What’s in a Right? Gold mining, decentralisation and neoliberalisation in Burkina Faso

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Introduction

Much of the critical literature on gold mining and development has focused on the political economic drivers that underlie social and environmental shortcomings in the sector, largely defined as manifestations of a 'resource curse'. This work has placed an emphasis on the role of power and institutional configurations and their ramifications to world-wide liberalising fiscal and legal reforms undertaken since the 1980's (Bridge 2004, Hilson and Potter 2005), how these play out in relation to militarisation and violence (Bush 2009) and how they are linked to failed attempts at formalisation of the artisanal sector (Banchirigah 2006). This scholarship brushes a picture of increased inequalities, social injustice and tensions within the mining sector, globally. Local responses to injustice and analyses as to how responses come about are often dealt with outside the State, examining community/company conflictual relations (Hilson and Yakovleva 2007), the role of code of conducts in company social responsibility (Jenkins and Yakovleva 2006; Campbell 2008) and that of social movements in addressing social injustice (Bebbington et al. 2008). The analysis of resistance has been up-scale, and it is empirically very important and relevant since an internationalisation of governance calls for an internationalisation of its critique (Haarstad and Fløysand 2007).

At the same time recent research suggests that much might be learnt from the micro-politics of local responses to industrial mining (Bebbington and Bury 2009; Horowitz 2010). This paper builds on these findings from the unlikely angle of democratic decentralisation. It is unlikely because current evidence shows that local governments tend to facilitate dispossession (Campbell 2008, Lange 2011) suggesting that we should not expect to learn anything about resistance by these institutional arrangements. The question we can ask on the other hand, is how dispossession takes roots, becomes legitimised nationally and locally (Borras and Franco 2010), and what relations of power and authority frame the (im)possibilities for resistance to take place. Bebbington and Burry (2009: 17296) suggest that 'institutional conditions [...] separate the governance of mineral expansion, water resources, and local development, and of relationships of power that prioritize large scale investment over livelihood and environment.' The paper argues that such relationships of power must be investigated in the local, but making sense of them requires that we contextualise and historicize them in wider national and global trajectories of institutional change. Here I choose to focus on those trajectories at the intersection of liberal and decentralisation state reforms. Specifically I argue that the liberalisation of mining creates local governance challenges that should but cannot be met by local governments, because they lack sufficient powers and resources, which in practice encourages clientelist relations of power and authority that undermine citizens' interests.

The gold mining sector in Burkina Faso offers a good context to explore these issues. In the last 10 years gold has become a significant part of the national economy, and acquired the rank of first export product in 2009. This boom has been accompanied by rapidly evolving legislation to
encourage the expansion of industrial mining activities. At the same time, artisanal mining has also been gaining ground, coming increasingly in competition with the formal sector. As such gold in Burkina is a point of contact between the material interests of State, corporations and citizens' livelihoods, and liberalising reforms have been undertaken nationally as a way to best balance out these interests. At the same time, Burkina Faso has taken the path of democratic decentralization and since 2006 that includes the creation of autonomous local elected municipalities. How competition between the artisanal and the formal mining sector is regimented by liberalisation of the gold sector and arbitrated by nascent rural democratic institutions is tackled here in an attempt to reveal the contradictions that emerge from simultaneous liberal political and economic reforms.

In the first section of this paper I lay out the theoretical building blocks of this paper, focusing on how literature on the politics of possession contributes to filling a gap in work on the institutional dimensions of the 'resource curse'. Secondly, I present points of contact between mining and decentralisation, focusing on some local governance imperatives that the expansion of the gold sector poses, and highlight a certain contradiction with regards to the poor powers and resources devolved to local governments to meet these challenges. The third section examines the liberalising shift in Burkina Faso. Through the analysis of legal documents, interviews with relevant line ministry agents and media sources, I analyse the discrepancy between what the legislation intends to do, and how it plays out in practice. I show that mining liberalisation has accentuated the remoteness of the State in relation to the artisanal sector thus contributing to rendering it ungovernable. The last section takes a look at this situation 'from below' examining how and by whom these governance spaces left empty have been filled. Drawing on ethnographic data gathered over 15 months in the commune of Nebnooma1 in northern Burkina Faso, I analyse everyday relations of power and authority between a Junior mining company, artisanal miners and decentralised authorities. The ethnographic snapshot reveals unlikely political alliances, with on the one hand a mining corporation that should not, but does, temporarily protect miners’ access to resources, and local decentralised authorities who should not, but do, undermine miners' interests. Understanding the conditions under which these political positioning are formed is an important step towards elucidating why collective political action against dispossession may or may not take place.

The paper does not intend to make generalising statements about the role of decentralised institutions as legitimising or opposing neoliberal state projects. Nor does it claim that existing democratic frameworks help overcome the development shortcomings of liberalised mining sectors. What the paper offers is an avenue for engaging with issues of formalisation and titling in a practical manners, taking power and authority seriously within the institutional conditions that give rights their material significance. At the intersection of liberalising and democratising state reforms irregular power trajectories emerge, relations of authority are configured in unexpected ways. These irregularities need to be theorised if we are to understand the seeds and constraints to gold-related development opportunities and/or to resisting dispossession.

