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Licensing of artisanal mining on private land in Uganda: social and economic implications for female spouses and women entrepreneurs

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ABSTRACT

Based on research conducted from October 2015 through June 2018, this paper highlights the social and economic implications of licensing artisanal mining on women's land rights in Uganda. It also brings to the fore how artisanal and small-scale mining (ASM) governance is affecting women's participation in the sector. It examines how women as spouses and as entrepreneurs in the ASM sector are affected by the prevailing local governance structures and land tenure arrangements; the arrangements in place to ensure that female spouses get a share of compensation and other long-term benefits from ASM; and the ramifications of the lacuna between policy and enforcement on spouses and on women engaged in the ASM sector. The results show that the rights of women in the ASM sector are subjugated to social cultural practices, contradictory laws regarding women's land rights, poor law enforcement, and weak structures for ASM governance.

RÉSUMÉ

Basé sur des recherches conduites entre octobre 2015 et juin 2018, cet article met en lumière les implications sociales et économiques de l'octroi de licences d'exploitation minière artisanale sur les droits fonciers des femmes en Ouganda. Il met également en évidence la façon dont la gouvernance de l'exploitation minière artisanale et à petite échelle (EMAPE) affecte la participation des femmes dans le secteur. Il examine comment les femmes, en tant que conjointes et entrepreneures dans le secteur de l'EMAPE sont affectées par les structures de gouvernance locale et les régimes fonciers en vigueur; les dispositions en place pour faire en sorte que les conjointes reçoivent une part de la rémunération et des autres avantages à long terme de l'EMAPE; et les ramifications de la lacune entre la politique et l'application de la loi sur les conjointes et sur les femmes engagées dans le secteur de l'EMAPE. Les résultats montrent que les droits des femmes engagées dans le secteur de l'EMAPE sont soumis aux pratiques socioculturelles, aux lois contradictoires concernant les droits fonciers des femmes, à la mauvaise application des lois et à la faiblesse des structures de gouvernance de l'EMAPE.

KEYWORDS

Private registered land; artisanal mining; women's surface rights; legal pluralism; hybrid governance

MOTS-CLÉS

Terres privées immatriculées; exploitation minière artisanale; droits de superficie des femmes; pluralisme juridique; gouvernance hybride

Background and introduction

The extractive industry is becoming increasingly important in low-income countries because of its growing role in national economies and its impacts on society and the environment. There is also ample evidence that with artisanal and small-scale mining (ASM) growth, disputes with larger private-sector actors seem to have increased in frequency and intensity (Barreto et al. 2018, 1; UNEP 2012, 15). This development has captured the interest of governments, international organizations, and private corporations alike, but it has also raised concern about ASM's governance. To this extent, recent developments in Uganda such as the Sustainable Management of Mineral Resources Project (SMMRP) and the International Conference of the Great Lakes Region (ICGLR) are advocating for inclusive policies to foster "good governance" in the sector.

ASM is widespread throughout Uganda and has been growing exponentially since 2008. ASM accounts for more than 90% of Uganda's minerals produced. It is estimated that well over one million Ugandans directly or indirectly benefit from this sector through provision of employment, especially in rural areas, thereby improving livelihoods of families and curtailing rural-to-urban migration. Available data also shows that women's involvement in ASM activities is estimated at 45% overall and up to 70% in some sites (United Nations Environment Programme 2012, 7). In spite of these statistics, the World Bank project on Sustainable Management of Mineral Resources (SMMR) noted that ASM in Uganda remains largely unregulated and informal. Gold production itself remains dominated by ASM operations (World Bank 2013).

Recent years have ushered in different scenarios including laws and policies that have inevitably changed the ASM mining dynamics. Notable among the laws are the Constitution (1995), the Land Law (1998), the Mineral Policy (2002) and the Mining Act (2003). At the time of writing this paper, the Mining Policy and Minerals Policy have been revised and combined into a new Draft Mining and Minerals Policy (2018).

In line with the policy provisions, the Mining Act (2003) provided for location licences for ASM – which grant rights for prospecting and mining operations by methods which do not involve substantial expenditure and use of specialized technology. The Mineral Policy (2001, 8) provided for formation of associations for ASM for purposes of regulating the sector as well as improving people's capacity to produce and market their mineral products.¹ It also stipulated that government would maintain continuous dialogue with miners' organizations to address matters of ASM, and carry out awareness campaigns targeting small-scale miners. The new draft Mining and Minerals Policy (2018) echoes these strategies. In addition, one of its key objectives is to protect the rights of women and children in the mining industry and communities through encouraging women to form associations to address challenges limiting their participation in the mining industry; empowering them to participate in compensation negotiations for land access; ensuring that all programmes related to mining, including education and training opportunities, are based on gender equality and equity; and strengthening the monitoring and enforcement of laws and regulations relating to child labour and welfare in the mining industry. At the commencement of this study, there was no evidence of increased funding to the sector, although strategies to formalize ASM had started. By and large, however, the lacuna in funding and implementation still renders the ASM sector largely informal.

