Formalising for Development: Artisanal and Small-Scale Mining in Malawi’s Draft Mining Legislation

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Table of Contents

Abstract ..................................................................................................................................................1
1 Introduction ..........................................................................................................................................2
2 Formalisation and Sustainable Development in Malawi’s ASM Sector ..............................................................................................................................3
  2.1 ASM and Sustainable Development .........................................................................................3
  2.2 What is Formalisation? ..............................................................................................................5
  2.3 Formalisation for Sustainable Development: Assessing Malawi’s draft Mines and Minerals Bill ..6
  2.4 Further Strategies needed to support ASM’s path towards Sustainable Development ........9
3 Conclusion ..........................................................................................................................................10
4 List of References ............................................................................................................................11
5 Appendices .......................................................................................................................................13
  5.1 Appendix 1: ASM in Malawi’s Mines and Minerals Act and Bill ............................................13

Table of Abbreviations

ASM Artisanal and small-scale mining
AU African Union
CEPA Centre for Environmental Policy and Advocacy
ICMM International Council of Mining & Metals
IGF Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development
LSM Large-scale mining
MMSD Mining, Minerals, and Sustainable Development
NCA Norwegian Church Aid
UNDESA United Nations Department of Economic and Social Affairs
UNECA United Nations Economic Commission for Africa
Abstract

Artisanal and small-scale mining (ASM) is a livelihood strategy for between 13,500 and 40,000 people in Malawi. Like other countries in sub-Saharan Africa, the sector is characterised by high social, economic, environmental and health costs for miners and surrounding communities. In response, the Government of Malawi intends to ensure the sector is formalised to better manage the costs and to maximise the benefits of ASM for households and the nation. Although artisanal and small-scale miners in Malawi are required by law to obtain a licence to operate, many continue to operate informally.

This paper assesses the extent to which Malawi’s draft Mines and Minerals Bill (2015) promotes sustainable development through the formalisation of ASM. The qualitative assessment is based on an understanding of development that encompasses economic, social and environmental perspectives, developed from sustainability approaches in the mining sector. Although the Bill improves the current Act’s regulation for ASM and is a key step in improving the development outcomes for ASM communities, experience from other countries show that legislation does not necessarily result in formalisation of the sector. In some cases, legislation raises the costs for operating formally and legally and therefore perpetuates an informal sector where miners continue to be cut off from support services. The assessment of the Bill reveals that Malawi’s government must employ other strategies for managing and regulating ASM that go beyond legislation to ensure sustainable development outcomes.
1 Introduction

Three people died on Christmas day last year in tunnels on the banks of Lilongwe River in Malawi because people had rushed to the site in search of gemstones (Maingo 27 December 2014). A couple of weeks later, over the New Year holiday, two other rivers, the Lisungu and Likhudzi Rivers, attracted people who were hoping to strike gold to supplement or replace income received from small-scale agriculture, which is the dominant livelihood strategy in Malawi (Phiri 6 January 2015). Artisanal and small-scale mining (ASM) is another important livelihood strategy in Malawi, which is similar to many other developing countries (Hentschel et al. 2002); however, negative externalities of ASM are a challenge for sustainable development. ASM is frequently associated with poor health and safety performance, environmental degradation, illegal mining and trading, lack of training and equipment, limited access to services, conflict with large-scale mining, and social costs, such as, a rise in prostitution, the spread of HIV/AIDS and child labour (Purevjav 2011, Veiga 2014). Thus governments seek to either ban or regulate the sector to address the costs. Where ASM is permitted, governments aim to maximise the contribution of ASM to household and national income and to minimise the environmental, economic, occupational and social costs. One of the main strategies for managing the ASM sector is formalisation through legal and regulatory instruments (Collins & Lawson 2014).

In Malawi, the ASM sector employs somewhere between 13,500 (NCA, ActionAid & CEPA 2014) and 40,000 (Buxton 2013), but the sector has not been clearly mapped (Tilitonse Fund May 2013). Nonetheless, more Malawians are employed in ASM than the large-scale mining (LSM) sector and therefore ASM is of importance from a socio-economic perspective. Malawi is presently developing its first National ASM Policy and is revising the Mines and Minerals Act; the current one was enacted in 1981.

