full list of interviewees.

Table 3. Summary of formalisation process outcomes

<p><b>1994 Legalisation for 'de facto mining' for ASM</b> (Law 141/1994, regulated through Decree 2636/1994)</p>	<p>3006 applications made, of which 900 were approved – mostly for coal mines (MINMINAS 2013a:14).</p>
<p><b>2001 New Mining Code (Law 685) legalisation process</b> (Art. 165, regulated through decree 2390/2002 - Mining Code) (6-month term)</p>	<p>By November 2013, a total of 31 14 applications were made, of which 80% were rejected and only 5% were entered in the National Mining Register. The cost of the programme was estimated at around USD25 million, for a success rate of 4.74% (MINMINAS 2013a:14; Pardo 2013:157).</p>
<p><b>2001 Special Reserves for ASM Law 685/2001 (Mining Code)</b></p>	<p>By August 2013, 89 Special Reserve areas for ASM had been requested. 24 were approved, 29 rejected, 11 under evaluation, 10 addressing non-compliances, 4 delimited without studies, 3 addressing technical and environmental plans, 3 in process, 2 withdrawn, 1 to be declared and 2 pending technical visits (MINMINAS 2013a:24).</p>
<p><b>2010 Formalisation of Traditional Mining programme</b> (Law 1382, Reform to the 2001 Mining Code and Decree 933/2013: reducing entry requirements and distinguishing informal ASM from illegal criminal mining)</p>	<p>By July 2012, 8125 applications were received, of which 39% were rejected, one mining title was granted, and 4959 are still pending resolution.</p>

Note: See also Appendix 1 for more detail on this legislation and its outcomes.

## 4.2 Underlying barriers

This section identifies the main barriers to formalisation underlying these failures. Government and other stakeholders identified the main underlying barriers to formalisation through a participatory process that included 21 multi-stakeholder workshops and 18 working sessions with organised ASM and MSM miners, held in different mining regions during 2013 (MINMINAS 2013a). This section is based on the outcomes of that process, further research, and stakeholder interviews by the author.

### 4.2.1 Weak public administration

- **Weak governance:** According to the mining authorities' own evaluation (ibid.) weak governance has been the main barrier to achieving better outcomes in formalisation. Although incentives were built into most formalisation plans, they were not properly implemented. This weakness on the part of the mining authorities has perpetuated a culture of informality (Pardo 2013).
- **Mining authorities' loss of institutional memory:** Interviewees also point to the loss of institutional memory since 2001 as an important barrier in the state's response to legalisation requests from informal ASM miners. The Uribe government's dismantling of the mining administrative architecture after 2002, and the transition to the new structure, resulted in officials changing jobs and files being misplaced.<sup>49</sup> The many pending legalisation requests bear witness to this, as well as the many mining concessions granted to mining companies and to venture capital investors in the past 15 years, without proper planning or knowledge of the situation on the ground. There is an overall perception by regional officials, practitioners and miners that the officials defining mining policy from Bogotá have little knowledge or experience of the sector's realities. According to Marcela Bonilla of the Mining and Energy Planning Unit of the Ministry of Mines in charge of developing a national plan to organise mining activity (PNOM) taking into account land planning and social inclusion, there is no experience in the state (or even globally) to properly undertake this complex task (interview 2 April 2014). In aiming to attract FDI through projecting an image of prosperity and security, recent formalisation initiatives (especially after 2010) have also ignored prior progress in specific regions and have focused instead on the criminalisation of informal miners.<sup>50</sup>
- **Rapid change in the mining sector not properly recognised:** Some believe that the current economic policy which relies on mining as one of main engines of economic growth, ignores the rapid changes which have taken place in the mining

<sup>49</sup> President Uribe was in power from 2002 to 2010.

<sup>50</sup> From interviews with Oseas García, Luis Alvaro Pardo, Miguel Molano and Jorge Jaramillo in March and April 2014.

sector over the past ten years. The rise in gold prices allowed numerous informal ASM to become MSM, while gold mining attracted criminal networks and armed groups who expanded their influence and control over the ever-growing mining areas in Colombia. 'The state's decision to promote the official "mining engine" clashed with the informal, illegal and criminal "mining engines"' (Pardo 2013:188). Informal ASM and MSM miners have been caught in the middle of this clash and have been prosecuted in the same manner as criminal miners, while their traditional areas of operation have been licensed to others. This situation has eroded trust between mining authorities and ASM.

- **Inadequate decentralisation of mining sector administration:** Despite over 20 years of initiating decentralisation policies in Colombia, decisions regarding minerals development are still made in Bogotá with insufficient consultation with regional and local authorities, who have to deal with the ensuing environmental impacts and social conflicts, or may have alternative visions and plans for development that are not based on minerals. Additionally, mining has not been properly included in local participatory land planning processes.

There is strong demand from departments and municipalities for decentralising the decisions taken in Bogotá. According to Claudia Cadavid, Secretary of Mines in Antioquia, '...the reform to the Mining Code requires the inclusion of those territories in decisions, currently everything is done from Bogotá, it is necessary to legislate for the realities of our territories' (interview, 26 March 2014).

Effective decentralisation is key; however, many interviewees point to the importance of strengthening governance at the municipal level, to ensure that the potential benefits of mining fit with local priorities. A number of formalisation programmes have failed or been abandoned by local authorities due to the lack of continuity, political will and/or capacity; and limited understanding of regulations that are often complex.<sup>51</sup>

Furthermore, some mayors of mining municipalities resent the added responsibility of controlling mining without legal title, which mandates them to suspend operations and confiscate any minerals that are traded and transported without traceable origin.<sup>52</sup> According to some stakeholders, mayors are not well placed for this task. Mining, even informal mining, provides crucial income to municipalities via local economic linkages (Pardo 2013:156). As part of the local political elite, mayors are often involved in mining themselves (usually through financing). Closing mines could generate social conflict due to the resulting unemployment. In addition, they lack the capacity to police the security risks associated with controlling operations by illegal criminal groups, and there are no regulations for managing confiscated minerals.

<sup>51</sup> From interviews with Claudia Cadavid and Oseas García in March 2014.

<sup>52</sup> Art. 161 and 306 of the 2001 Mining Code, and Art. 338 of the Penal Code.

The coordinating committee proposed by the National Formalisation Policy that aims to involve relevant institutions, including regional and local ones, offers potential to deliver projects and plans more effectively in the regions. In addition, the recent Constitutional Court ruling (C-123/2014) on local and regional participation in decisions regarding mining activity is a useful instrument for enhancing decentralisation (see Section 1.2.6).

#### 4.2.2 Lack of differentiated approach to different sizes of mining operation

The 2001 Mining Code eliminated the differentiated approach to different scales of mining operation, and created uniform rules for all. According to many of the stakeholders interviewed, the mining code requires a structural shift to ensure inclusive policies for ASM, ethnic groups and medium-scale mechanised alluvial miners, since the code sets very high standards without providing effective mechanisms or incentives for ASM to comply with its terms. A major barrier is presented by the fact that Santos's economic policy relies heavily on the mining sector, despite the Mining Code's serious gaps in terms of the rights of vulnerable miners.

Claudia Cadavid, Secretary of Mines in Antioquia, states that, 'A structural reform is required. The "mining engine" as it stands is not responsive to the realities of ASM' (interview, 26 March 2014).

Although a 2013 decree (933) aims to differentiate between informal ASM and illegal criminal mining, the terms it established for the size and frequency of leases for MSM are still considered a barrier to entrepreneurial development. For instance, Ramiro Restrepo of Conalminercol calls on government to design specific regulations for mechanised alluvial operations that take into account its high mobility: these miners need to be able to apply for more than one title at a time. ASM and MSM must be able to enjoy the guarantees provided by a legal title in terms of long-term planning to enable the growth and development of this sector (interview, 7 April 2014).

#### 4.2.3 Delays in regulating mining in ethnic groups' territories

Although indigenous and Afro-Colombian peoples have special collective rights and have been granted a number of special mining zones for their own mining activities, important regulations are still pending. A repeated demand of Afro-Colombian communities is for the regulation of Chapter 5 of Law 70/1993, which should determine how and where mining may take place in collective Afro-Colombian territories (see Section 3.2.3).

However, ethnic groups have reached innovative agreements with miners of all scales in some areas, driven by the costly requirements for exercising the priority right that ethnic groups are entitled to, and the need to address conflict with external miners operating within their territories. This is the case for the Cocomacoiro Community Council, a major community council in Chocó Department – see Box 4.

#### Box 4. Cocomacoiro: an agreement between an investor and a community council

In order to take advantage of our priority right to mine on our collective territories, and to obtain the mining title required for certification,<sup>56</sup> we were faced with paying an excessively high *canon* [surface tax] to the state. This meant we had two options: a) to allow access to mining companies from outside our community, or b) exercise our priority right through partnerships with foreign investors. We negotiated that an investor would pay for the *canon* and cover the cost of technical and legal support for formalisation, but the Community Council would remain the owner of the mining title. Our strategy regarding informal mechanised miners in our area is to sub-contract with them, but it is the Community Council who decides whom to receive and under what conditions. Current internal regulations under development by the community aim to secure our control over the management of mining contracts inside our territories.

(Interview with Jorge Perea, Cocomacoiro Community Council leader, 4 April 2014).

The experience of Cocomacoiro highlights the importance of creating different types of model contracts. This arrangement enables a concession-holder to sub-contract to a mining operator, whether ASGM or, as in this case, a community concession holder with an industrial operator – while providing a guarantee of security, transparency and fairness.

#### 4.2.4 Scarcity of viable areas for ASM to formalise

According to Claudia Cadavid '...extensive areas under exploration are frozen and unavailable for the formalisation of ASM. In Antioquia, for instance, 90 per cent of the territory is titled, while only 10 per cent of these areas are being actually explored' (interview, 26 March 2014).

Working under legal title is the first step towards full formalisation. As the current formalisation plan indicates, legal ASM miners are now given several years to achieve full formalisation of technical, environmental, economic, tax, and labour requirements. However, the scarcity of their own areas for ASM to formalise – areas not already taken by mining concessions or Private Property Registers (RPPs) – is a significant barrier.

<sup>53</sup> Cocomacoiro was a member of Oro Verde, and as such sought Fairtrade and Fairmined certification.

Interviewees identified the following as the main causes of this barrier:

- **The mining authority failing to inspect mining concessions:** Legislation demands the 'cession of areas' and 'devolution of areas'<sup>54</sup> not economically viable for LSM concession holders. Until the mining authorities make full use of these instruments, the mining companies who own these titles are unlikely to devolve areas from their concessions before obtaining comprehensive information about the deposits under exploration.

Mining concessions in Colombia allow up to 11 years of exploration before submitting requests for mining. Environmental and social impact assessments, FPIC where relevant, and other technical and financial documentation are only required by the state after the exploration phase is finalised and mining is due to begin. This period may be extended even further if the concession-holder requests suspension of work due to an unforeseen event or *force majeure* (such as armed conflict). This policy has caused extensive areas to become unavailable for many years.

According to Xiomara Neira, Director of Mining Titling at the Mining Secretariat of the Department of Antioquia, 'The way to overcome this barrier is for mining authorities to drastically improve inspections to audit compliance with exploration commitments made in mining concession contracts. This would enable devolution of areas to the state or cancellation of mining concession contracts that are not complying with approved work plans' (interview, 17 March 2014).

However, further legal adjustments are needed to also allow private property registration title holders to devolve areas to the state for ASM.<sup>55</sup> Currently only mining concession contracts allow devolution of areas to the state. This constitutes a barrier to formalisation since emblematic gold mining areas, such as Northeast Antioquia and the Bajo Cauca, are unable to 'devolve' areas, and must instead 'donate' them – a legal situation not yet regulated by law. (See the case study in Box 5).

- **Lack of legal instruments to secure devolved areas or mining concessions for ASM:** A further barrier is that there is no legal mechanism to ensure that devolved areas or areas from non-compliant mining exploration concessions are secured for ASM formalisation. A number of stakeholders suggest the creation of a 'formalisation mining title bank', so that devolved areas are immediately committed to mining concessions or Special Reserves for ASM, instead of being available to non-ASM investors.<sup>56</sup>

<sup>54</sup> See glossary.

<sup>55</sup> See glossary for more on private property registration.

<sup>56</sup> From interviews with Claudia Cadavid, Jaime Jaramillo and Oseas García in March and April 2014.

### Box 5. Devolution of RPP titles: Mineros SA

According to the Vice President of External Affairs at Mineros SA, one of Colombia's largest mining companies, private property titles (RPPs) are not compatible with Special Reserve titles. Special Reserve titles are the main types of mining title designed for ASM areas, granted through a concession over free areas belonging to the state, rather than RPPs. The Special Reserve title is desirable because it implies technical, legal, organisational, health and safety and other support from the mining authorities to ASM.

Mineros SA decided to donate some of its RPP titles to six ASM associations that are legally constituted as enterprises. It did so in collaboration with the BioREDD programme to ensure support by regional and national authorities, taking advantage of the national mercury reduction plans. However this process has not been straightforward.

Mineros SA reports that the main bottlenecks in this route have been:

- Lawyers in charge of registering the donation to ASM enterprises have no experience of mining title donations.
- For the ASM enterprises to operate legally they must have a work plan and operations approved by the regional mining authority and an environmental management plan approved by the regional environmental authority, both of which must be contracted with experts and are costly for ASM.
- Delays at the BioREDD project – and on the part of government authorities in delivering on contracts and disbursing the cost of these technical requirements – have created uncertainty among the artisanal and small-scale miners, putting a two-year process at risk.
- When payment of the annual mining *canon* [surface tax] is due there is no procedure to ensure that the *canon* for ASM enterprises may be waived or reduced, because of the type of title (RPP), and it is unlikely that the ASM miners will be able to pay if they cannot operate legally.