In their assessment of Uganda's readiness of implementation of the Mining Policy Framework (MPF), Crawford, Disney, and Harris (2015, 18) observed the strengths and weaknesses in the country's current mining law and policies. Among the weaknesses, the following were identified as aspects relating to ASM:

- The Environment Impact Assessment (EIA) regulation does not detail requirements for baseline descriptions of current conditions prior to issuing an exploration licence or mining lease.
- Royalty payments often do not reach landowners, and payment problems are compounded by the complex nature of land ownership. Revenue from mining generally does not translate into long-term social and economic development in communities located near mining projects.
- There is no long-term strategy or funding to formalize the ASM sector, which remains overwhelmingly informal and continues to be a source of conflict and lost revenue.
- The Mining Act and Regulations do not sufficiently address mine closure, nor are all developers required to provide adequate financial assurance for mine closure.
- There are limited capacity, resources and personnel for monitoring, inspections, and enforcement of existing laws and regulations.

Our contention is that although the above weaknesses are likely to affect all stakeholders in the ASM sector, women are particularly more vulnerable. Given the pertaining situation, this paper seeks to address the following questions:

- (a) How are women as spouses and as entrepreneurs in the ASM sector affected by the prevailing local governance structures and land tenure arrangements?
- (b) What arrangements are in place to ensure that female spouses get a share of compensation and other long-term benefits from ASM?
- (c) What are the ramifications of the lacuna between policy, law, and enforcement on spouses and on women engaged in the ASM sector?

In Uganda, as indeed elsewhere in the developing world, women's land rights are often embedded in patriarchal structures – a situation that is often presumed not only normal but also natural. Goetz (2014, 1) highlights how African societies have devised ways to instil “a constant threat of violence, to ensure women's acquiescence to this structural inequality.” Mbote (2013), Boone (2007), and Doss et al. (2014) contend that land rights are key in advancing women's socio-economic status and position in society. Lack of these rights therefore greatly undermines efforts to improve gender equality and equity.

The overall responsibility to correct the traditional discriminatory practices in the patriarchal structures lies with the state. This should be done by enacting laws and putting in place mechanisms to correct the injustices and to adhere to the international conventions that espouse human rights. The government of Uganda has indeed taken steps to address this situation, though the impact of these interventions remains modest. Women's human rights, though enshrined in the supreme law, are still not being realized either because of the indeterminate laws or due to the fragile governance structures (UNDP 2012; Hannay 2014). On the one hand, it declares commitment to equality and abhorrence of the discriminatory traditional practices, while on the other it creates an

environment that leaves women in situations that effectively deprive them of their rights to the productive resources. The ongoing legislative reforms of both the extractive and legal sectors, although well intentioned, are not strong enough to protect women's land rights. In addition, the investment policy on extractives tends to protect the interests of foreign investors with the aim of attracting and securing greater foreign direct investment (FDI), as observed by SEATINI (2016, chapter 6.2).

In this paper, we have premised our analysis on three interactive aspects of the political economy of women and ASM: distribution of benefits and welfare of women as interested parties in the land on which ASM takes place; the ramifications of tenurial environment on women entrepreneurs in the sector; and the effects of the gaps between law and enforcement of activities in the sector. We also draw on the work of Verbrugge et al. which focuses on "the relationship between artisanal and small-scale mining and surface land arrangements" (Verbrugge, Cuvelier, and Van Bockstael 2015).

We base our conceptual framework on the new literature and theory of hybridity specifically in legal and governance spheres. From the numerous sources in the literature, there is a grey area between legal pluralism and legal hybridity. Broadly, however, both refer to the plurality and fusion of laws in any given space and time. Legal hybridity is mainly described to exist in African contexts and attributed to colonial rule (Meagher, De Herdt, and Titeca 2014; Reyntjens 2015).

According to Reyntjens, legal hybridity refers to the forms of governance that have emerged in light of the challenges posed to weak states by alternative, generally informal and sometimes criminal normative orderings that are nevertheless seen by some authors as avenues of state formation (Reyntjens 2015, 347). Legal pluralism involves devolution of governance competences from the state to alternative organizations (von Benda-Beckmann et al. 2009, quoted in Reyntjens 2015). These can be private institutions in the charitable or commercial sphere, decentralized entities, parallel centres of governance, political authorities, or legal frameworks based on neo-traditional, religious, ethnic, or local legitimations or international actors.