I/ Resource curse, institutions and the politics of possession

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1 The names of places and people from the study area have been changed in order to protect informants and because disclosing this information is not necessary for the construction of the argument made in this paper.
Debates over the development potentials of mining have recently paid attention to the importance of institutions as a factor lying between mining as a curse or as a blessing. Some scholars have engaged with the issue not from the point of view of the problem but from that of solutions proposed. Attempts to titling and the formalisation of artisanal mining for example have been scrutinised (Siegel and Veiga 2009) though it was often found inconclusive. As a result attention has been drawn to the design of artisanal mining livelihoods-based programmes and the debate has revolved around 'getting institutions right' (Hilson and Banchigirah 2009; Childs 2008). Others interested in the institutional dimensions of the resource curse have focused on the politics of institutions, stating that there are relations of power that precede the formulation of inadequate institutions. Bebbington (2010) for example interrogates the ineffectiveness of Corporate Social Responsibility codes. He argues for instance that government institutions in charge of the elaboration of these codes are also those promoting the development of the industrial sector, and are therefore unlikely to impose constraints on corporations. What this suggests is that the impediments to realising the development potential of mining must be understood less in the rules formulated in codes than in the relations of interests and power between institutions designing and implementing these codes.

This argument resonates a long standing debate in the role of property rights in natural resource based development opportunities. Central to this debate has been the argument that investment in land is less a function of institutional design (e.g. private, communal, or state ownership) than of the power relations allowing specific actors to benefit from resources (Ribot and Peluso 2003), and/or to claim rights (Sikor and Lund 2009). Research on the politics of possession has best been elaborated in the scholarship on environmental governance that shows how power relations that underlie conflicting interests and representations about resource use mediate the extent to which rights may or may not be enforced (e.g. Nightingale and Ohja 2012). Ribot (2009) for example shows that while forestry legislation pertaining charcoal quotas was devolving power to decentralised authorities, these were unable to enforce quotas because they went against the interest of powerful urban charcoal merchants.

There are two lessons from this approach that can benefit the debate on mining, development and institutions that this paper builds upon. First, that much analytical power about the development shortcomings of mining is to be gained by looking at the discrepancy between law and practice. Rights do not necessarily translate into access, understanding why that is so necessitates that we interrogate the kinds of power relations that allow this to happen and who benefits from this discrepancy. This distinction seems appropriate in the context of gold mining in where property rights regimes, for titling and permits for example, do not always translate easily in practice. For example below ground resources are generally the proprety of state but at the same time where artisanal mining activities operating outside legal frameworks are tolerated to the extent that they do not interfere with mining permits issued by the state (Spiegel 2012). Second, they suggest that the significance of rights may be less determined by the rules embedded in them than in the relation of power and authority between actors and institutions who arbitrate (like the charcoal merchants for example in the case of Ribot's study) the inclusion and exclusion of those who have rights and those who have access to resources. Although their role has been under studied to date, local governments play an important part in this arbitrating process in the mining sector, as the following section shows.
II/ Decentralisation and gold mining in Burkina: Imperatives and contradictions

Reforms towards democratic decentralisation in Burkina Faso have started since the restructuring of the state, through the adoption of a new Constitution and of Structural Adjustment Programs (privatisation of public services mainly) since 1991 that have made space for local governance, but it has only been effective in the whole of Burkina since the first municipal elections in 2006. The municipal council is made up of councillors elected at the village-level, generally ranging from 60 to 80 individuals depending on the number of villages in a given commune. At the village-level the Comite Villageois de Developpement (CVD), made up of 10 to 15 individuals, are nominated on the basis of consensus vote and are meant to insure the link between the municipal council and citizens. Together councillors elect a Maire who presides the municipal council, which is renewed every 5 years. The council gathers at least four times a year, and can be called upon by the Maire on a more recurrent basis depending on specific issues that may come up (GoB 2004).

The mandate of these authorities is not yet clearly defined, and the transfer of powers and resources to the council has been a slow and partial process. To date, the transfer of decision-making powers has been stronger in the sectors of health, education and sanitary and water management. Artisanal mining poses specific challenges in these sectors. The expansion of artisanal mining, while boosting the local economy, has social, environmental and health hazard-related impacts that are typical to this activity in Burkina and elsewhere. These include the unsafe use of mercury and arsenic for the transformation of ore (Tschakert and Singha 2007), the low rates of school attendance by children in mining villages, access to water (Bury 2004), a scarce resource in North Burkina, for the washing of ore, mining sites often carry important risks to drug and alcohol consumption that increase risks for artisanal miners (Gratz 2009). These constitute specific local governance challenges which decentralised authorities are expected to address in the everyday. In a recent article (Karatao, 7th August 2012) about landslides at artisanal mining sites in the rainy season when artisanal mining is theoretically forbidden:

That is where the responsibility of the communes comes in [...] They should sensibilise populations especially artisanal miners who work on their territory to the closure of sites in the rainy season. [...] Education campaigns should be organised (theatre-forum, educational talks, projection of films) to limit the damage [...] Legitimate force can be used on recalcitrant miners, but sensibilisation should first be used to prevent drama from happening.

(author's translation)

However resources transfer from central government to attend these sectors has been shy. Rural and urban land planning has been an important way to raise funds during the councils’ first mandate, as the councils were transfered the power to create cadasters in rural town areas by dividing and register land into allotments (parcelles) that record inhabited and uninhabited land (lotissement). This aims to control the pace and spaces of settlement, and it has generated a (relatively) huge amount of revenue, through registration fees and taxes, for municipal councils. It has been however a contested process, giving way to allegations of corruption and money mis-handling by municipalities, to the point that it was suspended by ministerial order for 12 months (Hilgers 2009). This case is repeatedly rehearsed in the public domain in national media (Lefaso 6th June 2012) and
it has served to support central state caution towards power and resource transfers to communes on the grounds of their insufficient technical capacity and their political immaturity (Champagne and Ouédraogo 2008). So far resources and powers have been most advanced in the sectors of water, health and education but councils must generally rely on the search for 'Technical and Financial Partners' (generally foreign NGOs) for funds (Ouattara 2006; André 2010).