#### Lessons:

- For formalisation initiatives to deliver outcomes, it is essential that the state defines efficient, clear and legally secure routes to enable initiatives between ASM and LSM.
- It is clear that without support and mentoring by LSM, the state or other knowledgeable institutions, artisanal and small-scale miners on their own are not able to comply with the complex and costly formalisation requirements.

- Legalisation must be implemented at a faster rate. Currently most informal miners have experienced state authorities' punitive actions against illegal mining. They live in fear and uncertainty, and extended delays make all involved lose faith in finding a solution.
- The central role of the state in terms of leadership, coordination, efficiency and quickly establishing clear rules for the current formalisation process is crucial for the process to deliver better results than previous efforts. The risk, if this does not work, is growing social conflict as ASM miners pressure the state for viable solutions.

(Interview with Jaime Jaramillo of Mineros SA, 3 April 2014).

#### 4.2.5 High costs and entry barriers to formalisation

- **Low level of education and training among miners:** The recent census (MINMINAS 2012) and regional workshops (MINMINAS 2013a) identified this as a considerable barrier to formalisation. Most formalisation processes have offered technical and legal assistance to miners, but it has been intermittent and neither tailored to local conditions nor inclusive of all ASM regions. The fact that so many artisanal and small-scale miners are illiterate or have had only elementary schooling is a significant barrier for trainers and limits the effectiveness of written or online training materials.
- **Short terms for compliance with all formalisation requirements:** Given the very short terms of many formalisation processes, it was not surprising that legal and technical support was only able to focus on selected areas, leaving much of ASM unattended. International experience (Barreto 2012) and the National Formalisation Policy support a gradual approach to formalisation, accompanied by consistent technical and legal support, tailored to the specific needs of different types and levels of ASM formality.
- **The cost and technical requirements for formalisation** represent additional barriers. According to Edinson Monsalve, a contractor with an operation contract with GCG, today mining and environmental management plans cost a minimum of USD25,000 for the smallest operation (interview, 7 April 2014).

- **The weak local presence of mining authorities** in the areas where informal miners work also means that miners must travel to the regional capitals to submit documentation to formalise, incurring additional expenses that some of the subsistence level miners cannot afford.
- **The economic burden of formalising employment** is one of the greatest bottlenecks in formalisation. Worker formalisation is a key objective of the government in line with the International Labour Organization's (ILO) 'decent work' agenda. However, miners want this framed as a process that enables a degree of flexibility and recognises traditional working arrangements in the ASM sector, where workers often prefer 'the luck of gold' to a fixed salary, and often move from one mine to another depending on productivity. This means allowing short-term contracts for workers, as in other economic sectors (interview with Harbi Guerrero, 25 March 2014).
- **Occupational health insurers not providing cover for ASM** is another barrier identified by all miners and practitioners. Because it is considered a dangerous activity, ASM employers are not always able to affiliate their workers to professional risk insurers (ARL). Health care programmes also do not cater for the realities of occupational health risks for men and women miners, according to the type of work they do and the risks they are exposed to. In addition, medicine for miners poisoned by mercury is not covered by health plans (interview with Oseas García, 17 March 2014).
- **Health insurers do not understand the nature of ASM cooperative business arrangements:** Worker formalisation in Colombia includes health, pension and occupational risk insurance. According to Harbi Guerrero of Coodmilla, health insurers also demand that social security for workers is registered under the cooperative as the mining title-holder. Although the employers of these workers are members of the cooperative, they are independent businesses, and each has their own operations and staff within the cooperative's mining title. As the cooperative cannot take on all its members' workers, this constitutes an additional barrier to formalising labour (interview, 25 March 2014).



Mine workers in Nariño © G Tavernier

#### 4.2.6 Inadequate funding for formalisation

The delivery of positive outcomes strongly depends on the ability of mining authorities to fully fund and implement the strategic work plan set out in the current National Formalisation Policy. According to Miguel Alfonso, Coordinator of the Formalisation Management Group, the plan requires over USD150 million for the next five years, of which only USD25 million has been secured from the Royalties Fund (interview, 1 April 2014).

The Ministry of Mines plans to create a USD5 million fund, backed by the National Guarantees Fund, to enable credits for miners involved in formalisation. It is currently working on regulations to allow it to manage the credit programme (not allowed by current legislation).

International cooperation funds are also targeted for counterpart funding, especially through public-private partnership programmes between companies, ASM, NGOs, universities and the state. In addition, the formalisation plan includes incentives for miners in the form of access to low interest credit lines.

Securing funds to implement the National Formalisation Policy is a significant barrier given competing demands for the state's budget. Government faces immense compensation costs for victims of the armed conflict, and a massive social inclusion programme is likely to emerge from peace talks with the FARC. It also needs to respond to recent commitments made to small agricultural producers, as well as to demands for developing much needed national infrastructure, among many other priorities.

Critical mass and political support for financing formalisation of ASM is difficult to obtain, due to historic failures in formalisation and ongoing perceptions in society and within some sectors in government that 'mining is bad for Colombia' (interview with Miguel Alfonso, 1 April 2014).

#### 4.2.7 Culture of informality in ASM and MSM

Some experts point to the informal nature and culture of ASM as an underlying barrier that did not make formalisation attractive or relevant, 'as long as they could continue working and trading informally, without paying taxes' (Pardo 2013).

Artisanal, small- and medium-scale miners admit that for many years they did not legalise because of fear of the costs of compliance, the excessive red tape, and the high entry barriers in the form of technical, environmental, legal and economic requirements. Some also recognised that they simply did not want to pay taxes, and being allowed to continue working indefinitely while legalisation requests were being processed (by an inefficient mining authority) perpetuated a culture of informality, according to Ramiro Restrepo of Conalminercol (interview, 7 April 2014).

Considering the culture of informality that prevails in Colombia, and the past failures of government to deliver on requests for legalisation, what are the guarantees that this time around miners will engage in formalisation?

*The fight against illegal mining, harsh and unfair as it has been because it confused traditional informal ASM with criminals, forced informal ASM and MSM miners to seek access to legal title... We wanted to be able to work legally, without prosecution by the government, and without having to be at the mercy of illegal armed groups.*

(Interview with Ramiro Restrepo of Conalminercol, 7 April 2014).

Restrepo acknowledges that this time round, ASM and medium-scale miners are willing to become formalised in order to be able to work: 'authentic MSM and ASM miners are prepared to enter formalisation and legalisation, so long as access to mining titles or fair contracts with title-holders are available, legal and technical support is guaranteed, and incentives are designed to help cover the cost of formalisation.'

### 4.2.8 Lack of access to banking and credit

Formal and technically operated mining is an expensive business. In order to reach a vein with sufficient gold ore, miners may have to dig for days or weeks without any returns – but still need to invest in equipment, supplies, salaries, and transport, let alone the licensing and legalisation costs. This is particularly true for ASM, which has no resources to invest in prospecting and exploration and relies on individuals’ experience to help find the right veins to mine. Without access to credit it is not possible to evolve beyond gathering superficial ore. In order to formalise, miners need to establish a work plan for a specific period of time, an environmental management plan and pay specialists to do them, secure initial financing, ensure reliable access to explosives and ensure continuous production to pay for operational costs. The absence of banking in the majority of operations makes obtaining credit very difficult, and limits the financial development and growth of the sector, and its formalisation.

Miners interviewed report that banks have very strict requirements for opening accounts. They demand accounting to be in place, and goods and services receipts for all purchases. ASM operates in highly informal economic contexts – the local shops that provide goods and services are themselves informal businesses, so do not usually provide receipts, nor are they registered as formal businesses.

Several interviewees<sup>57</sup>, consider this an important barrier to formalisation. BioREDD’s talks with Bancolombia, the largest Colombian bank, have failed to enable financial services and products for ASM, even for those in the process of formalisation, such as in the GCG mining area; allegedly because of uncertainties regarding illegal mining (interview, 1 April 2014).

Vladimir Chamat of the Formalisation Office says that the Ministry of Mines plans to provide direct credit to ASM but first it needs to create the legal tools to make this possible (interview, 1 April 2014).

### 4.2.9 Lack of access to explosives

*If we had a normal and legal supply of explosives we would be able to pay for the social security of our workers, but the government does not give ASM the tools it requires to formalise. It’s like telling your child that if he doesn’t study, he won’t get any food...If the child is unable to eat, it is even less likely that he shall be able to study!*

(Interview with Harbi Guerrero of the Coodmilla Cooperative, 25 March 2014).

<sup>57</sup> Miguel Molano, Director of the BioREDD programme, and Jose Ignacio Noguera, VP External Affairs GCG, interviewed April 2014.

Artisanal and small-scale miners operating underground gold mines need to have timely and reliable access to explosives in order to be able to break through rock to reach the small gold veins that they exploit. Of course the safe use and storage of explosives is also very important, which is why the state requires that only trained personnel may handle and use explosives.

Explosives are produced by Indumil, the national military arms industry, which strictly controls their sale and trade due to the armed conflict. ASM miners have been particularly affected by these restrictions where gold mining regions coincide with the presence of illegal armed groups. Obtaining legal explosives is costly and time consuming. It involves verification of legal mining titles, police certification of non-involvement in armed conflict and criminal activities, certification for transport of explosives, certification of training in the safe storage and use of explosives, as well as technical and legal certificates granted by the National Mining Agency (ANM) accrediting the use of explosives for a specific period based on annual mining plans.

According to Harbi Guerrero of Coodmilla, the amount of explosives required for a given mine plan are estimated in Bogotá based on global averages that do not recognise the diversity of mines (for example in Coodmilla veins are very wide and government estimations always fall short). ASM is required to register every three months; although miners send their documentation on time, processing times are so slow that often the terms of the permit have expired by the time the certification arrives (interview, 25 March 2014).

If ASM cannot access explosives through a legal and efficient mechanism, it is forced to either stop operations or to purchase explosives on the black market at four or five times the legal price. Many of the miners interviewed point to delays, inefficiency and even corruption in government granting of licences for explosives. ASM claim that in order not to stop operations, they are forced to seek explosives on the black market, or even make a highly dangerous homemade explosive (*polvo loco* or ‘crazy powder’), which has already caused poisoning and injuries to miners.<sup>58</sup>

Some programmes have successfully used access to explosives as a key incentive for miners to formalise, for instance in the context of GCG operation contracts in Northeastern Antioquia department, in collaboration with the Association of Small-Scale Miners of Northeastern Antioquia (ASOMINA) (interviews with Oseas García, 17 March 2014 and Jose Ignacio Noguera, 3 April 2014).

<sup>58</sup> See <http://hablemosdemineria.com/2013/05/22/el-polvo-loco-tiene-en-apuros-a-buritica>.



Perforating to set dynamite, Los Andes, Nariño © Harbi Guerrero

#### 4.2.10 Continued conflict and human rights violations in mining areas

*The most generous of formalisation processes was that of Law 685/2001 and its regulatory decree 2390 for de facto mining. However, very few miners applied for requests because 2002 and 2003 were years of much violence, ASM was cornered, prices were low, and miners were not interested in the extra costs involved in formalisation.'*

(Interview with Ramiro Restrepo of Conalminercol, 4 April 2014).

Massé and Camargo (2012) also point to human rights factors that influenced the low response by ASM to legalisation processes in a country beset by conflict. In order to demonstrate their legality, miners had to produce evidence that they were registered in the National Register of Mines and that: a) they had been mining continuously for the past five years, through technical and commercial documentation (receipts, and so on), and b) that their mines had been in existence for a minimum of ten years before the 2010 law (Law 1382). Due to the dynamics of armed conflict and the realities of population displacement and dispossession suffered by local communities in many traditional ASM

areas, many of them were in no condition to benefit from these opportunities, much less to keep accounting systems and receipts.

According to the Human Rights Watch 2013 report on Colombia, irregular armed groups (guerrillas and the successors of paramilitary groups) 'continue committing serious abuses in Colombia. Each year an additional 100,000 people are displaced, while human rights defenders, community leaders, union leaders, reporters, indigenous and Afro-Colombian leaders and leaders of already displaced groups are still subject to threats and other abuses' (Human Rights Watch 2013).

It is not clear how the government will address this situation in order to protect miners and enable formalisation in conflict and high-risk areas. This remains an important challenge.





# 5

## Success factors for formalisation

What does 'success' look like in formalising ASM? To succeed, the formalisation process demands that many variables work together over a sustained period of time. While the overall legalisation numbers are low, there are still positive experiences to report that have moved miners along a trajectory towards formalisation. What lessons can be drawn from those experiences?

Mining couple in Nariño concentrating gold ore © H Guerrero

Successful, effective engagement of ASM in state initiatives has occurred when ASM miners are able to work under legal title and participate in defining policies. It has also occurred when the state delivers technical, organisational and legal support – with coordination and continuity – underpinned by incentives to address important bottlenecks for miners, such as access to explosives, credit, technological innovation, and fair legal markets.

Outlined below are seven elements that are essential in creating the right conditions for formalisation to take place.