Legal pluralism is resisted by both states and the international (aid) community mainly on account of the purported supremacy of the state and of the universality of human rights. Citing Woodman (1998, 130–132), Reyntjens notes the problem with legal pluralism is that development projects promoted through state law are frustrated by people's adherence to non-state law; the strengthening of the rule of law is conceived as the strengthening of the rule of *state* law; legal pluralism complicates the planning of development projects; it gives rise to conflicts between normative orders, which produces inconsistency and uncertainty in the normative field; and domestic and international engineers of change do not have an adequate knowledge of non-state legal orders. Citing Isser (2012, 239), Reyntjens highlights three challenges of legal hybridity from a human rights perspective: the rights of women and minorities, due process, and fair trial standards; the principle of the equal application the law to all citizens; and the role of the state as the legal guarantor of human rights under the international treaty regime.

Although hybrid governance is a relatively new concept, it nonetheless culminates in the "pluralization" of regulatory authority leading to "hybrid political orders," among other situations including negotiated and non-negotiated outcomes. The discharge of state functions to alternative arenas of authority is at the core of hybrid governance. Examples of alternative and quasi-government institutions and non-state actors

exercising core state governance functions abound in the recent literature. In Uganda, hybridity is evidenced by both the laws and the institutions created to deal with complexity of land rights claims over previously registered land. Reyntjens concludes that hybrid governance, similar to legal hybridity, may be considered a still-evolving paradigm. It shifts from a predominant focus on state government and state law to hybrid modes.

Hannay (2014, 2) confirms that, like much of sub-Saharan Africa, Uganda has a pluralistic legal system combining various sources of law including pre-independence British law, Ugandan civil law, and customary law, all featuring in its legal structure. This article will shed light on the plight of women in ASM zones, whose daily lives are affected by this legal hybridity. We present findings from a case study of a gold rush mining site in Central Uganda, highlighting the plight of women's surface land rights on registered land and how tenure arrangements impact on women's participation in ASM.

The case study

The data presented in this article was collected from a gold mine site in Central Uganda which was part of a larger study covering the three countries of DRC, Rwanda, and Uganda. Several data collection methods were used including participant observation, focus group discussions comprising both women and men, a survey, key informant interviews, and life histories of women artisanal miners and service providers, during the two-and-a-half years of the bigger study (2014–2017).

Although this paper focuses mainly on land rights, it was not a key theme in the larger study. However, the findings from this study site compelled us to examine this aspect with the aim of exploring the possible implications pertaining to tenurial arrangements for women as land rights holders and as entrepreneurs in the ASM sector. The interest in examining these aspects arose from the fact that ASM was taking place on private registered land with multiple, overlapping, and diffused surface rights claimants. Though there are gaps in the data, this case study sheds light on some important issues regarding the land rights of female spouses and on those women who join the sector as entrepreneurs on private registered land.

Overview of the study site

The entire Central region was surveyed and land titles for it issued between 1915 and 1928 except for what was classified as crown or public lands.² Hence, any exploration and exploitation of minerals in this region must have the consent of the registered landowners and users of both the private and public *mailo* land. The former refers to individual freehold while the latter is that land under the jurisdiction of the Buganda Kingdom. In the particular area where the study was conducted, the land is under private *mailo* and the original registered proprietors had long since perished. Due to the disorganized nature of land record-keeping country wide, family dynamics, and economic constraints, it was not possible to get official up-to-date information on the current registered or proxy owners (administrator) of this land.³

The history of gold mining in the area dates back to around 1989, when the initial prospecting was started by a private company. This alerted the local communities to the possibility of the presence of valuable deposits of gold. As several local residents informed

us, a few “daring individuals” kept on prospecting for gold and eventually started mining, attracting other artisanal miners from the region and beyond. In 2005, an exploration licence was granted to the private mining company, covering an area of 282.9069 square kilometres. However, due to the overlapping land rights interests in the exploration area, the company encountered problems in evicting the then-present artisanal miners and residents. A compromise was reached for the private company to release 104 acres to the local artisanal miners who were already extracting ore. The area soon became a “gold rush” site as more and more speculators from within and outside Uganda arrived in the area to try their luck.

As a result of these developments and negotiations with the private company, and as provided for in the Mining Act 2003, an association between the power wielders (elites) and a few local ASM miners was hurriedly formed to acquire a location licence for prospecting and mining.⁴ An interview with a key informant from the Ministry of Energy and Mineral Development revealed that this association was the first such to be formed and became a model for artisanal miners throughout the country. This site was also reported to have the greatest number of women.

The thrust of examining its governance structure was to understand how state involvement in ASM through regularization, licensing, and registration impacts on women’s surface rights and their pursuance of economic empowerment.