The Minister of Natural Resources, Energy and Mining, Atupele Muluzi, called for the formalisation of the ASM sector in November 2014 during the review symposium for the country’s first ASM Policy (Mining in Malawi 19 November 2014, Namadzunda 13 November 2014). Muluzi commented this year that the amended mining bill, expected to be tabled in parliament in June 2015, will lead to ASM formalisation:

The new law wants a properly regulated mining sector. […] All illegal activities will be mainstreamed and incorporated into legal mining, where the government will have the powers to help these people [artisanal and small-scale miners] form cooperatives so that mining can take place in a group. This will have several advantages, as the new law will empower communities. Registered groups will be trained in mining; they will be taught how to negotiate prices for their precious stones; and they will also be supplied with equipment, health and safety gear.
(Muluzi quoted in World Bulletin 26 January 2015)
There is presently limited peer-reviewed research on ASM in Malawi; one of the few studies concludes, "A formalized ASM sector is one of the few viable options available for tackling poverty in rural Malawi" (Kamlongera & Hilson 2011). Formalisation, the Government of Malawi hopes, will ensure in the long run that ASM contributes to sustainable development rather than having a negative impact on communities. This paper seeks therefore to understand how legislated formalisation of ASM can positively contribute to the improvement of livelihoods. It asks: To what extent does Malawi’s draft Mines and Minerals Bill (Otto 2015) promote ASM’s contribution to sustainable development?

To address this question, the terms ‘ASM’ and ‘sustainable development’ will be defined, acknowledging the lack of consensus and clear definitions. The general understanding of, rationale for and application of formalisation is examined in the next section. This preludes the discussion of Malawi’s draft Mines and Minerals Bill in relation to sustainable development. Formalisation alone is not sufficient to ensure ASM contributes to sustainable development, thus the final section before the conclusion briefly addresses other strategies required by the Malawian government to manage ASM.

Desktop research forms the basis of data for this paper. Primary data collection lies outside the scope, which means that it is not possible to triangulate results. This is further limited by the absence of peer-reviewed literature; many of the relevant sources are qualitative grey literature, produced by organisations working with or researching ASM. Nonetheless, the author’s own experience in the mining sector in Malawi and participation as part of civil society in the review of Malawi’s draft Mines and Minerals Bill provide a suitable lens through which to evaluate these sources, addressing some of these limitations in part.

2 Formalisation and Sustainable Development in Malawi’s ASM Sector

2.1 ASM and Sustainable Development
The (potential) contribution of all scales of mining to sustainable development is established in Malawi’s Mines and Minerals Policy (2013) and the Draft National ASM Policy (2014). Both of these documents are guided by the Malawi Development and Growth Strategy (2011-2016) that outlines mining as a key priority area. The second policy objective of the Mines and Minerals Policy is “to contribute to socio-economic development of the country including poverty reduction and sustainable development” and the overall policy goal of the Draft National ASM Policy is “to contribute to economic growth and poverty reduction in Malawi through sustainable ASM activities”. These are aligned with continental positions on ASM found in the Africa Mining Vision (AU 2009) and the Yaoundé Vision Statement (UNECA/UNDESA 2002). However, there is no international consensus on the definitions of ASM and sustainable development. Malawi’s legislation and strategic papers provide no definitive answers either even though they establish a relationship between the two. In this section, the two concepts are explored.
Although ASM has no universal definition (Jennings 2005), it is generally understood as exploiting marginal or small deposits, lacking capital, being labour-intensive with low rates of recovery, having poor access to markets and support services and low standards of safety and health, and with significant impact on the environment (MMSD 2002: 315). ASM is also often characterised by migration (Jónsson & Bryceson 2014) although there is diversity in demographics, legality, seasonality and origins (Buxton 2013). Different types of minerals are extracted in the ASM sector: precious and semi-precious minerals, metallic minerals, industrial mineral, and construction minerals (Collins & Lawson 2014). In Malawi, ASM is largely driven by poverty (Kamlongera 2013) and it tends to be characterised as permanent co-habitation and shock and influx (ICMM 2009). In this paper, ASM is understood as mining undertaken without mechanisation, which is informed by the description of ASM in Malawi’s draft Mines and Minerals Bill (2015), where non-mechanised mining methods means mining using hand tools, handheld equipment and small pumps only.