## 5.1 Inclusion and engagement with ASM and MSM at regional level

When government has not taken into account the perspectives, priorities, or rights of social groups, it has faced strikes and marches, forcing it into dialogue. National government has responded to regional and local demands for decentralisation and participation in decisions by involving miners in regional and local workshops, and establishing permanent mining dialogues in mining regions. These have been successful in securing government commitments and solutions for communities and social organisations. When government has systematically incorporated participation in policy decisions, local and regional input has proven very useful.

- **Extensive consultation workshops** held by mining authorities with ASM, MSM and other local stakeholders between 2008 and 2013 provided robust analyses of the problems and potential solutions in efforts to formalise ASM. Through a SWOT ('strengths, weaknesses, opportunities and threats') analysis they identified the need for a more comprehensive approach to formalisation as a process, rather than as a short window tied to legalisation (MINMINAS 2013b).
- **Listening and acting in response to communities' own proposals:** How ASM formalisation is implemented has a direct bearing on how ethnic groups mine inside their collective territories. Ethnic groups have marched alongside informal miners and other vulnerable social groups to secure government commitment to dialogue with them. Formalisation pilot projects currently being explored between the mining authority and ethnic groups have the potential to find lasting solutions, so long as:
 

*...they understand the diversity of needs of different ASM miners, and do not impose streamlined solutions that do not involve community consultation. For instance, we are proposing a pilot for formalisation in La Toma (Cauca Department). It is our*

*own 'Mining for Peace' model, which allows both men and women to operate their own units, but maintains the preservation of natural resources as central to our way of mining.*

(Interview with Lisifrey Ararat, Ancestral Afro-Colombian Miner, Cauca, 1 April 2014)

- **Permanent mining dialogue processes** between the Ministry of Mines and community councils are working well for reaching agreements on how to roll out formalisation locally, using a differentiated, culturally sensitive approach. These bottom-up initiatives, such as the Chocó Permanent Mining Dialogue, are important steps in the right direction; they take into account regional social dynamics and economic realities, and enable culturally compatible solutions.

Helcías Ayala of the Pacific Environmental Research Institute (IIAP) reports progress in the development of environmental mining protocols agreed locally between community councils and miners of all scales operating in their territories (interview, 4 April 2014). IIAP in particular, with its comprehensive territorial approach, plays a very important role as independent facilitator and intercultural broker between local, regional and national agendas, while Foro Nacional por Colombia<sup>59</sup> plays a supportive role as independent NGO (Chocó Permanent Mining Dialogue, 2013).

The government is holding a number of these dialogues in different regions of Colombia. Community councils and local organisations aim to incorporate these locally agreed protocols into their own internal regulations and land management plans, and ultimately, in national legislation and policy. This process provides useful input into the regulation of mining in collective Afro-Colombian territories (Chapter 5 of Law 70), as it sets a local precedent to define the extent of self-determination over collective territories and the capacity of local organisations to influence decisions made in Bogotá regarding minerals development in collective Afro-Colombian territories (Chocó Permanent Mining Dialogue, 2013; interview with Helcías Ayala of IIAP, 4 April 2014).

Stakeholders have emphasised the need for a continuous flow of local input into policy and law. They also emphasise including independent bodies as facilitators in dialogues and implementing formalisation plans and projects as a constructive approach for formalisation.<sup>60</sup>

<sup>59</sup> See [www.fundacionforo.org/#!mineria-y-gestion/cj9](http://www.fundacionforo.org/#!mineria-y-gestion/cj9)

<sup>60</sup> From interviews with Helcías Ayala and Oseas García in March and April 2014.

## 5.2 Recognition of mining rights for traditional ASM and ethnic communities

Although a better balance in the democratisation of mineral rights is still required, the existence of Special Reserves for ASM is an important instrument that could be optimised. These reserves were granted to cooperatives and associations in regions where ASM is a traditional economic activity, or as an instrument to protect the traditional mining activity of ethnic groups, accompanied by technical support, enabling some community mines to formalise in miners' own territories or within their own mining reserves or areas. Existing types of mineral rights for communities should be expanded and provided with appropriate legal and technical support to enable greater social inclusion of ASM in the mining sector. The formalisation policy represents an opportunity to further enable these types of mining concessions for traditional ASM, through:

- continuing to protect subsistence or ancestral mining by local community members in alluvial deposits
- creating more special mining reserves in traditional ASM areas, and properly regulating and implementing them in line with the formalisation policy
- approving more Afro-Colombian mining zones within their collective territories
- approving more Indigenous Peoples' mining zones within their collective territories
- defining the role and rights of informal and traditional miners who are currently operating inside the strategic mining reserves delimited by the state.

### Box 6. Strategic mining reserves

Law 685 of 2001, the Mining Code, created special reserves, designed for areas of traditional informal mining activity, as well as for areas for government to undertake geological prospecting and strategic mining projects. In 2012, through Resolution 0045, the National Mining Agency, defined a number strategic mining reserves in the Departments of Amazonas, Guainia, Guaviare, Vaupes and Choco. These departments host very important biodiversity, and they include a significant number of territories that are titled to ethnic groups. They also host significant ancestral and traditional informal and formal ASM. Since strategic mining reserves are to be auctioned by the state under strict technical and financial requirements, it is not clear how ASM miners operating in those areas will be included in the final granting of concessions.

## 5.3 ASM and MSM associations at regional and national level

A number of cases in Colombia show how effective it can be when ASM and MSM producers combine efforts to lobby for rights, and to bring down the cost of supplies through economies of scale. Associations have also given miners greater bargaining power in negotiating contracts with LSM. For example, ASOMINA started out as an association to enable legal access to explosives. It has evolved to provide collective services to its members, including social security coverage, health, occupational training, education and even recreation. Today ASOMINA is establishing links with goods providers to create a bank of tools and spare parts at lower prices for its members, many of whom have operation contracts with GCG (interview with Hernando Henao, ASOMINA president, 2011).

## 5.4 Collaborative formalisation programmes between LSM, ASM and regional mining authorities

Relations between informal miners and large mining companies have led to useful outcomes in recent years. The scarcity of areas for ASM formalisation led LSM and government to allow artisanal and small-scale miners to continue working inside LSM mining concessions, through the endorsements, operation contracts and formalisation sub-contracts described in Section 3.3. Making formalisation a condition for these agreements (legal, environmental, technical and economic requirements), with LSM contractually obliged to provide technical support, has delivered progress in some aspects of formalisation.

A recent study (Arango and Gómez 2013) gives some insight into the benefits of different types of contracts between artisanal miners and holders of a specific mining title, owned first by Frontino Gold and later by Gran Colombia Gold (GCG) in Segovia, Antioquia; see Table 4.

Table 4. ASM-LSM contracts in Northeastern Antioquia: impacts on formalisation

Impacts of endorsement agreements, operation contracts and formalisation sub-contracts		Endorsements by Frontino Gold Mines	Operation contracts with Gran Colombia Gold	Formalisation sub-contracts with Gran Colombia Gold
Economic and technical	Direct and indirect employment generation	Improved	Improved	Improved
	Mineral revenue generation through local tax payments	Improved	Significantly improved	Significantly improved
	Technical improvement during exploration	No change	No change	No change
	Technical improvement during extraction	Improved	Significantly improved	Improved
	Technical improvement during processing	Improved	No change: ASM not involved in processing	Improved
Environmental	Compliance with environmental management plan	No change	No change	Improved
Legal and organisational	Entrepreneurial and organisational strengthening	Improved	No change	No change
	Accounting	Improved	No change	Improved
Labour	Affiliation to social security	Improved	Improved	Improved
	Improved employment conditions	Improved	Improved	Improved
	Improved health and safety and occupational health	Improved	Improved	Improved

Source: Based on Arango and Gómez (2013), adjusted by Natalia González, ARM.

The study found that all types of contract delivered improvements in ASM performance in terms of employment generation, state income via mineral revenue, technical extraction techniques, worker access to social security, improved employment conditions, and health and safety standards.

Endorsement and formalisation sub-contracts enabled improvements in processing methods only when the contract did not oblige the miners to sell ore to the company plant; there was also entrepreneurial and organisational strengthening and accounting among ASM miners. In contrast, operation contracts did not impact on those variables, or deliver on improved environmental management by ASM miners, because the company plant processes all ASM minerals. Miners interviewed point to the risk of loss of trust between ASM and GCG if greater transparency in the handling of the ore delivered by ASM contractors to the company plant is not guaranteed. They feel that ores may be inappropriately mixed during processing (interview Edinson Monsalve, 7 of April 2014). However, Jose Ignacio Noguera, VP External Affairs for GCG insisted that there is a transparent valuation system in place and that the price paid is 90 per cent of the LBMA (London Bullion Market Association) price. This points to the need for clear communications and effective transparency.

The lack of change in the 'exploration' indicators reflects the fact that ASM miners have no resources to undertake technical exploration.



Training on health and safety in Nariño © ARM

### 5.4.1 Assessing operation contracts

Operation contracts between LSM and informal ASM miners operating inside LSM mining concessions (see Section 3.3) emerged as a demand from LSM for government to guarantee their acquired rights. Although they were designed with no participation by ASM, they represented some progress, and provided important lessons to government in developing formalisation sub-contracts.

Edinson Monsalve is the ASM legal representative for the ASM enterprise Tierradentro SAS, which has an operation contract with Gran Colombia Gold (GCG). He recommends that miners sign these contracts because they enable them to work legally and without being prosecuted; contracts are the fastest route to formalisation; and because in many old industrial mines the economically viable ore (that is, ore with sufficient gold content) is very deep underground. This requires significant investment in equipment and ensuring the stability of the mine, both of which are not possible under informal conditions (interview, 7 April 2014).

According to Jorge Jaramillo, who has been involved in implementing operation contracts in Northeastern Antioquia Department (Segovia), operation contracts allow a more constructive relationship to evolve between ASM and LSM, and enable a more effective use of mineral deposits. The narrow veins and areas inside old mines could only be extracted with the smaller manual equipment used by small-scale miners; these minerals would otherwise be impossible for the company to extract (interview, 2 April 2014).

### 5.4.2 Assessing formalisation sub-contracts

Overall, data and projections suggest that formalisation sub-contracts may yet deliver the most promising and comprehensive outcomes, although they are too recent to offer success stories:

- Depending on how they are rolled out, formalisation sub-contracts may enable greater transparency than operation contracts – and therefore greater protection for ASM miners – since the state has a more active role in their design, approval and monitoring than operation contracts.
- Artisanal and small-scale miners, rather than the LSM title-holder, are responsible for progressive compliance with formalisation requirements. This is considered an improvement both for LSM companies, who are no longer responsible for ASM performance, and the artisanal and small-scale miners themselves, who prefer to be in charge of their own compliance. This underlines the importance of effective and timely technical and legal support for ASM.<sup>61</sup>

<sup>61</sup> From interviews with Ramiro Restrepo, Harbi Guerrero and Edinson Monsalve.

- Differentiated inspections of ASM operations by the mining and environmental authorities within LSM titled areas, based on progressive formalisation requirements and applying simpler environmental guidelines, are seen as a step in the right direction. ASM miners note that state audits are more neutral than audits by title-holders, who may use non-compliance to terminate contracts in order to protect their own interests (interview with Edinson Monsalve, 7 April 2014).
- Miners are not obliged to sell their gold to LSM. This has an additional advantage in terms of access to ethical certification and trading internationally. If gold is sold to LSM, miners are not able to access premium payments or establish long-term business relations with their own clients.
- It remains to be determined whether miners will be obliged to process their ore at the company plant or if formalisation sub-contracts will enable ASM business development through managing their own processing plants.

While the development of these contracts, which emerged out of existing informal practices, has delivered positive outcomes – such as working under legal title and achieving mercury reduction targets – other improvements to ASM/LSM relations are required to achieve the full progressive formalisation that the government currently proposes. According to Claudia Cadavid, Secretary of Mines of Antioquia, there is room for improvement in formalisation sub-contracts through greater transparency. She says that the regulation allowing this type of sub-contracting (Decree 480/2013) as it stands currently may lead to abuse by title-holders; most ASM are negotiating contracts under threat of penalisation or confiscation of equipment. She recommends developing minimum standards for contracts to ensure equity and transparency, and suggests that these private contracts should be publicly available for information for civil society (interview, 26 March 2014).

### 5.4.3 Godfather plans: LSM mentoring ASM

'**Godfather plans**', which are now obsolete, were implemented from 2001. Under these plans, LSM mentored ASM through technological transfer, and technical and legal support, in exchange for reduced royalty payments for LSM. Formalisation was a precondition for artisanal and small-scale miners to sell to the company, creating a powerful incentive through market access at a fair price – the Nobsa coal project is one example of this (interview with Hernando Escobar, 2 April 2014). However, some stakeholders report that LSM often donated useless and obsolete equipment and only got involved for the royalty reduction.

'If LSM were to be serious about collaboration with ASM they should set up joint ventures,' argues researcher L. Alvaro Pardo (interview, 31 March 2014).

Although the Constitutional Court declared that reduced royalties could not be used as a tax incentive, this step towards ASM-LSM collaboration in some cases evolved into operation contracts. According to some interviewees this model recognised that the state is not an entrepreneur, nor an experienced trainer, but that ‘what was required was the expertise of the mining industry to train ASM, rather than more bureaucrats’ (interview with Hernando Escobar, 2 April 2014).

Building trust and relationships on the ground between ASM and LSM through mentoring and technical support has worked well when the conditions are transparent and fair, and there is independent third-party involved in the process, be it government, NGO or academic institution.