Findings

Effects of prevailing tenurial arrangements on women entrepreneurs in ASM

During the four occasions on which we frequented the gold mining site, at least seven individuals (men) were indicated to be “landowners” (although in reality, they are actually tenants on registered land), all collecting different types of levies for the surface rights they are presumed to be entitled to. Women are greatly affected by the multiple claims of surface rights through the endless levies, thereby denying them accumulation opportunities. Women entrepreneurs revealed anxiety over the endless levies they had to pay to the different landlords and lessees to be able to operate at the site. A female shaft owner reported in consternation that

This land where we stay and operate from belongs to different landlords. Where we are now this land belongs to a Mukonjo man (another ethnic group from south-west Uganda) who died some time back and it is now the widow in charge. ... The challenge I face is paying the different landlords who have different rates for digging shafts. For example, with landlord KN, I had to pay 50,000 shillings (USD 14.8) for the size of 20-20ft for the start. When I reached the ore I gave him 1,150,000 shillings (USD 341). Then for every 10 bags of ore dug he takes two and one for the officer in charge. And when I start getting expensive ore then he extracts ore from the shaft for 24 hours using my machines and power every week. It’s the same thing with landlord KB, but at least for him he takes one bag of ore out of 10 bags. And he does not extract ore from our shafts like KN but we negotiate. I feel like these landlords are exploiting us shaft owners. We just agree to whatever they say since we have no choice, we are at their mercies.⁵

There were about 700 miners operating at this site and 2000–3000 people working as service providers with their livelihoods tied to gold mining. We observed that not all the miners operate under the auspices of the association as required for the location licence – a situation that gave rise to different power centres. We also identified several layers of

surface rights claimants, and these rights kept changing so much that it was difficult to make meaningful negotiations to access space needed to do mining and other, supportive activities. These rights included inheritance/descendancy rights, inter-generation tenancy-hood (lawful and *bona fide*) rights, lessee, and rental. The question of rights and benefits at the site was a very serious concern for all. The integrated diagram (Figure 1) demonstrates the magnitude of surface rights claims at the site.

While narrating about land and management at the site, one woman entrepreneur stated that:

The digging was on public land (pointing towards down the valley) and then they later got a title over it but I do not know the names on the title. Maybe it is the company's [i.e. the association's] names. What I know is that the *kibanja*⁶ belonged to MK but now ownership seems to be split up. There is another *kibanja* owner called ST; he then sold it to a company for Shs 40m but the land had a lot of gold worth billions. Another *kibanja* owner, NB, owns the area where rentals and shops are. Both NB and ST were here before the coming of the gold seekers [the rush].

There are three issues arising from these life history excerpts, including the quandary of surface rights claims over registered land also having tenants (*bibanja* owners) with secondary land rights. The second issue also related to the first is the rate at which these rights are transferred, making it very difficult for the business community to know who the rightful claimants are. Third is the issue of governance, including the key players, where they derive the mandate, and possibly the conflict of interest that undoubtedly affects transparency in the association. Our own subtle inquiry into landownership of the area was futile, though we established that the association collects money from landlords who are also actively involved in mining activities and from the different sections (processors, extractors, and service providers). The landlords also collect a levy from tenants. The association's insistence on collecting various levies was to pay the government for the licence and taxes on revenue. Information from the local executive members of the association indicated that the licence cost them USD 100,000 – a figure over two hundred times the official amount (USD 450). They further informed us that to become a member, one had to pay UGX 10,000,000 (USD 2966). There were multiple levies that all miners and service providers had to pay. These levies and taxes are summarized in Figure 2.

Due to overlapping interests of surface rights claimants including landowners, lawful and *bona fide* tenants of different generations, lessees, and the association, there was

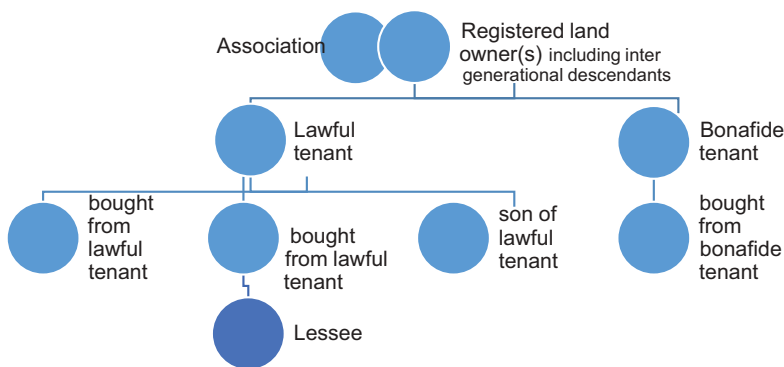


Figure 1. The layering of surface land rights at study site.