The most commonly cited definition of sustainable development emerged through the UN Brundtland Commission (1987): “Development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. This has informed the approach most actors across sub-Saharan Africa taken to national development policy, including the mining sector. For example:

- The Mining, Minerals, and Sustainable Development study (MMSD 2002) developed a sustainable development framework for the minerals sector including economic, social, environmental and governance spheres.
- Based on the MSSD study, Azapagic (2004) designed a framework for sustainable development indicators for the mining industry to assess performance and improvements by the industry, compatible with the Global Reporting Initiative (a global corporate sustainability reporting framework). However, this has been developed for LSM; “further work is needed to develop a more simplified framework of indicators for small-scale mining and for small-to-medium enterprises since they […] play a significant role in the sector’s efforts to achieve sustainability” (660).
- In general, Africa’s guiding document on mining, the Africa Mining Vision (AU 2009), posits that mining can contribute to broad-based sustainable growth and socio-economic development if mineral exploitation is “transparent, equitable and optimal”. In particular, the ASM sector should “stimulate local/national entrepreneurship, improve livelihoods and advance integrated rural social and economic development” (AU 2009).
- The Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development designed a policy framework to “allow mining to make its maximum contribution to the sustainable development of developing countries” (IGF 2013); this includes the legal and policy framework, financial benefit optimisation, socio-economic benefit optimisation, environmental management, post-mining transition, and ASM is addressed separately.
For the purpose of this paper, the assessment of Malawi’s draft Mines and Minerals Bill in terms of ASM and sustainable development will be assessed qualitatively using the highlighted spheres below (adapted from IGF 2013, Hilson 2012, UNECA 2011, Azapagic 2004, MMSD 2002). This will also be used to highlight areas beyond formalisation that the government must address to ensure ASM aligns with its national development agenda.

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<th>Sphere</th>
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<td>Economic</td>
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<td>- Clear legal frameworks</td>
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<td>- Regulatory mechanisms to facilitate organisation and obligations of ASM</td>
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<td>- Simplified and decentralised procedures for acquiring mineral rights</td>
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<td>- ASM rights holders given viable land, adequate duration and security of</td>
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<td>- Providing technical support to build the capacity of government and other</td>
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<td>bodies tasked with regulating and supporting the sector</td>
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<td>Integration of informal ASM activities into the formal economic system</td>
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<td>- Access to finance for ASM sector to improve savings, financing and</td>
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<td>- Strong policies and systems for collection, management and reinvestment of</td>
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<td>- Initiatives for standards and certification of ASM ‘fair trade’ conflict</td>
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<td>- Formalisation of mineral trade and access to markets</td>
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<td>- Technical training for operators of mines</td>
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<td>- Education for ASM workers and families</td>
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<td>Preventing</td>
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<td>Child labour</td>
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<td>women</td>
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<td>-    - Capacity building and training for miner operators and workers</td>
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<td>-    - Community monitoring</td>
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2.2 What is Formalisation?
Most miners in the ASM sector operate illegally or informally (Hinton 2006). To address ASM, governments have shut down operations, managed ill-effects outside of formal licencing, or facilitated a supported legalised ASM sector (RCS Global 2015). In sub-Saharan Africa, regulating the sector has usually started with legalisation, requiring miners to register as a company or cooperative and obtain licences and permits to operate. A connected step is formalisation, i.e. “the process of registering and organizing mining in the field” (UNECA 2011: 43), which encourages the miner to enter the formal economy, complying with relevant laws. Formalising the ASM sector
enables better regulation, “increasing the sustainability of activities, creating benefits for communities and minimising negative impacts” (Collins & Lawson 2014: 15), and revenue generation for the government. Formalisation needs to take place along the value chain (Buxton 2011). Four points include input market, processing and production, domestic trading and international trading (RCS Global 2015). However, Malawi, like other countries, introduced ambiguous legislation in the 1980s that does not clearly differentiate between artisanal and small-scale mining and does not have a well-supported, decentralised implementation and monitoring system. The limits of formalisation’s effectiveness through legislation alone is discussed later in the paper.