## 5.5 Organised ASM and MSM developing business on their own terms

Some of the miners interviewed pointed out that they much prefer mining titles of their own, where they are fully responsible to the mining authority directly, and which entitle them to technical and legal support for legalisation and formalisation.<sup>62</sup> A diversified and fair mining sector should offer opportunities for ASM working inside LSM mining concessions/areas, as well as ensuring sufficient areas on which ASM may develop and grow as sustainable businesses on their own mining leases.

According to the practitioners interviewed there is evidence from Segovia (Northeastern Antioquia) to indicate that miners achieve greater business development, organisational strengthening and formalisation when they operate and manage their own processing plants, and are free to sell their metals, rather than remaining as mere extractors of ore by processing their ore at local or company plants.<sup>63</sup>

For example, in the past, associations signed contracts with Frontino Gold Mine that required the associations to pay social security for workers, and to improve technical and environmental performance, while they could sell their own gold to the best buyer. This was a milestone for the associations concerned. With the aim of increasing the security of their title, according to Natalia Gonzalez of ARM, miners sought to comply with environmental, technical, labour and tax obligations (interview, 17 March 2014).

This experience highlights the importance of creating tools for ASM to develop as a business. Longer-term contracts with LSM would allow this, as well as autonomy for miners to sell and process their metals independently of the title-holder.

<sup>62</sup> From interviews with Harbi Guerrero, Ramiro Restrepo, Aristarco Mosquera and Jorge Perea.

<sup>63</sup> From interviews with Oseas García and Natalia Gonzalez on 17 March 2014.

## 5.6 Effective coordination between mining authority agencies in delivering support

There has been progress towards formalisation when the mining authority has delegated regional mining authorities and environmental authorities to work on the ground with miners to improve specific conditions. Although a programme may be focused on mercury abatement, for instance, a chain of other issues may emerge – such as the need to access credit – which is addressed by the programme as well (the BioREDD programme’s efforts to secure credits for miners is one example).

The environmental mining centres, mining district model and mining clusters described below demonstrate the efficacy of a coordinated regional approach.

### 5.6.1 Environmental mining centres for cleaner production in ASGM

Environmental mining centres (Centros ambientales mineros - CAM) were established in the mid-1990s under the coordination of regional environmental authorities, with the support of the German Society for International Cooperation (GIZ), in several gold mining regions with traditional ASM activity.<sup>64</sup> They delivered significant progress in cleaner production and formalisation of ASM through a two-part strategy: organisational strengthening of the associated ASM enterprises under their own legal titles, and technical support to improve gold recovery and reduce mercury use through the establishment of training centres with infrastructure for clean processing. These training centres are managed by ASM cooperatives, with support from the regional environmental authority.

In 2004, on the back of rising mineral prices, the Ministry of Mines decided to strengthen existing centres and create new ones in areas where mining was the backbone of regional development. Other minerals besides gold would also be considered. This was combined with two other policies: the creation of ‘mining districts’ to establish mining clusters (Buitelaar 2001) and ‘godfather’ plans, which involved direct support by LSM to ASM, driven by tax incentives. The objective was to increase gold production, further expand cleaner technology, promote legalisation, and enable supply chain approaches, in order to increase local employment and local sustainable development in mining regions (UPME 2004).

<sup>64</sup> CAMs were established in Sotomayor (Nariño), Ginebra (Valle del Cauca), Fondas (Cauca); Santa Rosa del Sur and San Martín de Loba (Bolívar) and Puerto Limón (Putumayo).

Coodmilla, the Mining Cooperative of La Llanada, was one of these environmental mining centres and a 'mining district'. With its origins in a land invasion by local ASM miners and former workers in a mine abandoned by an American Company in the late 1950s, Coodmilla managed to obtain a mining lease in 1974 as a result of government policies that promoted ASM organisations and provided technical support. It has benefitted from a number of successive formalisation programmes supporting environmental and technical improvements, and also from supply chain programmes. For example, Coodmilla is involved in the development and implementation of the Fairmined standard and currently receives support from Chopard Luxury Jewellery Company to obtain Fairmined certification.

Cooperatives like Coodmilla, among others, are testimony to what ASM can achieve with appropriate and locally delivered support, especially with the active involvement of the regional mining and environmental authorities, and the creation of effective market incentives. The *Defensoría del Pueblo*<sup>65</sup> has evaluated the involvement and leadership of regional environmental authorities in formalisation initiatives as a success factor, recommending it for future formalisation and support programmes (Defensoría del Pueblo 2010: 117).

### 5.6.2 Mining Districts: enabling mining clusters and attracting FDI

Coordinated state support, delivered comprehensively to some Mining Districts, enabled the creation of mining clusters and enhanced local economic linkages. This in turn – according to some stakeholders – enabled progress in ASM formalisation.

The Mining Districts programme (MINMINAS 2008) was the main policy instrument used by the Uribe government between 2001 and 2010 to seek greater competitiveness and productivity in the mining sector. Mining Districts were conceived as a strategy for the comprehensive development of mineral deposits, inspired by the experience of mining clusters in Canada and Chile. This model was implemented at a regional level, aiming to optimise social impact by facilitating mineral production and infrastructure development to boost productivity and competitiveness and attract FDI. It sought to align minerals producers of various sizes, businesses, NGOs, workers, research institutions, and local, regional and national authorities around the participatory planning and management of mineral supply chains, using comprehensive land planning and strategic environmental evaluations, with a long-term vision for sustainable mineral-rich regions (Buitelaar 2001).

<sup>65</sup> The *Defensoría del Pueblo* is a constitutional and autonomous entity whose mandate is to ensure the promotion, practice and dissemination of human rights and international humanitarian law.

Figure 6. Colombia's mining districts



Twenty-six mining districts were created for coking coal for domestic consumption and metallurgical coal for export as well as for nickel, building materials, industrial minerals and limestone for cement. Eight gold-producing districts and two emerald-producing districts were also included (UPME 2004:4).

The efficacy of Mining Districts in formalising ASM has had mixed reviews by miners and practitioners. For Conalminercol, the Mining Districts policy was mainly for the benefit of LSM, focusing mostly on coal and industrial minerals, with limited impact on ASGM (interview with Ramiro Restrepo, 7 April 2014). On the other hand, the model enabled the delivery of more comprehensive support for ASM formalisation in some regions, according to Isaura Trujillo of the Mining and Agriculture Secretariat of Huila Department, where a number of ASGM cooperatives now operate in an organised manner using clean technologies<sup>66</sup>. In fact, the Iqira ASM cooperative in Huila has reached an advanced level of formalisation and recently obtained Fairmined certification<sup>67</sup>, thanks to continuous and comprehensive support from successive government programmes (interview, 7 April 2014).

<sup>66</sup> Although Huila was not among the mining districts, proactive local officials report that they inspired them to independently take an integrated approach to supporting ASM, in line with the mining districts model (Isaura Trujillo, interviewed 7 April 2014).

<sup>67</sup> See <http://tinyurl.com/arm-colombia-2014>.



Iquiria cooperative Fairmined certified gold © ARM

## 5.7 Long-term partnerships for technical support

Formalisation is now understood as a process, rather than as a one-off opportunity to legalise (Ministry of Mines 2013a). Long-term partnerships between mining authorities and independent NGOs, technical cooperation programmes and academics have seen some positive outcomes in delivering tailored support tied to an ongoing process of formalisation.

When experienced trainers delivered technical training, with a hands-on and problem-solving approach in a format suitable to local geological, social and cultural conditions, it has been highly valued by miners, and positive change ensued. Technical change for mercury elimination, for instance, poses significant challenges. But as William Batista, consultant to the Ministry of the Environment for the National Mercury programme points out: 'ASGM miners are interested and open to reducing mercury, so long as pilot projects demonstrate that gold processing without mercury delivers economic benefits'. (interview, 22 March 2014). Therefore, the main success factor in technological change in ASGM is evidence for miners that new methods guarantee better gold recovery than traditional ones.

Examples of partnerships that were praised by the miners consulted for this report are:

- Where the environmental authority maintains ASM support functions there are better results in business development and formalisation than in places where the environmental authority switched to inspection functions only, or where the CAM's were abandoned (interview with Natalia Gonzalez, 17 March 2014).
- Recently established 'pilot formalisation laboratories' in some mining regions provide local technical and legal support by the Government of Antioquia through the National University of Colombia's School of Mines. These are evolving well because of the quality of the support provided (interview with Ramiro Restrepo, 4 March 2014).
- The Government of Antioquia's ongoing support programmes in Segovia through operation contracts and formalisation sub-contracts (aimed at mercury reduction and implemented by BioREDD in partnership with LSM and SENA, the state occupational training agency) are also reporting significant reductions in mercury consumption and emissions (interview with Oseas García, 17 March 2014).
- The involvement of miners' organisations in occupational health and safety training in Nariño and elsewhere has contributed to steady improvement, starting with the use of personal protection equipment by all workers (interview with Harbi Guerrero, 25 March 2014).
- Innovative partnerships are emerging on the back of ethical sourcing initiatives that enable a host of downstream supply chain players (such as refiners and jewellers) to provide direct support to specific ASM organisations.<sup>68</sup> For example, the jewellery company Chopard provides support to a number of ASM organisations, with the aim of helping them achieve complete formalisation and eventual ethical certification (interview with Natalia Gonzalez, 17 March 2014).

<sup>68</sup> See [www.chopard.com/fairmined-gold?\\_\\_store=en\\_gb](http://www.chopard.com/fairmined-gold?__store=en_gb).



# 6

## Conclusions and recommendations



Precolomban goldwork © A Santamaría

Colombia faces numerous challenges in its efforts to formalise the artisanal and small-scale mining sector; and not all government policy has been constructive. The 'mining engine' as a paradigm for sustainable minerals development is unfortunate, for instance, suggesting an engine with unstoppable speed and purpose. The government has given priority to the mining engine as a way of obtaining mineral rent for central government, instead of a more integrated vision of the role of mining in sustainable local and regional

development strategies. As a result, it has failed to convince Colombian society in general, and local stakeholders in particular, of the benefits of mining.

Likewise, many in civil society consider the principle that mining is for the 'common good and public interest' unhelpful. This principle has given central government the power to make decisions regarding where and under what conditions mining may occur. It has also given international large-scale mining priority over other land uses, which many feel are incompatible with human rights and sustainable development.

However, the National Formalisation Policy (MINMINAS 2013a) seems to represent a promising new paradigm. Its implementation plan sets out strategic objectives that aim to address many of the barriers to formalisation identified in this paper, including enabling artisanal and small-scale miners to work under legal titles; adjusting regulatory mechanisms and guidelines for formalisation; providing occupational training and education for miners; enabling social inclusion and development in mining communities; ensuring relevant, timely and culturally adapted information for miners to formalise; delivering on technical, organisational and entrepreneurial strengthening of ASM; and securing resources and effective incentives.

The National Formalisation Policy also recognises that formalisation is a process, not a one-off action or law as international experts have insisted (Barreto 2011), and that it may deliver positive outcomes only if effective coordination between institutions is guaranteed. There are some very positive developments in that respect: the creation of a Formalisation Office at the highest level of the Ministry of Mines, and a committee to coordinate the institutions carrying out the formalisation plan.

Despite Colombia's continued armed conflict situation, there are many valuable lessons from past experience in Colombia about what can aid formalisation. Important instruments in Colombia are contracts, which enable collaborative formalisation programmes between LSM, ASM and regional mining authorities, allowing artisanal and small-scale miners to legally work on LSM concessions. Useful lessons emerged with operation contracts over the past 15 years, while there is growing engagement by the LSM sector in enabling formalisation in their areas of influence. New formalisation sub-contracts, tied with mercury reduction targets, may yet offer improved transparency to foster fair and effective collaboration within the sector. As the inclusion of informal ASM into formalisation increasingly relies on the establishment of fair and transparent contracts, information on the content and evolution of these contracts between ASM-LSM in Colombia offer useful lessons for other countries facing similar situations.

Lessons and outcomes are also emerging through regional 'multi-stakeholder' mining dialogues. These are enabling the development of inclusive mechanisms to reach agreements about formalisation and mining in ethnic territories in a manner that is responsive to diversity and incorporates local input. Devolution of decisions and state

management of mining to the regions is another area of current importance, not only in Colombia, but also in Latin America and beyond. Regional dialogue mechanisms may aid in linking local realities and priorities, with national ones. In addition, the strength and vision of the Afro-Colombian movement regarding the role of mining in their collective territory, offers useful experience for ethnic groups in other countries.

Increased organisation of ASM and MSM is also an important development because federations and associations offer legitimate channels for policy engagement by government. Associations also enable economies of scale to bring down the cost of supplies and help miners to access state services for formalisation. Enabling greater exchange and communications among regional Latin American miners' federations and associations would contribute to greater policy alignment, for example among Andean region countries in ASM formalisation policy and addressing illegal mining by criminal groups (Bolivia, Colombia, Chile, Ecuador and Peru).

A number of important drivers for formalisation are aligned. Most ASM and MSM miners are willing to formalise in order to be able to work in a secure and stable manner, especially in the wake of the government's prohibition of 'illegal' mining, which penalised informal miners without legal titles as well as criminal miners. LSM companies in Colombia are increasingly seeking viable solutions for ASM. Ethical jewellers and other supply chain players are investing in supporting ASM organisations to produce responsible certified ethical gold, while international markets seek to source traceable, conflict-free gold from Colombia. And global instruments and initiatives such as the Mercury Convention, the elimination of child labour, ILO's decent work agenda and potentially, OECD's Conflict-Free Minerals guidelines, could drive real change in the sector, since the Colombian government is committed to delivering on their targets at a national level.