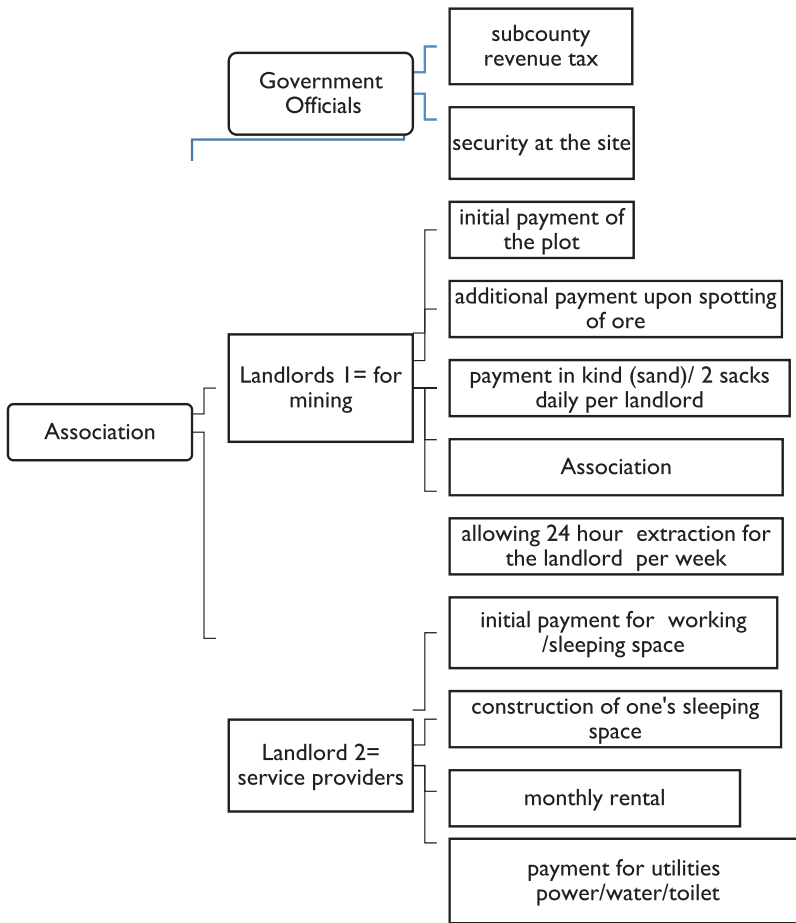


Figure 2. Levies and taxes paid by the mining community at the study site.

constant friction related to collection of taxes and levies. There was also a constant change of surface rights claimants due to speculation leading to leasing space from the previous claimant, which is a deterrent to women entrepreneurship. None of the old or new surface rights claimants had authentic papers to prove ownership, which created a formidable dilemma for all entrepreneurs at the site. The secretary to the association reported that “The association has tried to create a working relationship with some of the landlords but some have refused. For example, we wanted to remove the processing machines from the mining area but the landlords were adamant.”

Women entrepreneurs, who happen to be the majority of the service providers, were caught up in this web of multiple surface rights claimants, who continuously institute levies for activities taking place at the site.⁷ Meanwhile, the association, as an entity atop of the local governance hierarchy, was constantly in conflict with some of the surface rights claimants who claimed to have been conscripted into membership without their knowledge and now find themselves restricted by the association, especially in terms of collecting revenue. This in turn created a stalemate following which one tenant claimant took the association to court, claiming he was forced to join the association against his

will. The case had not yet been discharged⁸ at the time of the fieldwork. The stand-off between the association and the different surface claimants created a big challenge to its management. It was reported by the association's site manager that

Collecting dues from the mine is a problem because of double collection; many still resist. We do not collect money from ball millers for reason that the landowner of that area also collects money from them so they think the association is practicing double taxation.

The individual tenants-cum-landlords appeared to wield more power than the association since they had the powers to allocate and evict those refusing to heed their demands for levies in exchange for using the various spaces at the site. For women who had managed to save their meagre income from panning to invest in mining by buying mining pits, they were restricted to mining to a depth not beyond 7 feet. It was reported that signs of rich ore deposits are often detected at this depth. However, women reported that they are evicted even before this depth once they reach the rich ore deposits, regardless of any agreement made at or before commencement of extraction. The association was not in a position to prevent this unfair treatment of women miners, yet there was a lack of a neutral local arbiter since some of the local leaders were also directors in the association, thereby creating an element of conflict of interest. The fact that women are not represented in the association put them at a further disadvantage to negotiate fair terms regarding issues affecting them, particularly the changing levies and taxes.

Women's full participation, especially in the most lucrative mining activities, is also constrained by local taboos and male harassment which force them to adopt strategies to navigate the obstacles they face. Such strategies include protection of individual honour. For example, when one of the female entrepreneurs was asked what enabled her to become successful in mining, she revealed that a fellow female miner advised her that one of the tactics for success in mining was to get a shadow husband. She confessed:

I got a shadow husband and employed him on my grinding machine. He wanted us to have children but I chose to use family planning because I never wanted to add on the three children I already have. I had decided never to have more children but only focus on working for the ones I have. Now, I do not have time for intimate relationships; all I care about is how to make money.

Another barrier to full participation of women in ASM is the lack of childcare arrangements, particularly as the association and the mining regulations prohibit the presence of children in the mines. A woman entrepreneur had this to say:

One of the barriers I have been having is staying with children at the mine after the death of my mother who used to look after them. But as for now am trying to overcome that barrier by taking children to boarding schools. And when they are in holidays, I employ a maid whom I pay 80,000 shillings [USD 23.7] a month. And when she is not around, I leave the children with neighbours who cook for them and I buy them drinks once in a while as a way of appreciation. At times I go back with cooked food bought from restaurants to avoid cooking because I get so tired by end of the day.