2.3 Formalisation for Sustainable Development: Assessing Malawi’s draft Mines and Minerals Bill

Malawi’s regulatory framework for mining is informed by over 20 different pieces of legislation. The principle law, however, is the Mines and Minerals Act, enacted in 1981. The ongoing review of this Act is being led by the Department of Mines through the World Bank- and EU-supported Mining Governance and Growth Support Project. Last year, review meetings with diverse stakeholders were held and a consultant (Professor James Otto) was hired to produce a draft Amended Mines and Minerals Bill (henceforth “Bill”) (Mining in Malawi August 2014). This Bill was submitted in January 2015 to the Ministry of Natural Resources, Energy and Mining and is assessed in this section, using the criteria set out in Chapter 2.1, to reflect on the extent the Bill’s formalisation of ASM promotes sustainable development. The focus is Part IX §192 - §206 and Part X §207 - §217 for small-scale mining licences and artisanal mining permits, respectively. It should be remembered that this draft is a living document and will likely undergo a number of revisions before it is tabled in parliament in June 2015. In Appendix 1, the terms for ASM in the Act and Bill are provided.

For sustainable development to be promoted with ASM, ASM activities must be integrated into the legal and formal economic system. The Bill is progressive in this regard. First of all, the Bill clearly defines artisanal, small-, medium- and large-scale mining, primarily based on mechanisation and this relates to the application process, rights, obligations and land available. Both small-scale and artisanal mining are defined as having “non-mechanised methods”, which “means mining by the use of hand tools, handheld equipment and by small pumps with a hose diameter less than 75mm and such pumps’ associated machinery, but not by larger pumps or any other machinery driven by electric, diesel, petrol or gas-powered motors” (§2). Small-scale mining licences are granted for between one and two hectares (§199(a)and(b)) and can be extended up to two hectares. They have exclusive rights to carry out licence operations in the area, sell and market mineral product, dump any mineral and waste as agreed by the Commissioner, and request land access (§202) and may not employ more than fifty labourers (§203(i)). Artisanal mining permits are temporary only, have greater restrictions for local construction and customary pottery and brickmaking (§211(2)) and exclude precious stones, rare earth minerals, coal or any metallic mineral (§211(3)).
The organisation and obligations of ASM are clearly set forth in the Bill. For example, eligibility criteria (§192 and §210) outline the organisation of miners with the inclusion of cooperatives and partnerships for small-scale mining licences, which are often more able to access capital and training as groups and therefore have fewer restrictions than the artisanal mining permit. To ensure that small-scale miners are linked to the formal market, applications for small-scale mining licence musts include a proposed marketing arrangement for the sale of minerals produced (§193(iv)(e)); the conditions for artisanal mining permits are less stringent as minerals can only be used locally (§211(2)).

Small-scale mining licences are obtained from the Department of Mineral Tenements Administration (§193), while artisanal mining permits can be granted by the local government authority through bylaws that provide for permit application, granting processes, fees and enforcement (§207). If permits can be processed at the district level, it reduces the barrier to entry to formalisation for miners. However, the security of tenure for artisanal miners is limited as the Commissioner has the power and authority to cancel permits if “it is in the best interests of Malawi to do so” (§213(1)). The situation is similar for small-scale miners. Small-scale mining licences may overlap with an exploration licence with prior written permission of the holder of an exploration licence, however, the holder of the exploration licence can rescind permission, change conditions or direct that the small-scale mining licence granted in the area not be extended past the term (§130). In addition, the small-scale mining licence expires, without compensation, when any mining licence is granted to the holder of an exploration licence over the land. That said, a small-scale mining licence can be renewed on a two-yearly basis with no limit on the number of extensions (§196(3)) and there is a process to appeal a rejected renewal application through the Mineral Resources Board (§197(6)). In addition, small-scale licence holders must mark the boundary of their licence area and any arising dispute can be addressed by the Department of Mineral Tenements Administration (§201). The security of tenure and access to land of communities around sites of potential small-scale mining is protected under (§193(vi)) and (§198(2)), as applicants for small-scale mining licences have to provide “documentary evidence that consent to use the land for mining purposes has been given to the applicant by lawful occupiers or landowners” and licences include a copy of an agreement signed by the lawful occupier or owner of land.