This is also a key policy moment for Colombia as the current peace talks with the Revolutionary Armed Forces of Colombia (FARC), if successful, represent a first step in a new rationale of peace-building and reconstruction. Mining is already an emerging theme in these talks. In a post-war context it is very likely that some ex-combatants will reintegrate into society through ASM,<sup>69</sup> as recently suggested by the Minister of the Environment and Sustainable Development.<sup>70</sup> Therefore, bringing greater equality and distributive justice to the mining sector, improving its overall inclusiveness and its performance, are crucial drivers for government.

<sup>69</sup> ASM organisations in the Department of Nariño, in South Colombia, are already reporting that they have received ex-combatants (interview with Harbi Guerrero, 25 March 2014).

<sup>70</sup> See <http://tinyurl.com/post-conflict-mining>.

## 6.1 Recommendations

Overall, despite the many challenges, there is an important opportunity for the state to build on this critical mass. The main priorities for government to take it forward are summarised below.

### 1. Prioritise and fund the National Formalisation Policy

**Government must show strong leadership – and secure the funding – to make the proposed National Formalisation Policy a reality.**

The divisive 'mining engine' policy must give way to a programme that includes the rights of vulnerable mining groups and incorporates the perspectives and priorities of regions in decision-making. The National Formalisation Policy has this potential, but it is far from certain that government will approve the required financial resources among many other conflicting demands.

### 2. Develop an inclusive post-conflict vision for the whole mining sector

**In the coming post-war era of peace-building and reconstruction, government must articulate an inclusive long-term vision of the role of mining and minerals in the transformation of Colombia and its mining regions.**

Such a vision needs to:

- be collectively developed
- be aligned with global sustainability challenges
- be inclusive of ASM and ethnic groups
- actively seek to address inequalities in Colombian society
- deliver improved quality of life in mining communities
- be based on the rights of communities to work and to a healthy environment
- call on international mining companies to be partners in peace-building in Colombia through robust corporate social responsibility.

### 3. Secure rights for miners

**Stakeholders have identified priorities for securing rights to mining and human rights for artisanal and small-scale miners.**

**Rights to mining:**

- Speed up the legalisation of ASM mining rights. Waiting times for government responses to legal procedures must be drastically reduced and simplified. Many livelihoods depend on these mines, and miners are not able to stop working while they wait for permits to arrive.
- Mentor and support artisanal and small-scale miners, indigenous peoples and Afro-Colombians to ensure they are able to comply with legal and technical requirements.
- Guarantee the recovery of mining areas for ASM, by setting clear rules for cession or devolution of areas and mining rights by current title-holders, providing legal tools to enable ASM-LSM collaboration, and implementing strict inspections of current mining concessions.
- Create a formalisation title bank for ASM with devolved, ceded or cancelled concessions.
- Define how the Strategic Reserves shall be inclusive of existing ASM in those areas
- Regulate cession and devolution of areas for Private Property Register (RPP) titles. Currently only mining and exploration leases are legally able to devolve areas to the state.
- Create additional Special ASM Reserves in areas of traditional ASM, and deliver on legal and technical support in line with their original intention (Law 685).
- Regulate governance arrangements for mining activity inside the collective lands of Afro-Colombian communities (Chapter 5 of Law 70/1993).

**Human rights:**

- ASM and MSM organisations call for the rights of ethnic groups to be recognised over their traditional territories, and for the effective compliance by government with free, prior and informed consultation and consent to mining operations there, in accordance with International Labour Organization Convention No. 169 on indigenous and tribal peoples, and with the Constitution of Colombia.
- Support the strengthening of governance by ethnic organisations in their own territories to help them better manage the challenges of mining, in line with their rights to self-determination.

- In the context of continued human rights violations in some mining regions, state authorities must secure the protection of artisanal and small-scale miners and local communities, and their human rights.

### 4. Define a progressive and step-wise approach to formalisation

**The progressive approach to formalisation is a very positive conceptual change in policy. This step-wise approach must now be reflected in detailed guidance and regulation for legal, technical, labour, and environmental licensing procedures, for inspections, and for worker formalisation requirements.**

- Make legal changes in line with the progressive nature of the formalisation plan.
- Enable greater inclusion and engagement with ASM and MSM at regional level in defining how the progressive formalisation policy will be implemented, in order to help them to understand and define a step-wise, flexible approach to formalisation, with continued mentoring.
- Tie legalisation of mining titles to specific commitments by miners to progressively formalise legal/organisational, technical, labour, environmental and commercial aspects of their operations. The application of simplified mining environmental guides is a step in the right direction.
- Properly train inspectors to understand the progressive nature of formalisation, and enable the continuous improvement of standards in the ASM sector by following up non-compliance with training and support programmes.
- Incorporate into the current process prior experience and lessons on the drivers and barriers for miners to formalise different aspects of their operations.

### 5. Take a differentiated approach

**Past experience shows that recognising different ethnic groups and types of ASM operations has better outcomes.**

Not all informal miners see mining as a high-intensity activity; some see it as one of several components of their long-term diversified livelihoods (for instance some Afro-Colombian communities). Others seek to grow as enterprises and therefore require a different approach in terms of type of title, skills training and access to technology and credit. A number of legal and regulatory adjustments are needed to respond better to this diversity.

- Incorporate the different scales of mining into the Mining Code to recognise and properly characterise diversity.
- Apply differentiated inspection according to the size and capacity of the mining operation, and train inspectors to understand the progressive nature of formalisation.
- Exempt ethnic groups from the mining *canon* (surface tax).
- Train the relevant mining authorities in social, intercultural, and gender-sensitive approaches, or establish alliances with institutions that have the required social expertise, to enable appropriate attention to women, ethnic groups and elderly people working in the ASM sector, and to strengthen ongoing efforts to eliminate child labour and violence in the sector. This is best done in partnership with specialised NGOs, universities or relevant state institutions (such as SENA, the national occupational training service).
- Create a pension fund for panners, who practise subsistence mining, to be charged to the royalty fund, in order to protect the most vulnerable people in the ASM sector (including many women and elderly people).

## 6. Promote ASM and MSM business development

**The growth of ASM and MSM as responsible enterprises has great potential to reduce poverty, generate decent work and improve quality of life in mining communities. Formalised ASM miners achieve greater business development, organisational strengthening and formalisation when they can operate and manage their own processing plants, progressively take control over their supply chains, and are free to sell their metals.**

- Strengthen the administrative structure and procedures of ASM producer organisations and medium-scale mining enterprises to help formalise their administrative and trading functions.
- The legal framework should not limit the scale of ASM activity, but nurture the development of ASM and MSM mining enterprises through greater supply chain control; for example, by helping to establish clean processing plants administered by associations or ASM/MSM enterprises.
- Enable pilot projects with international gold consumers (such as refineries and jewellers) seeking to source conflict-free gold from Colombia, that support legal ASM to produce and trade responsibly produced metals along traceable conflict-free supply chains and corridors.
- Legally enable ASM and MSM to directly trade and export traceable gold, and provide timely information and guidance on how to export.

- Improve the working conditions and capacity within ASM to progressively achieve decent work standards in the sector. The formalisation of workers remains a significant challenge and requires a differentiated approach in response to diversity, as well as legal and institutional adjustments for ASM to access an economically viable social security system.

## 7. Strengthen miners' associations

**Strong ASM and MSM associations and producer organisations to strengthen alliances in the formalisation process.**

As the representative bodies for ASM and MSM, associations and federations play a key role in promoting formalisation in the sector, and they are important early warning mechanisms of problems or barriers in different regions

- Engage with formalised ASM enterprises and organisations in regional dialogues and formalisation projects; they may play a leadership role in the sector as they have experience and advice to share, and provide local content for formalisation.
- Engage actively with miners associations and federations through regional and international mining dialogues and formalisation programmes, and support the strengthening of their governance and administration.

## 8. Support transparent and fair relations between ASM and mining companies

**Large-scale mining companies increasingly recognise their responsibility towards helping ASM to formalise. Instruments such as formalisation sub-contracts can be invaluable tools in this process.**

- Define efficient, clear and legally secure routes to enable initiatives between ASM and LSM.
- Better regulate formalisation sub-contracts so that more title-holders agree to contribute to formalisation under their areas.
- Consider defining good practice guidelines for such contracts and public access to their contents – or research and develop model contracts that can be adapted to different situations – in order to bring greater transparency and sustainability to LSM-ASM relationships, and build trust.
- Enable ASM to trade their minerals independently of LSM in formalisation sub-contracts, in order that ASM may access ethical market initiatives, which are based on long-term direct relationships between ASM and other supply chain players such as refiners, manufacturers and jewellers.

- Secure independent and good quality technical and legal support so that ASM is able to evolve responsibly and comply with the law, while LSM is able to deliver on corporate social responsibility targets.

## 9. Deliver legal, financial and technical support

**It is clear that without support and mentoring, ASM is not able to comply with the current formalisation requirements. And ASM should have the same opportunities as other economic sectors to access credit from banks.**

- Facilitate partnerships between regional government, civil society organisations, technical cooperation bodies, private sector companies and ASM to ensure continuous high-quality technical and legal support for formalisation.
- Promote banking systems and products that cater for ASM miners, with offices in the mining regions, and tied to formalisation commitments. This could entail a high-level dialogue between the Ministry of Mines and the Banking Association of Colombia.
- Review procedures for legal access to explosives for ASM, and design secure, yet traceable and timely supply for ASM through local intermediaries. These may be enabled through formalisation commitments and worker/producer organisation.
- Consider expanding the Technological Development Centres (CDT) initiative with the involvement of the private mining sector, regional universities, regional governments, SENA and the Science and Technology Commission of Colombia, in order to offer permanent technical training programmes to ASM miners in mining regions, and train skilled labour for the mining sector.
- Make better use of existing ethical certification initiatives as incentives for formalisation programmes. In some regions certification schemes for artisanal and small-scale mining organisations are giving access to international markets, earning premium payments and developing traceable gold supply chains. These set good examples for other ASM about the benefits of certification, as an option for formalised miners.
- Enable exchange of knowledge and experience between artisanal and small-scale miners from different regions and countries. Horizontal learning is an effective transformation tool. This can also help promote the peace-building efforts of communities in conflict-affected areas.

## 6.2 Further research

The following areas of research are key to keeping up the momentum of Colombia's formalisation policy:

### Understand step-wise and progressive approaches to formalisation

- The government's recognition of progressive approaches to formalisation is very important. Research is needed into progressive formalisation, in order that regulations provide clear guidance for compliance and inspections.
- Greater understanding is needed of the drivers and barriers for miners in formalising different aspects of their operations, in order to define the detail of how the rates and requirements of a step-wise approach are to be implemented, monitored and adjusted in different situations.

### Improve governance and transparency in relations between ASM and LSM

- Contracts between ASM and LSM require increased levels of transparency. Research is needed to create basic best practice guidelines for these contracts, or even to develop model contracts that are responsive to different types of situation.

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## Interviews

Interviewee	Organisation	Date interviewed
Alfonso, Miguel	Coordinator, Formalisation Management Group, National Mining Agency (ANM), Ministry of Mines	1 April 2014
Ararat, Lisifrey	Afro-Colombian Community Council Leader, La Toma, Cauca Department	1 April 2014
Ayala, Helcías	Programme Officer, Environmental Research Institute of the Pacific (IIAP)	4 April 2014
Batista, William	Practitioner and consultant to the Ministry of Environment and Sustainable Development on Mercury Implementation	22 March 2014
Bonilla, Marcela	Mining and Energy Planning Unit of the Ministry of Mines	2 April 2014
Cadavid, Claudia	Secretary of Mines, Department of Antioquia	26 March 2014
Castro, Juan Guillermo	Vice-President Mining Promotion, National Mining Agency	1 April 2014
Chamat, Vladimir	Policy Group official, Formalisation Office, National Mining Agency (ANM), Ministry of Mines	1 April 2014
Escobar, Hernando	Mining Lawyer, secretary to Law 685/2001 Mining Code	2 April 2014
Eslava, Adolfo	Researcher on mining and informality, EAFIT University, Medellín	2 April 2014
García, Oseas	Programme Officer, BioREDD Programme	17 March 2014
Gonzalez, Natalia	ARM Consultant	17 March 2014
Guerrero, Harbi	Coodmilla Cooperative, Nariño Department	25 March 2014
Henao, Hernando	President of Association of Small-Scale Miners of Northeastern Antioquia (ASOMINA)	2011 (interviewed by Natalia Gonzalez)
Jaramillo, Jaime	Director Social Responsibility, Mineros SA	3 April 2014

Interviewee	Organisation	Date interviewed
Jaramillo, Jorge	Independent practitioner and Ex-Director Productivity and Competitiveness Officer, Department of Antioquia	2 April 2014
Jimenez Claudia	Executive Director, Association of Large-Scale Mining Sector in Colombia (SMGE)	2 April 2014
Molano, Miguel	Director, BioREDD Programme	1 April 2014
Monsalve, Edinson	Manager, ASM company Tierradentro SAS, Antioquia Department	7 April 2014
Mosquera, Aristarco	Afro-Colombian Community Council Leader, ASOCASAN, Chocó Department	28 March 2014
Neira, Xiomara	Director Mining Titling, Mining Secretariat, Department of Antioquia	17 March 2014
Noguera, Jose Ignacio	Vice-President External Affairs and Sustainability, Gran Colombia Gold	3 April 2014
Pardo, Luis Alvaro	Researcher, Ex-Mining Director, National Mining Planning Unit (UPME)	31 March 2014
Perea, Jorge	Afro-Colombian Community Council leader Cocomacoiro, Chocó Department	28 March 2014
Restrepo, Ramiro	President, National Confederation of Colombian Miners (Conalminercol)	7 April 2014
Trujillo, Isauro	Agriculture and Mining Secretariat, Huila Department	7 April 2014

# Appendices

## Appendix 1. Policy and legal instruments relating to ASM and MSM

ISSUE DATE	Legal instrument	Description	Outcomes and status
23 December 1988	First Mining Code - Decree 2655 of 1988	Included definition of sizes/scales of mining for underground and open-cast mines, for 4 mineral groups: precious metals and stones, coal, building materials and others, according to volumes of extracted ore and sterile materials over one year, installed capacity, number of jobs and degree of mechanisation. *Main aspects: 1) determined that all surface and underground (minerals) natural resources belonged to the state 2) regulated mining life cycle phases tied to time frames and contract duration 3) established different types of mining titles 4) defined illegal mining as that done without legal title, and established sanctions and closure of illegal operations 5) established a 6-month period for legalisation, promising illegal miners priority over third parties requesting the same areas 6) defined 'subsistence' mining 7) defined the state as mining entrepreneur through contribution system (Aportes) 8) created special indigenous mining areas.	Overruled in Article 361 of Law 685, 2001 (current mining code)
27 August 1993	Law 70, Chapter V (on mining). Which develops the Transitory Article 55 of the National Constitution. Known as the Law of Afro-Colombian peoples.	Law 70 recognises territorial and collective rights to Afro-Colombians settled on state lands on the Pacific coast and elsewhere in Colombia. It also establishes protection of cultural identity rights, promotion of their economic and social development, and equal opportunities for Afro-descendant peoples. Chapter V of Law 70 focuses on mining in collective territories, establishing special Mining Zones for communities, priority rights, special joint afro-indigenous mining zones, environmental protection, and promises the regulation of this law for its effective implementation.	Chapter V on mining in Afro-Colombian territories is still pending regulation.