Decision-making powers in strategic natural resource management (forests, minerals), have not effectively been devolved to municipal councils. As a subterranean resource, gold remains firmly held by central state (Article 5 du Code Minier 2003), and the powers of municipalities over the delivery of mining titles, and over the collection of rents from the industrial sector for example are weak. The only form of resource sharing from the centre with municipalities is fiscal decentralisation (Article 82 du Code de 2003). In a decree passed in 2005 (Decret no. 2005-048/PRES du 3 Fevrier 2005) communes are entitled to 20% of the superficiary tax paid annually by exploration companies. However these rents should be made in the form of 'dotation' from the central government to the communes. These dotations are annual or punctual resource transfers from central to decentralised administration, but their origin and motive is not named. As such these dotations escape local government scrutiny and it is impossible for them to keep mining rents transfers in check. This lack of control is even more problematic because the draft of the new mining code due to be voted soon suggests that this fiscal decentralisation will be removed from the legislation. The fact that local governments are not able to distinguish these mining 'dotations' from resource transfers of other kinds means that they are probably not aware of them and have therefore no means of resisting the re-centralisation of mining rents.

Despite this, local governments are expected to play an essential part for the smooth running of industrial mining in Burkina, and this appears in the Mining Code (Law No. 031-2003/AN on 8th May 2003). This is true in particular when it comes to facilitating mining companies' access to sites often uneasily accessible, introducing them with and mediating relations with local communities (articles 63, 85), overseeing Environmental and Social Impact Assessments legal and practical procedures (Decree No. 2007-853/PRES/PM/MCE/MECV/MATD on 26th December 2007), and they are also often expected to mediate conflicting relations between industrial companies, residents and/or artisanal miners (article 111).

This section sets the general scene of the role and mandate of local governments in the mining sector. The expansion of industrial and artisanal mining poses specific governance challenges and tasks that decentralised authorities have been assigned. However insufficient powers and resources have been devolved to decentralised administrations to carry out these mandates. This places those who govern at the municipal level in an ambivalent position vis à vis both artisanal miners/citizens and private (often foreign) investors. In the following sections I further elaborate on issues of local governance imperative and contradictions. I first show that the imperative is not simply due to the expansion of the artisanal and industrial mining activities, but more crucially to the unequal distribution of privileges and rights granted to these activities as part of liberalisation of the gold sector, and a regime of representation of artisanal mining as second class citizens, two phenomena that contribute in practice to making artisanal mining ungovernable. In the last section I examine how this ungovernability is tackled showing that local governments left 'powerless' pushes them to position themselves vis à vis artisanal and industrial miners in a way that shortcircuits possibilities for local collective action.

III/ Liberalising gold, making artisanal miners ungovernable
In this section I examine changes undergone in the mining legislation in Burkina and show how these contributed to making artisanal miners ungovernable. The ubiquity of illegal and artisanal (read 'precarious') mining is often analysed as a function of poverty, lack of technological capital and of alternative livelihoods that characterise rural African economies. Critiques to this argument have pointed rather to structural causes, namely in neoliberal restructuring of state institutions induced by structural adjustment reforms (Hilson and Potter 2005, Banchigirah 2006). In what follows I build on this argument for the case of Burkina Faso, going one step further, contextualising these reforms in national politics rather than international institutions as a way to start opening the state 'black box'. I examine two specific changes in the liberalisation of mining legislation in Burkina, one pertaining to the marketisation of gold, and the other to the mining title regime. In both cases, I examine the impacts for artisanal mining in practice.

The privatisation of 'comptoirs': making miners illegal

The liberalisation of the mining sector has happened late in Burkina (Luning 2006; Campbell 2008) which can be explained by the fact that gold became part of the local and the national economy in the late 1980s, unlike in Ghana or Mali for example, and because of the profound institutional changes and political impact of the brief revolutionary regime (1984-1987) led by Thomas Sankara. At that time prolonged droughts were affecting the Sahel region and artisanal gold mining was resorted to by farmers as a cash-generating strategy to compensate for lost crop. There was no coherent national mining legislation (over trade or permits) and the expansion of the artisanal sector called for the need to regularise the sector. The Comptoir Burkinabe des Metaux Precieux (CBMP) was created in 1986 and established a state monopoly on the production, transformation, purchase and export of gold. CBMP agents were posted in the provinces and constituted the sole point of sale for artisanal miners. The CBMP monopoly provided for the state to be able to oversee and control the production and sales of gold extracted artisanally as Gueye (2001:39) describes:

"The Gold Purchase Counter [CBMP] was the only body allowed to purchase, process and market gold. It established an organisation dedicated to carrying out these tasks. It employed technicians to purchase gold from artisanal sites and granted authorisation cards which permitted local buyers to purchase gold that could be resold to holders of gold marketing cards. CBMP had several local buyers who resold gold to the Counter. In order to obtain an agreement to purchase gold, an application had to be submitted to the Mining Minister, after which an inquiry was conducted by the police force. The agreement to purchase gold could only be signed by the Mining Minister. The CBMP Executive Manager could sign local purchasers’ cards. Local purchasers’ cards cost CFAF 1000 each while the agreement to purchase gold cost CFAF 250,000."