In the application for small-scale licences, social and environmental considerations are only broadly taken into account (§193) and these safeguards are essential to ensure social and environmental costs are minimised. For both licences and permits, only Malawian citizens as individuals, partnership or cooperatives or 100% Malawian owned companies can be engaged in ASM (§192 and 210), which may protect national interests and ensure benefits are realised domestically. The statement for a proposed small-scale mining operation must include the potential effect on the environment, with no further details provided and no requirement of an Environmental Impact Assessment, and on any monument, shrine or relic as well as the potential impact on the local population, including any particular risks involved in mining the minerals. This application must also include plans for “environmentally responsible mining”, “proposals for mitigation and
compensations measures” and “proposals for their [chemicals] control or elimination” (§193(iv)(b),(c)and(d)). The Commissioner also has the right to terminate or not renew a small-scale licence if a miner does not comply with its environmental and social plans and has “not carried out effective rehabilitation and reclamation” (§197(4)(b)), while non-compliance with conditions can result in a fine and/or imprisonment under artisanal mining permits (§212(2)). Occupational risks must be reported on and operators of “dangerous or defective mining operations” may be given notice to remedy or remove a danger or defect and an authorised officer can suspend operations until this has been addressed to “his or her satisfaction” (§205); an appeal process is also built in for small-scale miners. Although these safeguards are not detailed, miners are subject to other laws such as the Environmental Management Act (1996).

Reporting obligations are clearly spelled out for small-scale miners (§204). This is one way for the government to manage the costs and benefits of the project. For small-scale miners, this touches on the economic, environmental and social spheres: a biannual report must be submitted that includes information on operations, minerals mined and sold, royalties paid, any fatal accidents or those leading to significant bodily harm and steps taken to avoid its recurrence, and rehabilitation and reclamation work. This report is not public, unless the licence holder gives consent, and can only be used to “publish statistical information concerning mining in Malawi or for the Commission to give advice to the Mineral Resources Board or Minister on a confidential basis” (§204(4)). The artisanal mining permit does not have extensive reporting requirements and it is the responsibility of the local government to set these terms and itself to report each year to the Commissioner “summarizing the number of artisanal mining permits it issued in the previous year, their purpose, the minerals mined and the amounts, and any enforcement issues that arose and how they were resolved (§207(6)). However, the restrictions on artisanal mining are greater as a permit is granted only for minerals “used in local area construction” or “customary making of pottery and bricks”, for a period not exceeding one year and for a limited volume (§211). To promote occupational standards, restrictions are set on the depth of the pit (§211(f)) and conditions are set so that “safe practices” are used, child labour is prohibited, no mining takes place underground and no explosives are used (§212(b)(e)(f)and(h)). Furthermore, the licence area must be kept free of alcohol and illicit drugs and no labourers can be under the influence when mining (§212(j)). Vulnerable groups and women are not mentioned in the Bill. To reduce environmental damage, the Bill states that the artisanal operation will not have a significant impact on the environment or existing land use (§211(b)and(c)) and no water can be discharged except into structures that protect the waterway from discharge from or caused by the mining operation (§212(i)). The Bill also gives local authorities the right to add further conditions that can be tailored to the district and situation (§212).

The Bill formalises and places different restrictions and conditions on small-scale mining licences and artisanal permits which will promote benefits and safeguard against costs. The proposed legislation, although robust, will only go so far in ensuring that ASM contributes to
community sustainable development. The next chapter will address further strategies required in addition to formalising the sector through legislation.

2.4 Further Strategies needed to support ASM’s path towards Sustainable Development

Despite formalisation efforts, much ASM around the world remains informal. Rather than formalisation supporting sustainable development of communities and household, it sometimes further institutionalises poverty (Hilson 2012). Miners will only become licenced if the benefits clearly outweigh the costs (Barry 1996); paying taxes, remote registration centres, or complying with laws increases the barriers to entry and raises the costs of operating. Formalisation through the legal framework and the Bill is thus only one instrument the Government of Malawi has at its disposal to aid ASM management (RCS Global 2015); Malawi needs to look more holistically and beyond legislation.

The Government of Malawi does not have accurate picture of ASM in the country (Tilitonse Fund May 2013). Data on ASM is required to develop effective policy and programmes because “inappropriate policies and regulations have confined numerous ASM operators to an informal-sector existence, in the process cutting them off from most avenues of support” (Hilson 2012: 193). Actors involved in ASM need to share knowledge, particularly as organisations, such as UN Women and Pact, engage with ASM in Malawi; civil society organisations must also be included as advocates for community development (Kamlongera 2011). A baseline study will likely show that technical support is required for both government and miners. Government must have the capacity to regulate, monitor, enforce and support the sector. Enforcement is particularly important for promoting human rights and protecting vulnerable groups, such as women and children, and for ensuring the environment is protected because the Bill does not require rigorous environmental licencing through the Environmental Affairs Department for ASM. However, environmental management needs to be appropriate for small-scale production and also needs to take into account multiple land uses and users, particularly small-scale agriculturalists (Spiegel 2012; Hilson 2011). Government must work with mine operators and regulate the treatment of labourers since those doing the work “have no formal legal recognition, making them highly vulnerable” (Verbrugge et al. 2014: 2). For artisanal mining, the local government is responsible for passing bylaws to govern risks, other local structures such as Area and Village Development Committees should be sensitised so that they can help regulate miners in their area.