28 June 1994	Regulating royalties and compensations - 'de facto' mining legalisation law - Law 141 of 1994	*Created the National Royalties Fund and National Royalties Commission, and regulated the state's right to receive royalties from the exploitation of natural resources. *Created concept of 'de facto mining' (minería de hecho) in reference to mining without a legal title or permit and provided a 6-month term to formalise.	
29 November 1994	Decree 2636/1994 regulating Article 58 of Law 141/1994	*De facto miners may legalise if they can demonstrate they have been mining continuously up to November 1993. *Miners have 6 months to legalise, while the state is obliged to finalise legalisation procedures within one year and cover the cost of legalisation. *ASM exploration leases are defined as smaller than 10 hectares and are exempt from paying surface tax (canon), but they must submit a simplified final exploration report. *Small-scale hard-rock mining leases may be up to 100 hectares. *ASM working with mini dredges with up to 8" hoses and 16HP engines do not require mining lease but must register at the municipality. *Miners have right to request all technical and legal support required for legalisation from authorities. *A joint field visit from mining and environmental authorities to determine feasibility of the operation and indicate technical and environmental adjustments required for legalisation. *Establishes procedures when de facto mining overlaps with existing legal mining title or exploration lease, giving preference to operators with the highest technical and environmental performance. *Refuses legalisation of: mines considered unsafe for miners, or without environmental permits, or situated in no-go areas therein defined, or overlapping areas reserved by the state for exploration.	Some 19,500 requests from this process still pending. Ineffective because miners could continue mining and trading requests processed, exempt from penal actions. Comptroller General reported that of 3863 requests, only 183 were granted mining leases, an effectiveness of 4.74% (Pardo 2013:157).
24 March 1995	Environmental Licence and Mining Register - Decree 501 of 1995	*Determined that concessions and exploitation titles required environmental licences. *Required registration in mining register within 10 days of issue of environmental licence and/or environmental management plan.	
1997	National Mining Development Plan	*Changed definitions of mining scales of 1988 Mining Code: G1 - informal/ subsistence mining; G2 - predatory mining; G3 - organised mining.	Not in force

15 August 2001	2001 Mining Code - Law 685	*Norms made more flexible to facilitate private investment. *Established 'first in time, first in right' law for awarding mining titles. *Publicly owned state companies disappear. *Sizes/scales of mining eliminated. *Standardisation of norms for all scales of mining. *External third-party auditing and control of mining activity established. *Legalisation process included. *Enabled the creation of Special Reserves: government responsible for exploration and developing strategic programmes with traditional mining communities if feasible. *Recognised panning but limited to 'locals' in Afro-Colombian communities. *Enabled joint ventures with investors and association and operation contracts with third parties for exploration and mining in their leases. *Mayors of municipalities made responsible for closing down informal mines once legalisation term expires.	19,500 requests from this process still pending. Ineffective because miners could continue mining and trading while requests processed, while exempt from legal action. Controller General reports that of a total of 3863 requests, only 183 were granted mining leases: an effectiveness of 4.74% (Pardo 2013:157).
2002	Regulatory decree of Article 165 of the Mining Code regarding legalisation of informal mining - Decree 2390	*Regulated de facto mining, giving informal miners 3 years to request mining concessions while cost of legalisation would be borne by the state, and exempted miners from illegal action, allowing them to continue operating and selling mineral while their requests were under study. *Involved environmental authorities for the first time in legalisation programmes: while mining authority to undertake the work plan to define project feasibility, environmental authorities to produce environmental management plans and approve them. Included mining-environmental guidelines, aimed at improving mining and environmental performance. Authorities had 6-month term to undertake this work.*Granted community-based associations or cooperatives priority over the concession of mining leases, as well as technical, legal, and financial assistance, organisational training, and credit programmes for equipment. *Offered free training, research and technological transfer for cleaner production.	According to Pardo (2013:157) this legalisation programme failed because of miners' lack of commitment and interest to follow through, and the mining authorities' inadequacy in responding to formalisation requests.

23 July 2002	Modification of Royalties Law 141 of 1994 - Law 756	*Provided a definition of small-scale mining for precious metals and stones: up to 250,000m3 for alluvial, and up to 8000MT ore for underground mining. *Enabled royalty transfers to promote ASM through integrating ASM titles to enable 'sustainable mining'.	This definition is not applied in practice (Pardo 2013:158)
December 2002	National Mining Development Plan 2002 -2006	Followed the 2001 Mining Code. *Strategic lines seek to articulate disperse laws: exploration of Colombian territory, consolidation of national mining information system, increase mining authorities' efficiency, legalisation programme for de facto mining, expand transport and port infrastructure, emphasise supply chains and environmental sustainability.	Not in force
August 2007	Interagency Agreement 0027 for coordination in the eradication of illegal mining	*Established that all equipment should be confiscated and legal actions applied to illegal miners *Introduced definition of illegal mining into Mining Glossary: 'Mining developed without registration in the National Mining Register, that is, without mining title. Mining that is developed in an artisanal and informal manner, outside of the Law..!(No. 9).	This definition confused illegal mining with artisanal mining (subsistence mining requiring no permits) and informal mining (as yet undefined in the mining code).
2008	Mining Districts policy	Policy instrument to promote mining regions with a view to supply chain initiatives and coordinated institutional services based on mining clusters, to enable competitive and productive mineral-rich regions	Significant efforts invested, but cancelled by the Santos government in 2010; now reintroduced in current formalisation plan

2010	Reform to the 2001 Mining Code - Legalisation of Traditional Miners programme - Law 1382	*Recognised the presence of ASM in areas requested for exploration licence; required that title leaseholder inform mining authority, otherwise request denied. *Created operation contracts to enable agreements between ASM and LSM. *Legalisation of traditional mining programme. *No legal actions to be applied for illegal extraction of minerals; no equipment confiscated or mines closed; trade can continue while request processed. *Allowed dredges up to 60 HP and gave miners up to 2 years to legalise.	Not in force. Declared unconstitutional by the Constitutional Court (clause C-366 of 2011) due to non-compliance with free, prior and informed consent (FPIC) from ethnic groups. Government given 2 years to undertake FPIC before law eliminated, and Law 658 of 2001 again in force.
9 February 2010	Regulatory decree of Law 1382 - Decree 2715	*Legalisation of traditional mining. *Proof required of continuous mining activity over previous 5 years through technical and commercial documentation (receipts for sales of minerals and payment of royalties) plus proof that mine existed for a minimum 10 years before law. *Joint visit from authorities to audit health and safety standards and occupational health, worker social security, environmental conditions; 3 months to take corrective measures or request rejected. *If approved, technical mining plan and environmental management plan to be submitted within one year, with subsequent short terms for adjustments. *Once approved it must be registered in the National Mining Register. *Environmental restoration and decommissioning required in any case.	The requirements led to miners' marches and protests in several mining regions. 3091 legalisation requests submitted; none approved. According to Pardo (2013) no resources were secured for formalisation and the local institutional support network was weak and inoperative in many areas.

16 June 2011	National Development Plan 2010-2014 'Prosperity for All' - 1450 Law of 2011	*Defines the mining sector as an engine ('mining locomotive') of Colombia's economy. *Includes the formalisation of ASM as a strategic line, highlighting importance of characterising and defining it again. *Differentiates between illegal and informal mining, as a mechanism to protect informal mining, again recognising that traditional small-scale and medium-scale mining require specific approaches to enable a decent living standard. *Other strategic lines include control of illicit mining. *Forbids use of dredges, mini-dredges, front loaders and any mechanical equipment in informal mines. *Measures to control mineral trading through the creation of the Unique Register of Mineral Traders (RUCOM). *Other items include: titling, access to credit, redefinition and characterisation of ASM, mercury management, and return to supply chains and Mining District policies. *Forbids mining activity in cloud forest ecosystems, forestry reserves, coral reefs, mangroves and wetlands protected by the Ramsar Convention. *Establishes strategic mining reserves as new types of concessions	In force
February 2012	Strategic mining reserves - Resolution No. 18 0241	Delimits strategic mining reserves with combined total of 2.9 million hectares in 15 departments. They include 10 minerals of strategic national importance: gold, platinum, copper, iron, coltan, potash, phosphates, magnesium, uranium and thermal and metallurgical coal. These reserves are delimited in areas still belonging to the state: no further concessions to be granted, and concessions in force not to be renewed. Granted only as special concession contracts through auctions by the state under strict financial and technical requirements.	
October 2012	Decision 774 of the Andean Community of Nations	Approves an international collaborative approach through the Andean Fight Against Illegal Mining Policy.	In force
October 2012	Decree 2235 regulating Decision 774	Orders the destruction of heavy machinery and other equipment in operations without legal title or environmental permits, as well as the confiscation of produce.	In force

February 2013	Resolution No. 0129 of the National Mining Agency, regulating Law 1382/2010 and Decree No. 1970/2012	Defines terms of reference for mining plans in legalisation of traditional mining requests	In force
1 April 2013	Decree 0705, which adds and modifies provisions of Decree 2637/2012, which in turn regulates Law 1450/2011	While Decree 2637 regulates the RUCOM (Register of traders), 0705 further requires traders to obtain certification from municipalities or the National Mining Agency if minerals are sourced from panners (subsistence miners), mines in process of legalisation or special reserve areas.	Critics point out that this decree, in accepting the extraction and trading of minerals from sources without legal title, is evidence that the state continues to accept informality.
9 May 2013	Modifies provisions on formalisation of traditional mining as well as some Mining Glossary definitions - Decree 933 of 2013	*Modifies the definition of traditional mining, aiming to differentiate it from illegal mining tied to criminal groups. *Determines the requirements, times and processes for the formalisation of traditional mining. *Limits the size of ASM concessions to 150 hectares for individuals and 500 hectares for groups or associations of traditional miners, and only one concession each. *Sets out commercial and technical requirements for accreditation of traditional activity. *Sets out requirements for technical and environmental management plans. *Defines routes for the formalisation of traditional miners operating on third-party mining titles, either through cession of areas or operation/association contracts between ASM and title owner. *Defines benefits for title-holders who cede areas to traditional ASM. *Proposes the incorporation of ceded areas into special reserves for formalisation.	In force. Enacted to prevent legal vacuum for almost 4000 requests for formalisation from Law 1382 of 2010, later overruled by the Constitutional Court.