The CBMP agents posted in the provinces acted like other Ministry extension agents who intervene in the domains of forest and water, agricultural and animal husbandry in rural areas today. As such they provided advice and support to miners, they were in daily contact with them and they were also entrusted with a security role on mining sites (Art. 89, Loi No.023/97/II/AN on 22\textsuperscript{nd} October 1997). They were in charge of installing work arrangements and part of the revenue raised was directly reinvested in the improvement of the mining sites and infrastructures (Werthmann 2001). The 2004 Poverty Reduction Strategy Paper for Burkina Faso states that "in the decade 1991-2001, the contribution of these small-scale operations in the form of support for provincial budgets from gold washing taxes amounted to approximately CFAF 500 million" (GoB 2004: 61). In a recent study of artisanal mining productivity in Burkina, Jacques et al. (2006: 119-120) describe the legacy of the CBMP on artisanal work arrangements in one of their study sites:
The main artisanal gold mining sites in Burkina can surprise by their degree of structure and organization, which might resemble a “small mine” if sufficient material means were deployed. This organization, indispensable because of the size of the sites and the complex exploitation method, was set up by the CBMP, which was very early on given a mandate by the Government to take this activity in hand. The sites consist of well-defined workshops, where everybody has a specific task to carry out with specific equipment. Some tasks are set aside for the elderly, such as watchmen, for women (manual grinding or winnowing), for young boys (crushing, and transport of ore and water), or for girls (picking and sorting in the waste heaps). The automatic character of the acts and the permanency of the tools enables the reliable determination of an average theoretical productivity for each task. (...) Each task has its own fixed price that varies little from site-to-site. Among the miners in the extraction zone, it is common to share the ore and thus the risk. This is performed according to precise rules that are accepted beforehand by all members of the team”

The Sankara regime was overthrown in 1987 by Blaise Compaore who has been in power since then. His succession, presented internationally as marking the turn towards multi-party democracy, marked the introduction of a series of decisive political and economic reforms in the path towards democratic transition and economic liberalisation. The first Mining Code was formulated and the monopoly of the CBMP was banned by a joint order signed by the Ministry of Mines in 1997 (Decrees No. 96-231/PRES/PM/MEM on 3rd July 1996 and No. 97-035/MEM/MEF/MCIA on 14th May 1997). These decrees authorised the creation of private comptoirs for the purchase and export of gold nationally. This meant that the CBMP had to become competitive with the private comptoirs created by Burkinabe entrepreneurs. In 2001 the CBMP started to be privatised (No. 015-2001/AN of 4th July 2001) and it was dismantled in 2003 on the grounds that it had gone bankrupt. This official explanation is however not shared by all, and an ex-CBMP agent currently employed at the Ministry of Mines remembers that “at the time [the CBMP existed] you could not make good business with gold because the prices were fixated by the government, you had to sell with the government, and careful if you got caught! The CBMP did not go bankrupt, it was liquidated by the World Bank. How can a business that buys something at 1F and sell it at 10F go bankrupt?!“

In the period that followed the fall of the Sankara regime, the central grasp over the sector eroded. Table 1 compares artisanal and industrial gold production and illustrates the disastrous performance of the industrial sector, that was at the time exclusively made up of two state owned mines and which ended in their closure respectively in 1990 and in 1999 (Kambou 2006). The artisanal production on the other hand expanded fantastically. Reasons for the peak and drop between 1990 and 1993 are not clear especially considering that gold prices were actually very stable at that time interval. What is noteworthy here however is the stabilising and then dramatic fall of artisanal production from 1998; but this downwrad trend does not so much reflect a decline in the artisanala production of gold as the increased incapacity of the CBMP to record artisanal gold production. Indeed in that time interval the majority of gold production was not channelled through the CBMP and according to Englebert (1996:96 • 7 cited in Werthmann 2001) at least 40% was smuggled out of the country. A later study conducted by the french Bureau de Recherches Geologiques et Minieres established that 80% of gold was sold through informal channels between 2001 and 2003 (Jacques et al. 2006: 123).

Table 1. Artisanal and Industrial gold production

2 Anonymous employee at the Ministry of Mines, interview conducted on 30th March 2012.
3 The increase in gold prices may have increased the incentive for artisanal mining – See fluctuation of gold price (as per London PM) between 1833-2011 http://www.nma.org/pdf/gold/his_gold_prices.pdf
in Burkina Faso between 1986 and 2001