Government capacity and administration is important and if poor it can act as a disincentive to miners to formalise. For example, if it takes too long for mining title application to be processed or is too expensive, miners will continue to operate outside of the formal sector. A study of Colombia’s formalisation approach revealed that a progressive and step-wise approach was necessary to enable miners to comply incrementally with legal, technical and environmental procedures and inspections; this also had to be differentiated by type and scale of mine even within ASM (Echavarria 2014). In Colombia, one of the most successful approaches to ASM has been to promote the organisation of miners into cooperatives to bring down the cost of supplies through
economies of scale and help miners’ access state services to formalise and support operations (Echavarria 2014; cf. RCS Global 2015); training is required to ensure good governance within cooperatives for their effectiveness (Collins & Lawson 2014). Through cooperatives, equipment, training and technical assistance can then be provided to encourage value addition and link to formal markets. Taxation, payment and fees also need to be carefully set to ensure they do not act as another disincentive.

Technical support is required for miners to ensure that they understand and can comply with legislation otherwise they will continue to operate informally. Training could be supported through an extension service (Hinton 2006) but this requires government capacity and operations at the correct level. Access to capital and finance and training on how to operate a business are vital for small-scale miners, in particular, to formalise and escape the “poverty trap” (Hilson 2012). This includes training on value addition and formalising the trade of minerals. Evidence from a case study of Talensi-Ndabdam District in Northern Ghana shows that while the introduction of small-scale mining licences provided security of tenure, the absence of support services, especially microfinance, means that the “vicious cycle of poverty […] will continue to proliferate (Hilson 2012: 193). As was shown, although the Bill safeguards against poor social and environmental practice, it does not provide comprehensive guidance on best practice for operators; this may of course be detailed in future regulation. Miners will require training on occupational health and safety and best practice. However, if the penalty for noncompliance is too high this will act as a further disincentive to formalisation (Collins & Lawson 2014).

3 Conclusion
Malawi is at a pivotal juncture as it reviews its Mines and Minerals Act of 1981. The country has committed to ensuring mining contributes to sustainable development. ASM is a subsector that often has a poor economic, social and environmental record yet it remains an important livelihood strategy. Acknowledging this, the Government of Malawi has embarked on a process to formalise ASM. This paper showed that formalisation can contribute to and is a key step in ensuring that ASM promotes the sustainable development agenda. Malawi’s draft Mines and Minerals Bill (2015) is progressive in that it gives exclusive rights to miners and indicates the rights as well as restrictions and conditions small-scale mining licence and artisanal mining permit holders must comply with. However, on its own, the Bill and legal framework is not enough. Government and miners require technical capacity to ensure compliance, monitoring and support. The government must address the barriers to entry of the formal market for miners, i.e. costs of complying with legislation, to ensure that miners formalise and at the same time, service providers, especially financial institutions, must provide training and capital to miners to help them graduate from subsistence to enterprise. Malawi also requires clear programming on how vulnerable groups will be protected as children and women often bear the brunt of the costs.

Further research is required to examine the relationship between ASM and sustainable development around the continent because “ASM continues to occupy such a marginal position on
the economic development agenda of sub-Saharan Africa” (Hilson & McQuilken 2014: 116). Research needs to explore how best government can support the sector, encourage the move from informal to formal, complement other livelihood strategies and ensure the development triad of social, environmental and economic aspects are considered when developing the legal framework.

4 List of References


5 Appendices

5.1 Appendix 1: ASM in Malawi’s Mines and Minerals Act and Bill

The following table shows how small-scale and artisanal mining are defined and some of the key terms for licence holders according to Malawi’s Mines and Minerals Act 1981 and Mines and Minerals Bill (Otto January 2015). The latter is currently in draft form and being review by key stakeholders, led by the Department of Mining in the Ministry of Natural Resources, Energy and Mining.