Arrangements in place to ensure that women fairly benefit from the ASM sector

In attempt to understand the arrangements in place to protect women's surface rights under ASM, we first scrutinized the policies and laws related to mining, land, and the environment. This was triangulated with primary data in order to present a comprehensive situation of the women's plight. The category of women of concern here are the female spouses to the presumed male owners of the family land on which ASM activities are taking place.

The general observation is that both the policies and laws regarding land and mining contain contradictory sections leading to legal and governance hybridity. In the first instance, Uganda's constitution guarantees the protection of women and their land rights (articles 31–33) by giving them "equal property rights with their male spouses." It also prohibits any "laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status." On the other hand, the land law waters down these rights by merely according married women consent⁹ rights (Land Act Amendment 2004, sections 38 and 39) to their family land¹⁰ and not co-ownership rights as envisaged by the constitution.

Women's predicament is further aggravated by the social construction of the institution of "marriage." The law recognizes several marital arrangements including civil/church, Islamic/sharia, and customary. However, the majority of couples are socially deemed married although legally they are merely co-habiting. On the other hand, those falling under customary marriage are often not registered and have no documentary evidence of their union. This gap is often exploited by male landowners to deny their female partners/spouses household property entitlements and a voice. This lacuna in the land law coupled with the unclear marital arrangements disadvantages the majority of female partners in such unions because they lack the *locus standi* to seek justice when they are deprived of their rights.

The land law further complicates the situation by according tenants full rights over private registered land including vending, bequeathing, and construction of permanent structures, resulting in a situation of multiple, layered rights and claims. Moreover, tenants' claims are often not documented or verifiable. This has led to unprecedented land disputes and evictions culminating in the establishment of numerous institutions at different levels of governance to curb the situation.¹¹ This legal innovation has turned land governance into a frighteningly messy and expensive affair.¹² Hence, seeking legal justice is often not an option, especially for rural women.

This situation is further exacerbated by the Mining Act (31, 1) which gives exclusive rights of access to investors/prospectors to undertake prospecting and exploration without necessarily seeking dialogue with the surface rights holders or even consulting with the local authorities. Although consent of the surface rights holders is supposed to be sought at the later stage of exploitation, there are no mechanisms to verify that all the stakeholders are involved and provide their consent from an informed point of view. Women are the tillers of the same land where excavation takes place. The absence of provisions to acknowledge this fact and to protect their interests and compensate them for the product of their labour (the crops) is indeed a major setback for the welfare of the women and of the communities at large (Land Regulations Schedule B, Form IV 14(iii)).

The governance structure at the site (the association) that was expected to adhere to the law and to exercise control over the ongoing mining activities and other associated supportive services is glaringly gender blind. The association had five male directors who were also its original founders. One of the directors was also the village chairman as well as the owner of the land where most of the actual mining was taking place. The total membership of the association was 37 to 40, of whom only four were reported to be women. Attempts to establish the identity of the members apart from the directors were futile. We later established that the figures given were only those on the books and declared for purposes of acquiring the licence. The location licence covers a small area of only 104 acres but had scores of families holding the various rights as either lawful or *bona fide* tenants, half of whom were women.

The absence of women as co-rights claimants in the association leadership raises several questions. The first question is whether women, as surface claimants of the land, participated in the process of surrendering that land to acquire the location licence. The process of participation in this case would entail understanding and appreciation of associated trade-offs and benefits before appending consent on the documents for the licensing process, as required by law (Land Act 1998, Section 39). Although we were unable to access the documents submitted to the commissioner for the licence, the fact that male “landowners” were directors but none of their spouses were suggests that women were left out of the process. This implies that without a voice in the governance hierarchy, female spouses were deprived of their surface rights claims. It also implies that they lack power to claim their rightful share of the long-term benefits such as royalties. These long-term benefits are very important, particularly at different life stages of women such as widowhood.

Women’s non-participation during the initial negotiations as well as in the existing ASM governance structures implies that they lack a voice with regard to issues of land restoration and environmental protection, which is detrimental not only to their health and welfare but also to the entire community. Indeed, there was ample evidence of widespread environment degradation and poor sanitation, as noted by two of the women entrepreneurs:

It is good you came during the rainy season so you see for yourself what we go through. First, there is only one public toilet where people pay 500 shillings [USD 0.15] per round. This deters so many people from using the latrine and [they] end up using the bush but when it rains all that *kazambi* [human waste] ends up flowing everywhere.

The digging of shafts here and there has left so many places open which puts us at risk ... When we had just started, it was hard to know how this would affect the environment. It’s now when you talk about it that I realise the impact. When we are in the mine here, our major concern is getting money, and things to do with the environment are a concern of the landlords. All the water that is used for panning both in ponds and sluices goes back down the stream and mixes with the water we use for home use. We have no alternative but to use it and many people may not know that the water we use mixes with mercury.

