ASSESSING DRIVERS FOR “FORMALIZATION READINESS” IN ASM COMMUNITIES IN KENYA: UNDERSTANDING THE ROLE OF COOPERATIVES

CASE STUDY
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Artisanal and small-scale mining (ASM) in Kenya is formally regulated through the 2016 Mining Policy, and the 2016 Mining Act and regulations. A separate artisanal and small-scale mining strategy is also in preparation but has not been released (as of November 2019). All these policies and regulations are broadly reflective of the African Mining Vision (African Union 2009).

The 2016 Mining Act represented the first substantial reform to the 1940 colonial-era mining law. Consistent with the 2010 Constitution, the Mining Act provides that all minerals are the property of the Republic of Kenya, which holds them in “trust for the people of Kenya” (article 6, Mining Act). The Constitution provides that all natural resources, including minerals, are vested in the national government which is responsible for the “sustainable exploitation, utilization, management and conservation of the environment and natural resources,” including equitable sharing of benefits (article 69 (1)). County governments, in turn, are responsible for trade development and regulation (such as business licenses, cooperative societies, Article 7), land planning, and the implementation of national government policies on natural resources and environmental conservation (Article 10, Fourth Schedule).

The mining sector in Kenya is administered through the Ministry of Petroleum and Mining and, more specifically, through the State Department of Mining. Related ministries, such as the Ministry of Environment and Forestry, and the National Environment Management Authority (NEMA), also play a role, as do county government offices for environment, societies and business licensing.

The 2016 Mining Act provides that artisanal mining permits shall be granted to a person who “may be a member of an artisanal mining cooperative association or group” (s. 95 (1) (c)). Further, the County Office is to “facilitate the formation of artisanal association groups or cooperatives” (s. 93 (3) (f)). Within this context, it is important to better understand whether necessary supports are in place for ASM cooperatives to form and contribute to the sustainable and inclusive formalization of the sector. To this end, CIRDI conducted a case study of an artisanal and small-scale gold mining (ASGM) cooperative to identify the supports – governmental or otherwise – cooperatives require to successfully form and initiate a path towards formalization.

The study is focused on just one cooperative – the Migori County Artisanal Miners Cooperative Society Limited (MICA) – which operates within the context of its own histories and dynamics. However, the findings of this study can inform a wider context. According to one interview, Migori County had 11 registered ASM cooperatives at the time of this study, with all of them facing challenges in successfully organizing and fulfilling the requirements under the Kenyan Co-operatives Societies Act, as well as the 2016 Mining Act. The various government bodies mandated with advancing and enforcing compliance with the new mining laws are similarly encountering their own challenges. This case study provides accessible information on what contributes to a strong ASM cooperative, and on how cooperatives can be better supported by government. The findings of this study aim to inform dialogue around cooperatives and formalization, and related interventions.
This study came at the request of the Kenyan State Department of Mining. Given the emphasis on ASM cooperatives in supporting the formalization process within national and county government policy, this study seeks to better understand what cooperatives need to successfully form, and how the government can best support cooperatives in the formalization process.

The Migori County Artisanal Miners Cooperative Society Limited (MICA), which had an established relationship with CIRDI through other projects, agreed to participate in this study and facilitate the research. A research team of three – two CIRDI staff members and a local research assistant from the Nairobi-based Centre for Environment Justice and Development (CEJAD) – conducted the field research in Migori county over one week (February-March 2019), followed by a research validation workshop in Migori Town on May 22, 2019.

The research included 15 structured interviews, three focus group discussions, and five semi-structured interviews with select government representatives based in Migori Town. In total, the research team spoke with 37 individuals, including 16 women and 21 men. The views of the members of MICA’s Management Committee were captured through individual interviews and focus group discussions.

The structured interviews aimed to better understand what motivated people to join MICA, how they benefitted from their membership, and the challenges they felt the cooperative faced. Two of the focus group discussions focused on better understanding the conditions for successfully establishing MICA in 2011, with questions honing in on what influenced and contributed to MICA’s formation and mandate, and how ASGM cooperatives as a whole could be strengthened moving forward.

The focus group discussion with MOKA – a women’s group within MICA – aimed to shed light on the gendered aspects of forming a mining-focused group, and the priorities of women within ASGM communities. Finally, the interviews with government stakeholders sought to better understand the opportunities and challenges the government faces in implementing the 2016 Mining Act in Migori, particularly in relation to ASGM cooperatives.