<table>
<thead>
<tr>
<th>Year</th>
<th>Artisanal production</th>
<th>Industrial production</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1986</td>
<td>272</td>
<td>2,456</td>
<td>2,728</td>
</tr>
<tr>
<td>1987</td>
<td>616</td>
<td>2,677</td>
<td>3,293</td>
</tr>
<tr>
<td>1988</td>
<td>805</td>
<td>2,555</td>
<td>3,363</td>
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<tr>
<td>1989</td>
<td>1,255</td>
<td>965</td>
<td>2,220</td>
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<tr>
<td>1990</td>
<td>2,302</td>
<td>1,199</td>
<td>3,501</td>
</tr>
<tr>
<td>1991</td>
<td>1,499</td>
<td>956</td>
<td>2,455</td>
</tr>
<tr>
<td>1992</td>
<td>1,338</td>
<td>890</td>
<td>2,228</td>
</tr>
<tr>
<td>1993</td>
<td>928</td>
<td>689</td>
<td>1,617</td>
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<tr>
<td>1994</td>
<td>906</td>
<td>731</td>
<td>1,637</td>
</tr>
<tr>
<td>1995</td>
<td>945</td>
<td>674</td>
<td>1,619</td>
</tr>
<tr>
<td>1996</td>
<td>769</td>
<td>294</td>
<td>1,063</td>
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<tr>
<td>1997</td>
<td>944</td>
<td>144</td>
<td>1,088</td>
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<tr>
<td>1998</td>
<td>951</td>
<td>140</td>
<td>1,091</td>
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<tr>
<td>1999</td>
<td>738</td>
<td>131</td>
<td>869</td>
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<tr>
<td>2000</td>
<td>515</td>
<td>38</td>
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<tr>
<td>2001</td>
<td>209</td>
<td>0</td>
<td>209</td>
</tr>
<tr>
<td>2002</td>
<td>390</td>
<td>0</td>
<td>390</td>
</tr>
</tbody>
</table>


The liberalisation of gold purchase gave way to the creation of private comptoirs mostly based in Ouagadougou and removed from the majority of artisanal mining sites which gave way to the proliferation of tolerated illegal sales points on sites, or at town markets. At that time the authority of the CBMP onto artisanal mining greatly eroded due to the proliferation of the informal market. A study by Werthmann (2001) in 1998 for example shows that tensions formed at that time between CBMP agents and an emerging class of powerful gold-diggers thriving off the informal market. The CBMP was finally dismantled in 2003 leaving behind it opportunities of engagement between the State and artisanal sector.

**AAM: formalising or criminalising artisanal mining?**

The other important change in the 1997 mining code was the codification of different mining titles. These mainly include artisanal, semi-mechanised artisanal mining, exploration permits and exploitation permits. Reforms in Burkina like elsewhere aimed to attract private investment in the mining sector including the guarantee of secure mining titles, the codification of tax exemption regimes for investors and the liberalisation of gold trade (Forster and Bills 2002; Pegg 2003). The revised mining code (2003) set up a range of custom and tax concessions aimed to encourage foreign investment in exploration work. These tax privileges are justified by ministry of mine agents as a way to encourage exploration and thereby to regain control by increasing knowledge of
underground resources\(^4\). This has clearly been successful since a quick glance at the map of currently valid permits at the BUMIGEB office\(^5\) confirmed that it is now difficult to find an area that is not covered by an exploration or an exploitation permit. Another aim of the code was to encourage artisanal miners to invest in upgrading their system of production up to semi-mechanised mining. Between 2001 and 2009 however, only five permits were granted for the semi-mechanised exploitation of gold, while at the same period the number of exploration permits bestowed jumped from 2 to 68\(^6\) (GoB 2010; GoB 2011).

The artisanal authorisation for mining (AAM) however are more numerous and a report by the ministry of mines shows that up until 2006 a total of 205 authorisations were acquired (GoB 2006: 6). The preference of artisanal miners is at first surprising because an 'Authorisation' confers less tenure security than a 'Permit'; what then justifies this preference? AAMs are less expensive than permits for semi-mechanised exploitation and they are also subject to less constraining environmental and social norms. These authorisations are on the point of view of ministry agents a way to integrate artisanal miners in the formal state economy\(^7\), as is illustrated by the fact they are exclusively reserved to Burkinabe citizens. They confer for two years, infinitely renewable, the right over gold that is extracted in the perimeter covered by the authorisation (maximum 1km sq.). On the ground however these authorisations are (mis)used as purchase points, as ‘sales licenses’ (Luning 2008) that are linked to the ownership of private comptoirs established in Ouagadougou. In rural provinces, these AAM are indeed called comptoirs by artisanal miners. In these places the price of gold is generally fixed low by the comptoir owner, and the AAM forces artisanal miners working on the delimited perimeter to sell gold with the comptoir. This significant discrepancy between law and practice is known by ministry agents, but it is justified as a way for the central government to regain control over artisanal mining. The link between the liberalisation reforms and lack of control is well encapsulated by an intervention in favour of comptoirs by the General Director of Mines related to a conflict between artisanal miners and comptoir holders:

'It has become a necessity for the State to revise its strategy to manage traditional sites. The CBMP used to manage these sites without problem, this structure has now disappeared, now we have to find the best formula that will help avoid conflicts'

Ilboudo, 19\(^{th}\) July 2012

These so called comptoirs expectedly are the sites of often explosive tensions between miners and the comptoir agents and police interventions that are regularly reported in the press. This has led to the creation of an anti gold-fraud brigade in 2006, the justifications for which are stated in a report from the Council of Ministers:

Since this liberalisation of the gold trade and the installation of the new private gold purchase comptoirs, there has been a fall in statistical data on

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\(^4\) Emmanuel Yameogo, Directeur General des Mines, interview on 24.02.2012

\(^5\) Permission was not granted to the author to reproduce this map here.