The above revelations clearly highlight how hybridity in the legal justice system impacts on women’s human and land rights. This finding confirms earlier observations by CEDAW (2010) quoted in Centre for Economic, Social and Cultural Rights in Africa (2015). In their submission at the United Nations Committee on Human Rights, they noted “... that even though women in Uganda have constitutional protections, mechanisms of implementation

and enforcing these constitutional provisions remain widely unknown and inaccessible to women.” The multi-layered land rights over privately registered land further complicate land governance as well as matters related to surface land rights claims for the different categories of women in the different categories of conjugal unions.

In addition to the above hurdles, some of the authorities at the lower levels – sub-county and village – who could be of assistance to the women are unlikely to do so given their interests and position in the mining governance structure. The national and local hybrid governance systems coupled with the women’s low levels of education (21.5% of women in the survey had no formal education) and social status, and the male dominance over land matters, meant that seeking redress as individuals or even in association can be overwhelming.

Discussion

This case study reveals that the relationship between miners at the study site and surface land claimants in a gold rush site can be symbiotic in light of the opportunities it presents to tenants with insecure land rights. In line with Meagher, De Herdt, and Titeca (2014) and Verbrugge, Cuvelier, and Van Bockstael (2015), legal hybridity has culminated in the “pluralization” of regulatory authority leading to “hybrid political orders” to avert undesirable situations.

This case study brings to light several challenges for women vis-à-vis artisanal mining. The first challenge is the legal dilemma which has to do with enforcement and protection of women’s surface rights claims over registered land under ASM. While the constitution avers it will protect property rights, particularly those of women, subsequent laws such as the Land and Mining Acts tend to downplay this principle when they fail to put in place instruments to explicitly protect these rights. Both the Mining Act (Article 60(1)) and the Mining Regulations (FORM IV Reg. 23(1)) fail to require the mineral prospectors on private land to produce/attach evidence of prior and sound agreements and spouses’ consent (Land Act section 39) for the land to be prospected and/or exploited for ASM.

Under the rights and duties of a location licence holder (Article 60), the holder has the right to enter his or her licence area, and has the exclusive right to prospect for and mine in that area and to remove and dispose of the mineral in respect of which the licence was issued. Without sound and fair agreements with the surface rights claimants, the rights of the licence holder seem to override those of landowners and there are no clear guidelines for conflict resolution at the local level.

The Mining Act provides that no *mining lease* will be granted unless an applicant has secured the surface rights of the land which is the subject of the application (section 43(3) (h)). But there is no clarification on how this is to be done. The Columbia Center for Sustainable Investment (CCSI), using the Human Rights Impact Assessment Tool (HRAT) and the NAMATI, reviewed Uganda’s Mining Act (2003) and the Mining Regulations (2004) and highlighted that

There is no appropriate protocol for consulting with land owners/communities before the prospecting/mining initiation and settling with members whose land will be affected. Requirements for social impact assessments and/or environmental and social impact assessment (ESIA), social management plans, human rights impact assessments, or a consultative process under the Act and Regulation are lacking. (CCSI 2014)

The surface claimants of the land initially retain the right to graze stock or to cultivate the land to the extent that such activities do not interfere with the prospecting, exploration, or mining activities (section 80 of the Mining Act). Any loss or damage to stock or crops that arises out of such exploration or mining activities must be borne by the surface rights claimants and not the licence or lease holder. This in effect undermines the rights of the surface claimants (section 81 (2a and b) of the Mining Act). In the case of crops, the women who are the key food producers have to bear the heaviest burden.

The second challenge is dispute resolution. When there is a dispute between a mineral rights holder and a surface rights claimant in relation to leases and sub-leases, including the rents payable, the case must be arbitrated by a senior government officer (commissioner) – based at the national level (sections 61, 81(2) and 82(2) of the Mining Act). Such a dispute resolution mechanism may not be accessible or affordable (in terms of time and distance) for the landowners, especially the women. A mining licence holder may be required to compensate the surface rights claimant for disturbance of their rights under certain circumstances (sections 82–83 of the Mining Act). However, disagreement over the amounts for compensation must be referred to the commissioner¹³ for arbitration. Subjecting surface rights claimants to such an expensive, complex and far-removed arbitration process is to put the welfare of the women residing in a location licence area in jeopardy. Such a process may require legal representation which may not be affordable to families such as those found in our study site. Moreover, where corruption is rife across all sectors in the country, justice becomes a privilege of the rich and in this case the investor is always at an advantage. Under these circumstances, the rights of women – who are often unaware of their land rights as spouses over family land – are greatly overshadowed.