The analysis of the research findings was supported by Doris Buss and Blair Rutherford, professors at Carleton University. Both have extensive knowledge of the ASGM sector in sub-Saharan Africa, with Buss having researched ASGM in Migori, as well as Kenyan mining law and policy. Buss and Rutherford provided desktop research support for this study, and Buss also participated in the research validation workshop. The data collected in the field was also supported by organizational documents supplied by MICA.
FINDING 1: ASGM cooperatives have the potential to empower local communities to drive their own development.

Forming an ASGM cooperative empowers communities to drive their own local development priorities through economic activities. This marks a shift away from reliance on international assistance, which some interviewees saw as inflexible and not addressing the real needs and priorities of communities. Coming together as a legal entity also improved MICA members’ relationship with local authorities, enhancing security for its members both through numbers and through access to legal recourse. Previously, individuals participating in unlicensed mining activities worked under the threat of police raids and had limited access to recourse. The cooperative also allows the pooling of education, financial and social resources, facilitating broader access to opportunities for members.

FINDING 2: MICA has access to assets, including social and financial capital, networks and trust, which has helped it achieve several successes. Despite this, MICA has been unable to obtain a mining license.

MICA benefits from local networks in attracting members who have brought expertise, experience, and financial and other assets to the organization. MICA has access to an office, computer and internet – these are important tools to conduct business, maintain the cooperative, and advance the licensing process, much of which is conducted online. MICA members are also well educated – of the 15 members interviewed, one third completed post-secondary education, one third secondary education and one third primary education. Most members are also able to contribute the membership fee of 3,000 KES, with some contributing more to support the licensing process.

Obtaining permits and licenses has proven costly, particularly given the number of trips MICA leadership has had to take to Nairobi to advance the administrative process.

Overall, MICA has experienced many achievements since its founding in 2011. These include, but are not limited to, successfully forming and being recognized by the Cooperatives Department; having a membership in place; obtaining a Mineral Export Permit in 2011 and a Mineral Dealer’s (Processing) License in 2018; offering members formal and informal training/learning opportunities (e.g. safety and technical training); supporting MOKA; enhancing trust in the community; advising and lobbying the government on mining-related issues; and gaining increased international recognition.

Despite best efforts, however, MICA has been unable to obtain a mining license given legal and administrative challenges. Obtaining a mining license remains a key focus of MICA’s leadership, as it is only through such a license that MICA can become financially viable and grow.

FINDING 3: Strong leadership is key to successful cooperative formation.

Experienced leaders founded MICA in 2011. Together, MICA’s leadership is educated, knowledgeable and experienced in the ASGM sector, has previous experience with ASGM cooperatives, and has experience in founding and developing organizations. The leadership of senior MICA members has been invaluable to the cooperative’s formation and success to date, as these people were able to navigate government bureaucracy, provided access to land for cooperatives activities, provided access to expertise, and contributed financially as necessary to support the licensing process (e.g. trips to Nairobi for in-person meetings with government officials). The leadership is also well networked domestically and internationally, facilitating access to additional resources.
FINDING 4: Too much responsibility has been concentrated within MICA’s leadership, particularly as they navigate the challenging licensing process.

While MICA remains a dynamic organization, the fact that it has been unable to successfully obtain a mining license has limited its opportunity for growth, evolution and financial viability. Given the challenges surrounding licensing, the founding leadership has largely remained in place to maintain stability. Pursuing the mining license, however, has created pressure on the leadership. One challenge has been maintaining the trust and interest of MICA’s membership – people joined the cooperative with high expectations and a limited understanding of how cooperatives or the licensing processes work. Not being able to acquire a mining license and the delays in securing a dealer’s license has impacted the trust of some members. In addition to this, the uncertainty surrounding the licensing process, and the need for multiple trips to Nairobi to navigate this, has proven burdensome and expensive for MICA and its elected representatives. This has resulted in burnout and frustration. As a result, the cooperative needs to identify opportunities to diffuse leadership responsibilities, while also ensuring members are informed of the intricacies of the license application process.

FINDING 5: Building and maintaining trust is critical for a successful ASGM cooperative.

Trust is essential for the success of a cooperative, yet this can be particularly difficult to maintain when facing problems and delays in securing relevant licenses and achieving other MICA objectives, such as increased market access and access to new technologies. Within this context, MICA members have to trust that their participation and membership contributions will lead to positive outcomes with time. They also have to trust that the cooperative leadership will continue to work for the collective good of members, even in the absence of tangible outcomes to justify ongoing expenditures of time and money. The current challenges around trust, however, has increased the exclusivity of membership as members have to be vetted and trusted.