\(^6\) A recent media source numbers around 700 exploration permits today [http://lefaso.net/spip.php?article47529&rubrique3](http://lefaso.net/spip.php?article47529&rubrique3)

\(^7\) Patrice Dabire, Direction du Secteur Artisanal, interview on 28.11.2011
the production of gold declared to the relevant
government agency, and a fall in the fiscal revenues
expected from this activity.
This phenomenon can be explained by the expansion
of fraud in various different forms.
Thus the adoption of this decree will have significant
impacts on the artisanal production and
commercialisation of gold in our country.
The main innovation from this decree is the creation
of an anti-fraud brigade for gold.
Communiqué du Conseil des ministres du 8
novembre 2006\(^8\) (author's translation)

The section shows how the neoliberal restructuring of the gold sector in Burkina is having the effect
of making artisanal mining escape the control of central government, both through the fall of the
state-owned comptoir and the failed attempt through mining permits regime to integrate artisanal
miners in the formal economy. The case of Burkina is not an isolated one and indeed echoes for
example Fisher's (2007: 739) analysis that demonstrates how institutions underpin processes that fuel
the social exclusion of artisanal miners in Tanzania. However the intensification of tensions at
mining sites nationally, and the increased intervention of the police shows that the governance
imperative of artisanal mining can no longer be ignored. At the local level the failure to integrate
artisanal mining in the formal sector poses a series of challenges. In the next section I analyse how
these challenges are addressed in the case of the commune of Nebnooma in north Burkina. I focus
on the political positionings that are formed in the process relating municipal authorities, artisanal
miners and a foreign mining company, showing how contribute to undermining the legitimacy and
authority of municipal agents.

IV/ Political alliance and authority forging in between rights and access: The case of
Nebnooma

In the commune of Nebnooma, artisanal mining is omnipresent in many aspects of social life.
Gold mining was first resorted to in north Burkina during the severe Sahelian droughts of the mid-
1980's by farmers in the search of cash to help them compensate for failed crops. Drought-affected
farmers had been progressively 'emptying' the land, and it is common in rural households to find
that 3/4 of its members are residents in South Burkina or in ivory Coast. Artisanal mining
contributed to reverse this demographic tendency, and successful miners are often those who came
back from migration with some capital, saw the business potential of gold in their hometown, and
decided to invest their capital in machines and materials for digging gold on family or village lands.
Artisanal mining is unequally distributed in the commune of Nebnooma and some villages to the
south of the communal capital, also called Nebnooma, are generally better endowed in gold
resources and have a longer history of artisanal mining (about 25 years).

In the area gold has only been mechanised for a little over five years, and mechanisation has
considerably transformed the pace and relations of production. While artisanal mining is still
undertaken by manually digging deep shafts or trenches that can reach down to 100m in specific

\(^8\) GoB, 2006, Communiqué du Conseil des ministres du 8 novembre 2006. Available from
sites, various machines are used to pull out the water off the shafts, to grind the stones that are pulled out and to wash the dust (Jacques et al. 2006). Artisanal mining has become significantly fragmented as a result, between those who buy, those who grind stones, those who dig, those who manage the diggers, those who own pits, with a distinct hierarchy between those jobs. Today then, gold mining is no longer a livelihood diversification strategy, it is a career opportunity for rural dwellers in Burkina and elsewhere (Tschakert 2009b; Johnsson and Bryceson 2010). In the commune of Nebnooma, a specific 'mining culture' has rapidly evolved around these jobs and has attracted a number of migrant workers. However unlike artisanal mining-based 'boom towns' elsewhere (Werthmann 2009) gold mining in Nebnooma has enriched 'authochthonous' miners, who have turned into entrepreneurs investing in the town in significant and long-lasting ways (building houses, opening businesses, including pharmacies, stationaries, mechanical repairshops). Most of these entrepreneurs/artisanal miners originate from villages in the South of the town of Nebnooma where gold is mostly found.

Municipal authorities and artisanal miners: an ambivalent relationship

At the national level it is clear that miners are marginalised from the formal economy and how national level institutions and legislation underpin this dynamics of exclusion. Zooming in on the local, the status of artisanal miners in more ambiguous. Classifying them as a 'marginalised' group is readily dismissed by residents and municipal authorities in the commune under study. Artisanal miners have emerged as a powerful class of economic and political actors in Nebnooma, while at the same time one that raises power through transgression, dangerous and precarious activity, and they tend to define themselves in opposition to formal institutions. This opposition is rehearsed in everyday governance, and this shapes relations of power and authority between local decentralised authorities and artisanal miners.

The majority or residents in Nebnooma engage in some way or another in artisanal mining, or indirectly benefit from it, and as such it constitutes a major livelihood resource of citizens, i.e. The electoral base of local authorities. On the other hand, artisanal mining poses typical social, environmental and health related challenges, as reviewed earlier, that the municipality is expected to tackle, while lacking the necessary powers and resources to do so. As a result, local authorities try to dissuade citizens from engaging this activity and artisanal mining is often downgraded in their public interventions. This however places local authorities in daily confrontation with artisanal miners, while being unable to offer viable alternatives. An example for this in the commune has been the attempts by the municipality to govern artisanal miners’ water consumption for the washing of ore. Since the mechanisation of mining, miners have been using fuel-powered mills that can be placed on the banks of water holes and draw water out and onto washing carpets where gold residues are retained. The use of these machines has been a growing problem for the municipality that was exacerbated at time of fieldwork by poor rainfall from the previous rainy season, and which threatened of water shortages that would affect other crucial off-season cash generating activities (herding, vegetable gardening). The municipality then decided to make, by way of a municipal decree, miners pay a standard monthly fee for the installation of their machines next to the watrehole. The measure expectedly raised significant discontent among the miners, who advanced the argument that charging them a fee would not solve the water shortage issue, and only served to enrich authorities. The measure failed to be implemented because of this opposition and because the municipality lacked the means to enforce it. The police and the gendarmerie, who account to central security authorities, were asked by local authorities to pick up the miners'
machines, but they refused on the ground that this would take away resources (manpower and a pick-up truck) that were needed to carry out their normal mandate.