15 July 2013	Mercury Law - Law 1658 of 2013	Regulates use, importation, production, trading, management, transport, storage, final disposal and release into the environment of mercury from industrial activities. *Determines that mercury must be eliminated from all industrial processes in 10 years and from ASGM activities in 5 years. *Includes incentives for formalisation through a) formalisation sub-contracts where ASM miners operate in third-party leases, b) devolution of areas for formalisation c) other benefits for ASM who formalise.	In force. Implements National Mercury Reduction Plan tied to the Minamata Convention
31 July 2013	Ministry of Mines and Energy Resolution No. 90603	Creates Permanent Mining Dialogue for the Formalisation of ASM in Chocó Department to coordinate policies, plans, programmes and activities relating to formalisation in Chocó, with key government authorities, miners, community councils, academics, and independent guarantors. Aims for a differentiated and inclusive social approach applicable in Afro-Colombian and indigenous territories.	In force, along with other mining dialogues held by the state with indigenous peoples, Afro-Colombians and artisanal, small-scale and medium-scale miners.
November 2013	National Strategic Plan for the Reduction of Mercury in Colombia's Artisanal and Small-Scale Gold Mining sector	Makes Mercury Law operational	In force
December 2013	National Mining Development Plan 2014-2018	Strategic objectives for mining sector still understand it as an engine for development: *Colombia's mining industry to be promoted; *mining as an engine for social development and economic growth; *formalisation and definition of ASM; *strengthening of sector's state administration. *Indigenous and Afro-Colombian mining zones, Special Reserve areas and ASM are targeted for titling or formalisation via contracts with third-party title-holders.	Preliminary version for discussion

February 2014	Mining Formalisation Policy of 2014	*Defines formalisation as a process and establishes different degrees of formalisation. *Defines the components of formalisation: legal, technical, labour. *Addresses the issues of lack of state coordination and information. *Includes promotion of associations in the sector. *Strategic lines include incentives for formalisation and for legal requirements for formalisation.	In force
5 March 2014	Constitutional Court Ruling C-123/2014	Constitutional Court determined that necessary measures for mining and environmental protection must be agreed with regional and local authorities for all mining activity authorisations.	In force
6 March 2014	Mining Formalisation - Decree 480	*Regulated formalisation sub-contracts tied to mercury reduction goals. *State given more active role in design, approval and monitoring of these contracts. *Passes environmental and labour responsibilities to miners working within third-party leases (usually LSM). *Orders differentiated auditing by authorities for ASM under formalisation sub-contracts based on an approved mining plan and application of simplified mining environmental guidelines. *Allows independent trading of minerals by miners under these contracts.	In force

## Appendix 2. Key stakeholders in Colombia's formalisation programme

ACTOR	ROLE
<b>MINING AUTHORITIES</b> (www.minminas.gov.co)	
<b>Ministry of Mines and Energy (MINMINAS)</b>	<p>State agency responsible for implementation, funding and monitoring of the formalisation programme. It manages the inter-institutional formalisation group.</p> <p>Overall, it formulates, directs and coordinates public policies, plans, and programmes for the mining sector (exploration, exploitation, transport, processing, transformation and distribution of non-renewable resources).</p> <p>Its Social and Environmental Office plays an important role in ensuring that plans and projects are inclusive of ethnic groups, and compatible with environmental goals.</p>
<b>Vice-Ministry of Mines</b>	<p>It has two main programmes:</p> <ol style="list-style-type: none"> <li>Corporate Mining Office which formulates, coordinates and evaluates policies for the industrial and corporate sector</li> <li>Mining Formalisation Office which provides guidelines for the current development of ASM Formalisation policies, including: <ul style="list-style-type: none"> <li>● Legalisation and development of traditional ASM</li> <li>● Strategies to differentiate informal, traditional mining from illegal mining by criminal groups</li> <li>● Formulates and implements current formalisation policy</li> </ul> </li> </ol>
<b>National Mining Agency (ANM)</b>	<ul style="list-style-type: none"> <li>● Manages mineral resources</li> <li>● Administers contractual and titling process</li> <li>● Follow-up and control of mining titles</li> <li>● Control of payment of taxes and royalties</li> <li>● Develops initiatives for the promotion and productivity of the sector</li> </ul>
<b>Mining and Energy Planning Unit (UPME)</b>	Plans the country's mineral and energy development, manages sector information and supports public policy formulation
<b>Environment and Social Office</b>	Enables inter-institutional coordination of mining authorities with environmental authorities and the Ministry of the Interior (in charge of policies and programmes for ethnic groups)

<p><b>Regional Mining Secretariats</b></p>	<p>Minminas has delegated functions to some departments for:</p> <ul style="list-style-type: none"> <li>● Control and legalisation of mining activities</li> <li>● Titling process</li> <li>● Follow up on mining titles</li> <li>● Regional formalisation programs.</li> </ul> <p>Only a few departments in Colombia have this type of delegation. Antioquia is the most autonomous. The ANM is opening regional offices.</p>
<p><b>OTHER STATE INSTITUTIONS AND AUTHORITIES RELATING TO MINING</b></p>	
<p><b>Ministry of the Environment and Sustainable Development (MADS)</b></p> <p><b>National Authority of Environmental Licences (ANLA)</b></p>	<p>The National Agency for Environmental Licences (ANLA) ensures that projects subject to environmental licences comply with the law and contribute to sustainable development.</p> <p>With regards to efforts to formalise mining, the ANLA is responsible for:<sup>76</sup></p> <ul style="list-style-type: none"> <li>● Granting or denying environmental licences and permits</li> <li>● Monitoring environmental licences and permits</li> <li>● Ensuring that participatory mechanisms for mining licences and permits are correctly implemented. Public audiences with local stakeholders, which may be affected by minerals development, are also part of environmental licensing, as is free, prior and informed consultation and consent (FPIC) for granting environmental licences</li> <li>● Currently it is developing simplified environmental mining guides to be applied in formalisation, with an emphasis on mercury</li> <li>● Managing the Environmental Licensing Information System</li> <li>● Charging fees for environmental licences</li> </ul> <p>MADS is in charge of implementing the Minamata Convention in Colombia for the elimination of mercury. In that capacity it carried out a study on the use and impact of mercury in the ASGM sector (UNEP and MADS 2013). It formulated the National Strategic Plan for the Reduction and/or Elimination of the use of Mercury in ASGM in Colombia and is part of the coordinating committee of this plan.</p>
<p><b>Ministry of Education</b></p>	<p>In the context of the formalisation process the Ministry of Education is in charge of follow-up on specific education programs for ASM, and improving mining education overall for improvement of technical capabilities in the mining labour force.</p>

<sup>76</sup> Source: www.anla.gov.co

<p><b>Ministry of Health and Social Protection and Ministry of Labour</b></p>	<ul style="list-style-type: none"> <li>● The Ministry of Social Protection and the Colombian Institute for Family Wellbeing, together with the Ministry of Labour, will implement actions related to social inclusion of elderly people</li> <li>● Health and safety audits and support the implementation of labour standards in mining.</li> <li>● These ministries are expected to enable the gradual approach promised in the formalisation programme, through a differentiated approach that recognises ASM's realities and resources.</li> </ul>
<p><b>UAEOS – Administrative Unit for Solidarity Organisations</b></p>	<p>Promoting the use of associations is one of the main strategic lines of the current formalisation programme. UAEOS will support and train artisanal and small-scale miners in organisational strengthening, forming associations and business development.</p>
<p><b>Ministry of the Interior</b></p>	<p>Has two main roles in formalisation:</p> <ul style="list-style-type: none"> <li>● As the ministry in charge of human rights it formulates and monitors policies for ethnic groups, ensuring the exercise of their rights through an integrated, differentiated and multicultural approach. It certifies the existence of ethnic groups and facilitates the implementation of FPIC.</li> <li>● It serves as a link and coordinates national and regional authorities, leading on decentralisation, territorial autonomy and planning.</li> </ul>
<p><b>Military industry in charge of manufacture of explosives (Indumil) and Department for commercial control of arms, ammunition and explosives (DCCA)</b></p>	<p>The DCCA, Indumil and ANM are responsible for the management, selling and certification of explosives.</p>
<p><b>National Comptroller</b></p>	<p>Highest fiscal body of the State, operating as an independent body, it monitors the fiscal management of both public and private sector players who manage funds or public goods of the nation. It undertakes sector studies to provide policy input.<sup>77</sup></p>
<p><b>National Police Force</b></p>	<p>In charge of forcefully removing informal miners when the local authority (municipality) responds to appeals for legal protection by title owners or in response to Decree 2235 on criminal mining.</p>
<p><b>Ombudsman (Defensoría del Pueblo)</b></p>	<p>Its mission is the promotion, respect and protection of human rights. It published a diagnostic study on the situation of human rights violations in the context of 'de facto' mining (<i>Minería de Hecho</i>).<sup>78</sup></p>

<sup>77</sup> Recently it published two studies on the mining sector, which question the efficacy of state mining institutions and policies from the perspective of ethical and efficient management of mineral resources (National Comptroller 2013a and 2013b).

<sup>78</sup> The study outlines the responsibility of the state in guaranteeing the human rights of ASM, and proposes policies to mitigate environmental impacts, reduce conflicts between LSM and ASM and ensure the rights of ethnic groups living in mining regions (Defensoría del Pueblo 2010).

<b>Attorney General</b>	Monitors compliance with the constitution, laws, judicial decisions and administrative acts; it protects and promotes human rights; it defends public interest and monitors the conduct of public officials. The Attorney General has produced a preventative report on the control of illegal mining in Colombia (Attorney General of Colombia 2011)
<b>Regional Autonomous Corporations (CARS)</b>	In charge of managing the environment and its natural renewable resources at regional level. CARS have been involved in formalisation efforts by allocating resources for piloting clean production programs, mostly focused on mercury reduction. They are involved in the National Strategic Plan for Mercury Reduction and Elimination. CARs have responsibilities, knowledge, and experience with ASGM (see www.minambiente.gov.co).
<b>Pacific Environmental Research Institute (IIAP)</b>	IIAP is a decentralised applied research institute which belongs to the National Environmental System and the MADS. Its governance structure incorporates representatives of ethnic groups. Dedicated to the sustainable development of the biogeographic region of Chocó, it operates in the Pacific coast of Colombia. Through the Chocó Mining Roundtable, established in partnership with the Ministry of Mines, it plays a facilitation role in enabling agreements (e.g. environmental mining agreements) between miners (of all scales) and local Afro-Community councils, which have collective territorial rights over much of this region. It provides policy input to enable formalisation in the area of its jurisdiction.
<b>SENA (Occupational training government institution)</b>	Historically the SENA has been a key technical training provider for ASM, delivering decentralised, hands-on programs by experienced trainers, directly related with occupational needs. It is in charge of delivering technical training to ASM for formalisation.
<b>Regional Authorities - Departments</b>	<b>Departments are the regional administrative subdivisions in Colombia</b> ruled by elected governors with a team of senior secretariats (agriculture, health, education, etc.). The central government has on occasion delegated to some departments functions of control, monitoring, intermediation for mining titles, seeking to bring the mining authority closer to the ground. A special case is Antioquia, which has its own mining cadastre and important delegation of mining functions by central government.
<b>Municipalities</b>	<b>Municipalities are the main local authority.</b> Mayors have special responsibilities in the control of mining without legal title, which mandates them to suspend operations and confiscate minerals traded and transported without traceable origin. <sup>79</sup> Municipalities also register subsistence miners working within their jurisdictions.

<sup>79</sup> Art. 161 and 306 of the Code of Mines, and Art. 338 of the Penal Code.

<b>Indigenous Peoples and Afro-Colombian local (administrative), regional and national representative bodies</b>	<p>The main indigenous representatives at national level are National Indigenous Peoples' Organisation of Colombia - Organización Nacional Indígena de Colombia (ONIC) and Traditional Indigenous Authorities – Senior Government Autoridades Indígenas Tradicionales Gobierno Mayor (AICO). At regional level there are second-level organisations, which represent local indigenous peoples' IIPP organisations. Most IIPP hold anti-mining positions (especially against LSM and criminal mining), as they are mainly agriculturalists and herders. Important exceptions are IIPP in the Departments of Cauca, Inirida, Caldas, Nariño, Guajira and Putumayo, who have their own mining operations.</p> <p>Afro-Colombians have two nationally representative organisations, the Afro-Colombian Community Process (PCN) and the National Afro-Colombian Autonomous Association (ANAFRO), who work closely together. Because of the importance of ancestral mining in their culture, Afro-Colombians focus their strategic work on securing fair rights for own mining and local authorities (community councils) are very involved in formalisation processes and in ensuring local representation in decisions regarding mining in their collective territories.</p>
<b>LARGE-SCALE GOLD MINING COMPANIES AND JUNIORS</b>	
<b>Large-Scale Mining Sector Association (SMGE)</b>	<p>This non-profit organisation brings together the main international mining and exploration companies operating in Colombia today. Its objective is to act as a representative of the large-scale mining sector companies before the state and society in general. They characterise themselves as being committed to Colombia's development, environmental stewardship, community wellbeing and respect for human rights. Companies involved are mostly gold, coal and copper miners: AngloAmerican, Anglogold Ashanti (AGA - South African),<sup>80</sup> AUX (Brazilian), CCX (Brazilian), Cerrejon (BHPB, Xstrata and AngloAmerican owned), BHP Billiton, CNR (Goldman Sachs), Drummond, Eco Oro (Canadian), Mineros SA (Colombian), Gran Colombia Gold (GCG - Canadian, previously Medoro Resources), Prodeco and Paz del Rio (Votorantim). Other gold companies, not involved in the SMGE are: Continental Gold (Canadian), B2Gold, Ashmont Resources Corp. (Canadian), Cosigo Resources (Canadian), and Ventana Gold, among others. Most of them engage with ASM in and around their mining leases.</p>
<b>Colombian Mining Association</b>	<p>Created in mid 2014 through the fusion of SMGE, the Asomineros Chamber of the Industry Association of Colombia, and the Colombian Chamber of Mines. The association includes mining companies, prospectors and developers, goods and services providers for the sector. It does not include ASM, and its role in its formalisation is yet undefined.</p>

<sup>80</sup> AGA did not reply to the author's request for an interview. They have a programme with ASM at their Gramalote asset (Antioquia).