**Mines and Minerals Act 1981**

*No differentiation is made between small-scale and artisanal mining in the Act.*

Under Part V, Sections 81 to 85, a person may be issued a mineral permit by the District Commissioner or person authorised by the Minister. The holder of the permit can enter upon public land or customary land to mine any prescribed mineral. The prescribed minerals are Basalt, Laterite, Clay, Salt, Granite, Sand, Gravel, Sandstone and Gypsum.

Section 82 (3) explains that the holder of a mineral permit shall not, pursuant to section 82,—

(a) carry on mining operations underground
(b) use explosives; or
(c) use any powered machinery in his mining operations except for the purpose of loading material in, or moving material from, the area where he carries on those operations.

A reserved minerals licence (section 98 to 101) is required to purchase minerals as are identified in the licence. Reserved minerals included precious metals and stones.

**Mines and Minerals Bill (Otto January 2015)**

*The draft Mines and Minerals Bill currently being reviewed differentiates small-scale mining from artisanal mining.*

*Non-mechanised mining methods, a criteria of both small-scale and artisanal mining licences and permits “means mining by the use of hand tools, handheld equipment and by small pumps with a hose diameter less than 75mm*
Small-Scale Mining
Part IX, Sections 192 to 206 deal specifically with small-scale mining licences.

According to Section 192, a small-scale mining licence holder must be
(a) an individual who is a Malawian citizen;
(b) a cooperative society registered pursuant to section 308;
(c) a partnership registered pursuant to section 308;
(d) a company registered under the Companies Act, 2013 that is one hundred per cent (100%) owned by Malawians; or
(e) a company duly incorporated under the Companies Act, 2013 that is one hundred per cent (100%) owned by Malawians.

The area of land for a small-scale mining licence is between one (minimum) and two (maximum) hectares (see Section 199). The area of small-scale mining licences can be extended but have to conform to the maximum area restriction of two hectares. The terms and approach for extending the area is explained in Section 200. Small-scale licences are valid for an initial period of two years, and may be extended for further period not exceeding two years at a time. There are no limits on the number of term extensions that may be granted. The terms for how to extend a small-scale mining licence are outlined in Section 197.

An application for a small-scale mining licence, submitted to the Registrar, (Director of the Department of Mineral Tenements Administration) must include, according to Section 193,
(a) in the case of an application by:
(i) - an individual, provide the full name, address (which shall be the registered address upon the grant of the licence) for notifications and nationality of the individual;
(ii) - a cooperative society or partnership, provide the registration number assigned pursuant to a registration obtained under section 308, and the address (which shall be the registered address upon the grant of the licence) to which all notifications shall be sent; or
(iii) - a company, provide the names and nationalities of all its partners or directors and, if a corporation with share capital, the name and nationality of any person who is the beneficial owner of more than five per cent (5%) of the issued share capital, and the company’s address (which shall be the registered address upon the grant of the licence) for notifications; and
(b) state the period applied for and the justification for that length of period;
(c) be accompanied by:-
(i) if the applicant is a company, a copy of the company’s certificate of registration;
(ii) a schedule, in the prescribed form, describing the corners of the proposed small-scale mining licence area in latitude and longitude, and
(iii) a sketch map, in the prescribed form, showing the boundary of the proposed small-scale mining licence and such other natural features and the location of principal villages and neighbouring mineral tenements, if any, as will enable the area to be correctly located;
(iv) a statement giving particulars of the proposed mining operations, including-
(A) a description of the mining method;
(B) the potential effect of the proposed mining operations on the environment, and on any known monument, shrine or relic in the requested licence area, and including a description of the applicant’s plans for environmentally responsible mining;
(C) the potential impact on the local population, if any, and proposals for mitigation and compensation measures;
(D) any particular risks (whether to health or otherwise) involved in mining the minerals and proposals for their control or elimination;
(E) the proposed marketing arrangements for the sale of the mineral production; and

Artisanal Mining
Part X, Sections 207 to 217 address the artisanal mining permit.

Mining permits can be granted by the local government authority through bylaws that provide for permit application, granting processes, fees and enforcement (Section 207). These bylaws may not conflict with the Act. The authority must submit an annual report summarising the number of permits, the purpose, minerals mined and amounts, and any enforcement issues raised and resolved. However, the Commissioner has the power and authority to cancel permits if “it is in the best interests of Malawi to do so” (Section 213(1)).

According to Section 210, an artisanal mining permit will be awarded only to
(a) an individual who is a Malawian citizen; or
(b) a company registered under the Companies Act, 2013 that is one hundred per cent (100%) owned by Malawians; or
(c) a company duly incorporated under the Companies Act, 2013 that is one hundred per cent (100%) owned by Malawians.