There is also of course overlap between miners and municipal authorities, for example most elected village councilors from mining villages, are often powerful miners themselves. However this overlap, does not diffuse antagonisms and rather entrenches political divisions territorially. Indeed these miners/elected representatives tend not to attend ordinary sessions of the municipal council as, they confide, that they feel 'higher municipal authorities are biased against miners and their activities'. This entrenches differentiation whereby the municipality tends to have little to do with mining villages, and these villages' elected representatives tend to take (often sophisticated) village-level governance measures without consultation with higher authorities. In the following I show how this fragmented political space shapes the relation between artisanal miners and a mining Junior company that holds an exploration permit in the area.

**Artisanal miners and a mining Junior: negotiating access and protection**

The commune of Nebnooma there is no AAM, but the commune has hosted a succession of exploration permits over the last 15 years. The most recent one was held since the early 2000s by the Canadian 'Junior' OREZONE and covers 315km sq. across the communal territory. Although the company has offices near Nebnooma and has most of its labourers residing in the commune, its presence is only sporadically felt in the town. The company OREZONE is acknowledged by national level actors as the Junior with some of the best community relations practice, and its work activities in the commune have been relatively unintrusive, apart from the odd exploratory borehole drillings in and around villages, giving compensation when this happened on farmers' fields. In order to access exploration worksites, OREZONE also levelled-off of existing dirt tracks linking the different drilling sites, which resident artisanal miners acknowledged has 'made their life easier'.

The village of Sanemziiga is situated right at the centre of the exploration area, and it has indeed been one of the most prolific sites in the commune in the last 25 years, to the point that residents often mention how Nebnooma has developed or 'grown out of Sanemziiga'. Artisanal miners are tolerated by OREZONE on its exploration permit. This is not the case for other places in Burkina. Luning (2012) for example shows how miners are controlled by Juniors via AAM/comptoirs that are tolerated by Juniors in places where gold reserves are known by Juniors to be poor. In view of Luning's analysis this begs two questions: firstly why has there not been an AAM in Sanemziiga? and secondly, how does the Junior Company OREZONE controls the artisanal mining population without an AAM?

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9 Five elected authorities from three mining villages reported this in formal interviews, but this statement is also based on observation and informal exchanges during the course of fieldwork.
10 Mining companies that do not engage in exploitation are generally called Juniors. They are mainly venture capitalists as they rely on the resources raised in capital markets and on the sales of their exploration permits to finance their exploration work. A Junior upgrades to a Senior if it decides to engage in industrial extraction work.
11 Mr Jonas Hien, President of ORCADE (a national NGO that supports the development of artisanal mining through education workshops on rights and on sustainable mercury use), interview on 25th November 2011; Mr Patrice Dabire, Ministry of Mines, interview on 30th March 2012.
12 Anonymous, CVD member, interview on 14th November 2011; Anonymous, Sanemziiga resident, interview on 21st November 2011; Anonymous, Sanemziiga Councillor, interview on 12th April 2012.
13 CVD members in Sanemziiga, group interview on 14th November 2011.
Discussions with Sanemziiga residents about why there is not an AAM in the area is explained differently by different people. Some claim that the people in Sanemziiga are very powerful and 'hard' people who never accepted that an AAM came to settle there. Others attribute this to the supernatural power of the place (Sanemziiga is situated at the bottom of a sacred hill), recounting a story when a representative of the well known comptoir SOMIKA had come to interact with the miners had been affected somewhere else some days later and never came back. Finally, all miners interviewed suggested that OREZONE never gave the permission for an AAM to settle in Sanemziiga.

The lack of AAM is generally referred to as good thing for resident artisanal miners in Sanemziiga, and has allowed them to be flexible, to look for work in different places while retaining a business base in Sanemziiga. Indeed a miner describe how the constraints of 'comptoirs' operate in practice:

> I heard that gold was declared in Watinooma and so I travelled there the day before yesterday to see whether I could get access to a shaft and hire some diggers. But I found they were quite closed up to strangers and anyway it would be difficult to smuggle the gold out of the site; they have a comptoir there you know. Over there you have to sell 6g at once, and they give you between 60,000 and 80,000CFA for it, here you can get 22,500CFA for 1g! So I just came back to Sanemziiga\(^\text{14}\)

Unlike the site where Luning conducted her research, artisanal miners in Nebnooma have been left relatively free to work on the Junior exploration permit, with the exception of occasions where miners' shafts where filled up with earth by OREZONE to allow their exploration drilling work to take place. This has brought some anxiety to miners and when asked whether in the long run they'd rather have to deal with a comptoir or OREZONE, one of them replied:

> really we choose the comptoirs [why?!] because the comptoirs is just people buying gold, whereas Orezone takes everything, we dont know where and when they might start digging, maybe they will dig close to our houses and in that case what are we going to do, where are we going to live?!\(^\text{15}\)

So far we have shown that artisanal miners have been made ungovernable in the liberalisation turn, which decentralised authorities have been expected, but unable, to address, and the governance void is filled by the very actors who are likely to dispossess artisanal miners in the near future. The latter are well-aware of that process as is illustrated in the statement above. In the following I analyse how these political positionings affect the ability of decentralised authorities to represent the interests of its constituents as a result.