MICA leadership has built trust within its membership through accommodating schedules in planning meetings so that people can attend; transparency in communication about meetings and activities; providing training; supporting a women’s interest group (MOKA) as a MICA affiliate with meeting space and mentorship; and maintaining positive relationships with potential international investors. These factors, among others, were identified by MICA members as important indicators for the efforts of MICA leaders. Challenges to trust remain, however, due to lack of information/understanding among some members on how cooperatives function; delays in securing licenses; delays in exporting gold (which is linked to licensing and logistical challenges); and the mobility of miners (e.g. challenge of transient membership).

Forming and sustaining MICA has been no easy task – words such as “commitment,” “perseverance,” and “sacrifice” were used often in describing what it means to be a member of the cooperative. But it seems that trust in MICA’s vision and mission, and by proxy the leadership, keeps current members motivated and committed to the cooperative and the formalization process.

FINDING 6: While MICA’s commitment to including women in its work is notable, MICA’s experience remains instructive about the gendered barriers to cooperative membership, leadership and active decision-making.

According to MICA membership records from June 2018, out of 36 MICA members 12 are women, representing 33% percent of the cooperative. This is comparable to research indicating that women comprise 38% of the ASGM workforce in Kenya. Additionally, MICA’s leadership supports MOKA, a women’s ASGM group affiliated with MICA. MOKA has received support from MICA leadership in successfully organizing and registering as a society, has access to the MICA office for weekly meetings, and has benefitted from MICA’s domestic and international networks. In particular, MOKA members are using MICA as a platform to promote awareness of and advocate for better health services for mercury poisoning.
Despite these efforts, women still face barriers to joining MICA. According to our interviews, women faced challenges in paying membership fees as they earn less than men, given they generally do processing rather than digging activities. Women were also less likely to be able to attend and participate in meetings, training or leadership positions because of domestic responsibilities. Indeed, women are not equally represented in MICA’s leadership – out of nine Management Committee members, only three are women.

Equal gender representation in a cooperative’s Management Committee or in the quorum of General Meetings is not a requirement under cooperative by-laws. Women also continue to face gendered stereotypes in relation to mining which can weaken their ability to effectively participate in meetings. If cooperatives are going to remain central to the Government’s ASM formalization plans, then additional steps will need to be taken to ensure that women from mining communities are actively and proportionately included in membership and decision-making bodies.

FINDING 7: Access to international networks has been critical to MICA’s formation and successful applications for licenses.

Access to international networks has supported some of MICA’s successes: they can create access to loans and grants to help with license applications; access to international markets; access to learning and training opportunities (in Migori and abroad); access to expertise; access to technology and equipment; and access to investors. While these networks may have had some positive impact, there were also risks involved which the MICA leadership had to manage carefully.

While international contacts could be seen to validate the cooperative, offering opportunities that instilled a sense of possibility and trust within the membership, some MICA members said they could also increase distrust when they did not result in visible outcomes. This could lead to suspicions about the purpose and intent of international visits, for example, and who might have benefited while others did not. In addition to this, other challenges (i.e. not having a license, viable product shipping mechanisms) often meant that the international connections and opportunities could not be fully exploited.

FINDING 8: Cooperatives support both formal and informal training and learning opportunities by bringing people together.

Cooperatives represent a talent pool in which people can learn from each other. Much of the “training” described in the interviews was informal and based on peer-to-peer exchange. Additional technical training has also been facilitated through international networks – given MICA’s status as a cooperative, foreign organizations are able to fund training opportunities for its membership. In addition to this, the State Department of Cooperatives has also provided ongoing support and mentorship to MICA’s Management Committee and leadership.
FINDING 9: The legal environment for ASGM licensing remains uncertain.

Currently there is lack of clarity in the definition of both artisanal and small-scale mining (and therefore who should apply for these different licenses). In addition to this, county-level Artisanal Mining Committees have been slow in forming. Legal restrictions resulting from a court case pertaining to land in Migori created additional delays in miners being able to obtain a mining license. The result is that at the time of the research in 2019, three years after the Mining Act and Policy came into force, artisanal and small-scale mining licenses were still not available in Migori, and uncertainty remained about how and if mining licenses would be available to entities like MICA.

FINDING 10: Applying for and maintaining licenses for mining activities is complex and challenging for cooperatives.

Because of delays in implementing the full range of licenses for artisanal and small-scale mining in Migori, MICA applied for and eventually secured a Mineral Dealers (Processing) license. The process was excessively bureaucratic, expensive and time consuming. The licensing requirements and monitoring process are not adapted to the capabilities of the very miners who should be applying, even, as in this case, when the applicant is a comparatively sophisticated, educated, and resourced mining cooperative.