The third challenge is the enforcement of the law governing ASM. As noted by Crawford, Disney, and Harris (2015), Uganda has limited capacity in terms of resources and personnel for monitoring, inspection, and enforcement of existing laws and regulations. A case in point is environmental degradation which was apparent at the study site. It is noted that both the Mining Act and the Regulations emphasize environmental issues and require a certificate of approval of environmental impact assessment, but there is little on the ground to mitigate the effects of ASM. In the case study area, we noted serious land degradation and abandonment of open pits. In an environment where there is a lack of information, communities may be compromised to enter into agreements that are very destructive to the land and resources they depend on.

The fourth challenge, also observed by Crawford, Disney, and Harris (2015), regards royalty payments. Given the multiplicity of the surface land claimants, it is impossible to imagine how the issue of royalties can be sorted out. By the time the study was winding up, there was a ban on payment of royalties in regard to gold returns; shortly after, all artisanal miners were evicted and the reason given was to streamline mining activities at the mine.

In addition to the above challenges, there is the observation that the quagmire surrounding land governance, including legislation for multiple surface rights claims, the lack of transparency in land transactions/trades, and how land conflicts are adjudicated, is in fact intentional. Kjær (2017) argues that there are strong incentives to maintain land governance as a grey zone in Uganda, because when land institutions are left in flux, land can better be used as a political resource to appeal to landless voters, to maintain the support of political cronies, or to attract large investors in land. In our research site, this

lack of clarity allowed competing claimants – different landholders as well as the association – to make overlapping demands for payments to those mining or selling in the area, which adversely affected women, who formed the majority of service providers and retailers as well as being less well-financed miners compared to men.

Conclusion

The notion of promoting associations for artisanal mining in Uganda as stipulated in the revised draft Mining and Minerals Policy (2018) has limitations in regard to the complex relations of surface land rights, as evidenced by the findings from the study site. It is noted that the revised policy, although more comprehensive than the previous one, echoes the strategies of fifteen years earlier; it is blind to the pertinent issues posed by the complex web of multi-layered surface land rights. While this policy promises quite a lot, the status of women in regard to knowledge about the different laws and rights, marriage practices, low levels of education, and customary norms towards women and land ownership are major barriers preventing women from benefiting from the policy objective. Besides, the marital arrangements described above leave them no or little room to justify their collectivity in the form of associations.

The challenges emerging from this case study highlight the discordance between the stated objectives of establishing good governance in the sector through associations in areas where land is privately owned. At our research site, this lack of clarity allowed competing claimants – different landholders as well as the association – to make overlapping demands for payments to those mining or selling in the area, which particularly affected women who formed the majority of service providers and retailers as well as being less well-financed miners compared to men. As others have noted, formal bodies mandated for ASM governance tend to benefit pre-existing elites (e.g. De Haan and Geenen 2016). Our study confirms this argument, of how historically marginalized women continue to be put at a disadvantage by the creation of the association.

Therefore, there is an urgent need to address the challenges of legal hybridity, errant local governance structures, and multiple surface claims in order to protect women's surface land rights and elevate their role in the ASM sector while at the same time assisting them in their struggle for economic empowerment.

Notes

1. This is further emphasized in the new draft Mining and Minerals Policy of 2018.
2. Crown land is generally referred to as "the 9000 square miles" and is contested by the Buganda Kingdom, while public land was the land that had been delineated by the colonial government for public use. In 1993, crown land was transferred back to the Buganda Kingdom as public *mailo* land and it is now under the jurisdiction of the Buganda Land Board. The *mailo* tenure system is akin to freehold tenure and is a local adaptation of the English freehold; it acquired its name from the unit of measurement (mile) at the time. It is almost exclusive to central Uganda though it is also prevalent in some areas in the west

(Kibale district). Like freehold tenure, *mailo* tenure bestows absolute ownership which can be bought, sold, and inherited. Also see Henry West (1967).

3. It is very difficult and rare for heirs to take up the responsibility of updating the records. Usually, there are several heirs to the land and it requires knowledge, money, and time for the interested parties to take steps in sub-dividing the land according to portions allocated by the deceased owner.
4. A location licence is a licence for prospecting and mining operations by methods which do not use specialized technology and do not involve substantial expenditure. A two-year licence costs USD 450.
5. USD 1 = UGX 3,372. Source: Bank of Uganda (31 December 2015).
6. The term *kibanja* is used in the local context to refer a piece of land held by a tenant on registered land; the plural is *bibanja*.
7. Interviewees repeatedly intimated that “big shots” in government rally behind and/or sponsor the ongoing investment; many suggested that some officials at the various governance levels receive heavy kickbacks for supporting the association.
8. We were unable to verify this at the magistrate court in the sub-county.
9. Meaning spouses have to give consent for any transaction involving family land.
10. Family land here refers to land on which family residence is located or land that the family agrees is used for the sustenance of its livelihood.
11. The land law has, since its enactment, been amended three times.
12. Cases of evictions are published in the nation’s daily newspapers.
13. The commissioner is the officer in charge of the Geological Survey and Mines responsible for approving the location licence, and is the arbiter as well as the chief supervisor of ASM activities.

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