According to Section 211, the permit may only be granted to mine minerals used in local area construction (e.g. sand, gravel, stones, clay, aggregate, earth and minerals used for the customary making of pottery and bricks) and only provided that the operation is
(a) is temporary, for a period not exceeding one year;
(b) will not have a significant impact on the environment;
(c) will not significantly impact on existing land use;
(d) will produce minerals only for local use near to the artisanal mining permit area;
(e) will not use mechanized means to extract the minerals;
(f) will not be underground or have any pit in excess of five (5) meters from the natural contour of the land;
(g) except in the case of clay for bricks, will not produce over one thousand (1,000) tonnes of minerals during the entire term of the permit; and
(h) in the case of clay for bricks, will not produce in excess of such amount of clay that can be used to manufacture ten thousand (10,000) standard bricks during the entire term of the permit.

This means that a mining permit cannot be used for the purpose of mining precious stones, rare earth minerals, coal or any metallic mineral (Section 211(3)).
(v) a description of any circumstances that may require the licence to be granted subject to particular conditions;
(vi) documentary evidence that consent to use the land for mining purposes has been given to the applicant by lawful occupiers or landowners of the land the subject of the application, if any;
(vii) any other material addressing matters that the applicant wants to be considered;
(viii) other materials as may be prescribed; and
(ix) the prescribed application fee or proof that such fee has been paid.

The rights of a small-scale mining licence holder are described in Section 202. The holder has exclusive rights to carry out mining operations in its licence area, and subject to any applicable law has the right in the licence area to:

(a) enter and occupy the land for the purpose of mining all minerals located on that land and carry on such operations and undertake such works as may be necessary or expedient for that purpose and for the purpose of treating those minerals;
(b) use only non-mechanised mining methods (as defined in section 2) to take and remove rock, earth, soil and minerals from that land, with or without treatment;
(c) sell and otherwise market and dispose of any mineral product recovered from or beneficiated or otherwise treated in the mine area;
(d) stack or dump any mineral or waste products in a manner approved by the Commissioner; and
(e) request a land access order pursuant to section 238;
(f) surrender part or all of the licence area subject to meeting the surrender requirements imposed under this Act.

The obligations of the small-scale mining licence holder are stipulated in Section 203. This includes employing no more than 50 labourers and using only non-mechanised mining methods. Reporting obligations are clearly spelt out in Section 204, which include a semi-annual report that outlines a summary of work in relation to a licence, the type and quantity of minerals mined and how they were disposed of including total value of all mineral sales, a summary of all royalties paid, a description of any injuries (fatal and significant bodily harm) and a summary of rehabilitation and reclamation work.

Small-scale mining licences may overlap with an exploration licence with prior written permission of the holder of an exploration licence. The holder of the exploration licence can rescind permission, change conditions or direct that the small-scale mining licence granted in the area not be extended past the current term by writing to the Commissioner (Section 130). The small-scale mining licence will expire, without compensation, when any mining licence is granted to the holder of an exploration licence over the land.

A small-scale mining licence cannot be transferred or assigned to another part.

The conditions for this permit are the following (Section 212):

(a) keep a copy of the permit at the mine site whenever mining is taking place;
(b) use safe practices whenever mining;
(c) use only non-mechanised mining methods (as defined in section 2);
(d) not use any powered machinery in its mining operations except for the purpose of loading material in, or moving material from, the area where those operations are performed.
(e) not employ or use child labour;
(f) not mine underground;
(g) not mine in any open pit deeper than five (5) metres below the natural surface of the ground;
(h) not use explosives;
(i) not discharge water from any sluice, pump or other equipment (that qualifies as non-mechanised mining equipment as per the definition provided in section 2) except into a holding pond, settlement dam or similar structure or apparatus designed to protect any waterway from the discharge of silt, solids and other suspended matter;
(j) must keep the licence area free of alcohol and illicit drugs and make sure that miners are not intoxicated or under the influence of illicit drugs or homebrew; and may include such other conditions as the granting authority determines.

In cases where the permit holder does not comply, the person is liable to conviction to a fine and/or imprisonment not exceeding one year according to regulations.

A permit is not transferrable unless it is done in accordance with a by-law made for that purpose by the local government assembly that granted the permit (Section 216).