The documents required to apply for the license are financially onerous, and not adapted to a context where gold miners have operated largely informally. For example, applying for a license requires documentation of mining knowledge and capital, and a track record of taxes paid to the Kenya Revenue Authority.

FINDING 11: The permit/license application and reporting processes may be a deterrent to the effective formation and function of mining cooperatives, as these processes are not adapted to the reality and needs of miners and investors.

ASGM cooperatives need more government support to be viable and to help achieve the Government of Kenya's objectives in formalizing the ASM sector. Currently the licensing process is complex, expensive, bureaucratic, and requires repeated trips to Nairobi. This makes the licensing process intimidating and out-of-reach for some mining cooperatives. These complexities are also ill-suited to the government objectives of up-scaling and encouraging local ownership.

Both of these can be difficult to provide after a prolonged period of informality in the sector. Other documentation, such as an Environmental Impact Assessment conducted by a government-approved consultant, can be costly to produce.

The monitoring process under the license is equally or even more cumbersome. The license holder, in this case MICA, has 90 days to start activities applied for under the license and must submit an account of all sales every April, July and October. The license expires December 31 (no matter when issued) and must be renewed then. For MICA, the application process took so long that their Mineral Dealer’s License expired shortly after it was granted. In other words, the expiration date of the permit was inconsistent with the time delays in securing the permit.

KEY FINDINGS – GOVERNMENT
The ASM sector is transitioning out of a long history of illegality and/or informality, requiring a cultural shift – both within the government and amongst miners themselves – in how government and ASM communities work together. In addition to this, ASGM cooperatives in Kenya are often under-capitalized and vulnerable to economic restrictions. Delays in obtaining a permit/license can pose significant financial and personal burdens on cooperatives and individual members, and can empower those with access to resources while disempowering those without. Furthermore, for cooperatives, delays in permitting can erode trust and capacity.

One approach to supporting the shift away from illegality and informality could be reviewing the license application and review process to identify opportunities for simplification and incremental implementation with progressive requirements. Reporting and taxation requirements could allow flexibility for new entrants, so they can adapt to the new requirements. Opportunities for strengthening ASGM cooperatives could also be identified, particularly in terms of record-keeping and financial management as these relate directly to the licensing process. With miners starting to pay taxes, there is also increased expectation that the miners receive government extension services to support and enhance their activities (see Finding 14).

**FINDING 12:** Greater training and cooperation is needed across the multiple government ministries, departments and agencies who touch on ASM formalization.

Knowledge of the ASM sector – which is complex – is not well established outside the Ministry of Mining, particularly for Nairobi-based offices and those that do not directly engage with mining on a regular basis. Good first steps to decrease the amount of effort required to get a license could be identifying ways to streamline the license application process and enhancing coordination between the State Department of Mining and other relevant departments.

Related to this, a low degree of government coordination and training may be increasing the costs of securing a license. MICA obtained a Mineral Dealer's (Processing) License in 2018. Accomplishing this required multiple trips to Nairobi to speak in person to officials who did not grasp the new licensing process and the nature of the ASGM business. MICA expended significant time and finances to do this, despite being uniquely positioned given its understanding of government operations and the key offices with whom to liaise.

**FINDING 13:** Prioritizing cooperatives as the preferred structure for holding artisanal and small-scale permits and licenses is likely to exclude some community members from owning permits, with women particularly impacted.

Cooperatives offer members a range of benefits, but as a structure they can be inaccessible to many. MICA members identified various benefits received from their participation: increased training on mining and business practices; increased knowledge of mining techniques and government laws and policies; and improved social standing, among others. However, barriers to participation remain. One key barrier for increasing membership was trust.

Given delays in obtaining a permit, MICA’s leadership decided to keep the cooperative small, including only known and vetted members, until it can operate effectively. As discussed in Finding 6, women in particular face challenges in participating in cooperatives. This is due to the gendered nature of the work (e.g. women process and generally do not dig, thus earning less) and given women’s domestic responsibilities, which can limit their ability to participate in meetings or take leadership roles.

**FINDING 14:** To be viable, mining cooperatives require government services such as geological information, technical training, and healthcare and social services.

People have diverse priorities for joining an ASGM cooperative, and the cooperatives require government support to be able to address these. A key priority for cooperative members is to obtain a mining license so that they can mine legally. This will facilitate access to international markets and investors, and thus increased income. Many of those we spoke to indicated that they understand that with formalization comes taxation. Yet with the payment of taxes comes the expectation of access to government extension services. In particular, miners indicated the need for geological support in finding gold reserves, technical training and improved access to healthcare. Additional priorities for joining a cooperative include direct access to buyers, increased access to gold pricing information, and access to equipment and mercury-free processing techniques.
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