<b>ASM AND MEDIUM-SCALE MINING AND REPRESENTATIVE ORGANISATIONS</b>	
<b>Local artisanal and small-scale mining organisations (1<sup>st</sup> level organisations)</b>	Despite widespread informality, numerous local representative organisations exist, most with the objective of obtaining better trading conditions and other benefits that come with economies of scale, such as purchase of explosives and fuel required for mining. Through the many formalisation processes several cooperatives and small enterprises have emerged to play an important leadership role. Among these are cooperatives and small-scale enterprises in Antioquia, Nariño, Huila, Santander, Caldas, Valle, Cauca, as well as associations created through operation contracts and several Afro-Colombian community councils in the biogeographic region of Chocó.
<b>Regional miner associations (2<sup>nd</sup> level organisations)</b>	At a regional level there are miners' federations which group local enterprises, cooperatives and local associations. Federations are often linked to specific mineral commodities, such as coal or gold. They play a key role in convening artisanal, small and medium-scale miners in policy discussions, and in defending the rights of ASM. In some regions ASM and miners have formed agro-mining organisations whose objective focuses on the integrated defence of traditional economic activities in a specific territory.
<b>Conalminercol National Confederation of Colombian Miners (3rd Level organisation)</b>	Created in 2010 by formal and informal traditional miners, it represents mainly coal, gold and construction materials miners. It is considered the most representative organisation of artisanal, small and medium scale miners due to its recent lobby and protest activities. It has 62 affiliated mining organisations representing some 250,000 miners and workers, from 18 departments of Colombia.
<b>NGOs, technical cooperation and academics</b>	
<b>BioREDD Program USAID</b>	This is a USD6.5 million USAID program working with ASM communities in the Bajo Cauca and Northeastern Antioquia Department regions to promote responsible ASGM. It is one of the main implementation programmes for the National Strategic Plan for Mercury Reduction in ASM through cleaner technologies and linked with the current formalisation programme. It involves three main areas of work: mercury reduction, formalisation and restoration of areas degraded by mining.

<b>Alliance for Responsible Mining</b>	The Alliance for Responsible Mining (ARM) is a non-profit supply chain NGO based in Colombia, and working at a global level to enable responsible ASM through a combination of producer support, policy and advocacy, and market access via its Fairmined standard. It implements a number of programmes linked with formalisation of ASM by providing producer support in the Departments of Nariño, Huila, Santander, Bolivar, Chocó, Boyacá, and Antioquia through programs directed at the elimination of child and forced labour (with US headquartered development NGO Pact), support for Fairmined certification (with funds from the Inter-American Development Bank - IDB, Fondo de Acción and Chopard), and enabling business relationships with ethical supply chain and market players. ARM holds the 'gold dialogues' between gold mining companies and ASM, to enable collaboration.
<b>Foro Nacional por Colombia</b>	Among many NGO's now involved in mining issues, Foro plays an important role as it hosts the EITI (Extractive Industries Transparency Initiative), and accompanies the Permanent Mining Dialogue Roundtable of Choco.
<b>Permanent Multi-stakeholder Mining Dialogue Roundtable</b>	The Permanent Mining Dialogue Roundtable is an initiative of 3 NGO's: Avina Foundation, Razon Publica and Gestion Ambiental Estrategica, with the participation of mining companies, environmental and human rights organisations. This is a multi-stakeholder dialogue scenario operating in Bogota, that aims to collectively develop a mining model for Colombia based on human dignity, economic development and environmental stewardship.
<b>Universities</b>	The School of Mines of the National University of Colombia (Medellín) provides technical support and training to miners in the Bajo Cauca region, through its 'formalisation laboratories' in partnership with the BioREDD project and the Antioquia Secretariat of Mines. There is considerable expertise among academics around mining issues: a number of universities in Colombia have research groups addressing ASM, informality in mining and conflict, the rights of ASM and ethnic groups, technical support, and policy issues.
<b>Intergovernmental bodies</b>	These include: UNIDO's work around mercury reduction, UNEP's support to the MADS in developing the National Strategic Plan for Mercury reduction, UNDP's involvement in previous formalisation processes, and IDB support through various projects.

## Appendix 3. National Programme for the Formalisation of ASM: Summary of strategic lines and actions

The current formalisation programme (MINMINAS 2013a) incorporates the outcome of internal and external evaluation of the barriers, achievements and failures of successive formalisation efforts by the mining authority, and prioritises the following strategic lines:

STRATEGIC LINE	MAIN ACTIONS
1 Stronger coordination between institutions to ensure efficient management of formalisation program	<ul style="list-style-type: none"> <li>● Implementation of coordination body to lead on formalisation</li> <li>● Adjust norms and regulations</li> <li>● Implement non-financial incentives</li> <li>● Implement projects on the ground</li> <li>● Reduce red tape and enable optimisation of formalities and procedures for formalisation</li> <li>● Evaluate, monitor, report</li> </ul>
2 Improve miners' knowledge and capacity through training for improved productivity	<ul style="list-style-type: none"> <li>● ASM training and education needs assessment (legal, technical, environmental and business)</li> <li>● Train 30,000 miners on formalisation</li> <li>● Improve and increase formal education programs related with mining</li> </ul>
3 Improved well-being and development in mining communities through differential inclusion and social development	<ul style="list-style-type: none"> <li>● Renewed support for the elimination of child labour in mining</li> <li>● Improve the participation of women in the ASM sector and provide diversification alternatives</li> <li>● Improve and increase the role of the private sector in formalising ASM through corporate social responsibility</li> <li>● Address the high level of sexual exploitation of minors and women in mining areas</li> <li>● Improve the conditions of elderly people working in the ASM sector</li> <li>● Improve quality of life for 15,000 miners and their families in ASM areas through social inclusion programs</li> <li>● Retrench 40% of miners to other activities by 2019</li> <li>● Establish integrated development programmes in mining areas</li> <li>● Support and strengthen ethnic groups' mining projects</li> </ul>

4 Relevant, timely and quality information to deliver formalisation	<ul style="list-style-type: none"> <li>● 2015 mining census to focus on formalisation</li> <li>● Adapt Online Mining Information System to include formalisation and procedures for ASM</li> </ul>
5 Technical, organisational and entrepreneurial strengthening of ASM	<ul style="list-style-type: none"> <li>● Legal adjustments and support to enable creation and strengthening of mining SMEs</li> <li>● Strengthening associations of ethnic groups in collective territories for mining formalisation</li> <li>● Centre for technological development and innovation to serve the formalisation process</li> <li>● Enable clusters and supply chain projects</li> <li>● Implement training needs and technical support for ASM formalisation</li> <li>● Establish technical support programmes tied to mercury reduction</li> <li>● Implement formalisation pilots aiming at formalising 2000 mining units by 2019, technical assistance in place for 700 mining units and 1800 panners, and 72 ASM associations created or strengthened</li> </ul>
6 Resources and incentives for formalisation	<ul style="list-style-type: none"> <li>● Enable economic and financial incentives tied to formalisation (aim: 6000 miners with benefits)</li> <li>● Train and support ASM to prepare and submit projects for third party funding (aim 90 project proposals)</li> </ul>
7 Enable ASM to work under legal title	<ul style="list-style-type: none"> <li>● Finalise all pending formalities tied to legalisation processes from Law 685/2001</li> <li>● Implement the process of formalisation of Traditional Mining, by resolving pending cases</li> <li>● Follow up, support and monitor compliance by ASM</li> </ul>
8 Regulatory mechanisms and guidelines for formalisation	<ul style="list-style-type: none"> <li>● Introduce chapter on ASM in the reform of the 2001 Mining Code</li> <li>● Introduce chapter on Ethnic Groups to articulate norms (Law 70, FPIC and regulations)</li> <li>● Regulate Art 11 Law 1658/2013 regarding formalisation sub-contracts, devolution of areas for the formalisation of ASM working in LSM mining titles, and priority technical assistance for ASGM with a demonstrated programme to reduce mercury.</li> <li>● Adjust H&amp;S provisions for ASM surface and underground mines and update Mining Glossary</li> </ul>

Source: MINMINAS (2013a), *Política Nacional Para La Formalización de la Minería en Colombia*, Version 2, Ministry of Mines and Energy, Bogotá.

# Glossary

**‘Alluvial’ gold mining:** mining of gold fragments found in loose sediment, such as in rivers and alluvial plains. The main environmental impacts relate to deforestation, increase in water turbidity and use of mercury.

**Ancestral miners:** Afro-Colombian and indigenous peoples who have practised mining as a traditional part of their livelihoods.

**Departments:** Colombia is divided into 32 departments, administered by governors. Departments are divided into municipalities administered by mayors.

**Campesinos** (Spanish): smallholder agriculturalists.

**Cession of rights:** Article 22 of the 2001 Mining Code allows a concession holder to cede their rights, wholly or in part, to a third party. The mining authority is informed and the agreement is registered in the National Mining Registry. Partial cession of rights (Art. 24) may be by quotas or percentages of such a right, in which case the granter and the receiver shall be jointly responsible. Cession of rights and areas are important to enable ASM to work on their own mining concessions.

**Cession of areas:** Article 25 of the 2001 Mining Code allows a concession holder to cede their rights to a division of the mining concession. It may comprise the right to use structures, installations, equipment and machinery and the use of access routes inherent in the concession contract, unless otherwise established.

**De facto mining** (*minería de hecho*): used in Article 58 of Law 141/1994 to differentiate between illegal and informal mining. It aims to reflect the social reality of people who have been mining for some time as a means of livelihood, but who have not been able to legalise their activity due to the difficulties in complying with mining authority requirements.

**Defensoría del Pueblo** (human rights ombudsman): a constitutional and autonomous entity whose mandate is to ensure the promotion, practice and dissemination of human rights and international humanitarian law in Colombia.

**Devolution of titles/areas:** concession holders are granted large areas for exploration and are expected to devolve to the state those areas with no economic interest to them after exploration. The state may also choose to cancel mining concessions if the agreed exploration work plan is found lacking after state inspections. These are also known as devolved areas. It does not apply to RPP titles.

**Exploration licence:** in Colombia these form part of the mining concession contract.

**Fairmined certification:** ethical certification of gold, and associated silver and platinum from artisanal and small-scale mining, developed by the Alliance for Responsible Mining (ARM).

**Formalisation sub-contract:** a legal agreement between LSM and ASM introduced in 2013, linked to mercury elimination targets. They allow ASM to work inside LSM mining areas but rights over these areas are not ceded and can be retrieved by the concession holder when the contract expires.

**First in time, first in right:** originally a social practice used in common law – whoever started using a resource first had a priority right to it. Under the 2001 Mining Code, it was interpreted as respecting the order in time in which a formal request for legal concession is made, regardless of the presence of traditional informal miners in the area requested.

**Free, prior and informed consent and consultation (FPIC):** International Labour Organization Convention 169 on the rights of indigenous and tribal peoples to be consulted and to consent to plans, projects and laws that may affect their rights and their way of life.

**Hard-rock gold mining:** extracting gold by penetrating rock via tunnels or pits. The main environmental impact is acid drainage from waters emerging from mines.

**Illegal mining:** according to the Ministry of Mines, mining which is developed without legal title or inscription in the National Mining Registry (Defensoría del Pueblo 2010:22). As this definition does not distinguish between informal mining and mining by criminal networks, it has provoked numerous protests by miners’ associations and confederations.

**Informal mining:** as well as ‘mining without a legal permit’, ‘informal’ refers to the generally poor environmental, technical, health and safety, employment and trading conditions for artisanal and small-scale miners, and their exclusion both from participating in the governance of the sector and from receiving state support.

**Mining Code:** Law 685 of 2001; the law that governs mining in Colombia.

**Mineral rent:** combines royalties and all taxes levied on mining activity, including canon (surface tax), sales tax, municipal, departmental and national taxes.

**Mining concessions (leases):** exclusive titles for exploration and mining over a specific period of time (usually 30 years, may be extended). Mining concessions include the exploration, extraction, processing, and transformation of minerals.

**National Mining Register:** the government record (staking system) in which all mining titles and concessions must be registered to prove their legality. It is managed by the National Mining Agency.

**Operation contracts** (also called 'exploitation' or 'association' contracts): legal agreements between LSM and ASM introduced by the 2001 Mining Code where artisanal and small-scale miners are allowed to work inside LSM areas but are obliged to process and sell their ore at the company plant, while LSM is responsible for the artisanal miners' compliance with mining authority requirements.

**Páramos** (Spanish): moorlands in high mountain ecosystems or 'Andean moors' typical of the humid Northern Andes (Ecuador, Colombia and Venezuela). *Páramos* play a crucial role in water regulation at regional level because their spongy vegetation traps melt water from glaciers and rain, replenishing aquifers on which lower-lying ecosystems, rural aqueducts and urban centres depend.

**Private Property Register titles (RPPs)**: these titles are a colonial legacy. They grant permanent private property land rights (including mining rights) with special provisions for owners, such as royalty payments of only 0.4 per cent.

**Royalties**: payments to the owner of mineral rights for the right to extract the mineral from the ground, based on a lease agreement. In Colombia gold pays a royalty of 4 per cent, based on 80 per cent of the world gold price.

**Subsistence mining**: washing of superficial sands from alluvial deposits to separate gold, or other minerals, by artisanal miners using manual methods such as panning, and generating only subsistence-level income, according to Decree 2655 of 1988.

**Special ASM Reserves**: under Article 31 of the 2001 Mining Code, Special Reserves are mining concessions for artisanal and small-scale miners involving state support in exploration and setting up mining and processing facilities.

**Technical Mining Glossary**: the official glossary that provides definitions for terms in mining laws and regulations.

**Traditional mining**: a type of informal mining recognised by law (e.g. Decree 2715 regulating Law 1382 and Decree 933 of 2013), carried out by traditional communities in specific areas where it constitutes the main livelihood. Traditional communities have the right of first refusal or priority to develop these resources over requests for leases from third parties to government.