**Municipal authorities and the Junior: seeking recognition over the heads of miners**

\(^{14}\) Anonymous, Sanemziiga artisanal miner/shopkeeper, interview on 29\(^{\text{th}}\) April 2012.

\(^{15}\) Anonymous, Sanemziiga artisanal miner, interview on 14\(^{\text{th}}\) May 2012
In this section I describe how these political fragments are revived through interactions with OREZONE and how this short-circuits the possibilities to collectively express anxieties or resistance towards prospective dispossession. The uncertainty about activities upgrading from exploration to exploitation has been cultivated by OREZONE. The Junior recently sold its permit to CLUFF mining for 29.6 million US dollars. CLUFF currently operates one of Burkina's six industrial gold mines situated 30km South of Nebnooma. It aims to build an open-pit mine in Nebnooma as a way to extend the life of its current mine. Up until that point it was always assumed that OREZONE would upgrade into an exploitation permit, an assumption based on the odd public interventions by OREZONE representatives aiming to educate municipal officials about the lifecycle of a mine, and sporadic private courtesy visits at the Mairie office by the chief geologist casually informing municipal agents that ‘they do not know yet when the mine will start but the drilling results look very promising’. This unpredictability, partly to be understood as a function of the credit crisis, nevertheless served a part in legitimising the presence and work of OREZONE, as not a mere land speculator (as it turned out to be) but as a prospective source of economic development for the municipality.

Indeed, one of the most difficult aspect of their role is dealing with the ‘ambiguous and contentious’ (Bebbington et al. 2008) aspects of mining, and their ability to organise is hindered by uncertainty pertaining dispossession and promises of development. Social relations filling, as Luning (2012: 24) eloquently phrases it ‘the gap between what is and what may become’ contributes to shape in important ways political identities and relations among local actors. In the context of the fragmented political field described earlier, with a ‘legitimate’ rural bureaucratic elite attached to the municipality on the one hand, and a subversive class of no less powerful successful artisanal miners on the other an important process is one of defining who is in charge, and whom does OREZONE consider an appropriate interlocutor is instrumental in that process. In what follows I examine points of contacts between artisanal miners, local government representative and the Junior, and analyse the formation of political alliances across these actors within instance of everyday governance.

In 2011 Nebnooma hosted the launching of the national reforestation campaign, that symbolises the issue of land degradation around which much of social and political life is engineered in rural Burkina (Englebert Pedersen 2003). Tradicional ceremonial of long lasting speeches and acknowledgment thereof of various national and regional authorities. On that occasion, OREZONE, in line with its CSR policy made a CFA300,000 (USD 553) donation for the event in the form trees to be given out to villages for the campaign. Conformly to the ceremonial tradition, a representative of OREZONE was handed out a certificate of acknowledgement preceded by a speech by the maire of the commune who stressed how important OREZONE might be for the commune in the near future (see Figure 1). Interestingly at this same event, a municipal congregation had approached the artisanal miners for a coontribution, justified by the fact that much environmental degradation was caused by their activity. The miners accepted to contribute by replanting the municipal highschool grounds, and one of the richest artisanal miners sponsored the drinking water supply for the whole event. However, the miners did not publicly receive an acknowledgement certificate. Whether there was a threshold within the donation made that defined whether or not public acknowledgment could be made is not sure.
The search for recognition as a way to assert authority is also linked in a more direct and material way to the fate of miners. In Sanemziiga, some unrest developed when after the company started to work at the same place artisanal miners do. OREZONE drilled a cement landmark that served as a bearing in its exploratory grid, at the same location as artisanal mining site, and the bearing was expectedly destroyed by miners while using dynamite at the site. The event led to the arrival from the capital, of OREZONE’s community relations officer to meet with the miners to try and find a solution to the problem. A couple of meetings were organised, at OREZONE's HQ with the shaft owning miners from Sanemziiga. A private interview with the national community relations officer prior and after the meeting revealed that what he was concerned about was not so much to debate responsibility about the broken bearing, but to find a way to break out the news to miners that OREZONE would soon need to do more work at the exact place where miners worked that would necessitate that their shafts be covered up. Indeed before the meeting the national officer, who does not speak the local language in which he meeting took place, gave instructions to his translator including that of not telling the miners they were planning to cover up the shafts. He wanted to strategically focus the meeting on the responsibility of the miners regarding the destruction of OREZONE property, hoping this would place them in a situation such that, being in the wrong, they could not object to OREZONE covering up the shafts. In an interview with one of the shaft owners from Sanemziiga some time after the meeting I learnt that the miners offered OREZONE a contribution of CFA 500,000 (about USD920) to replace the broken cement bearing. Another miner describes the event:

well OREZONE came to tell us that drilling this bearing costs 8 millions asking us what we're going to do about that [...] we said that since we dont have as much strength [money] as they do, we asked them to drill somewhere else, but they refused, then the maire told us that to show good will, to show that we realise our fault, we should give something in exchange [...] well what can we do, our fathers [meaning the maire] said so! It's like, imagine you are a village chief and there is an issue, normally you should help me, but if I realise that you put yourself on the side of those people, what can I do? You feel abandoned!16

At the time I met this miner, OREZONE had just left, CLUFF had not arrived yet, and the

16 Anonymous, Sanemziiga artisanal miner/shaft owner, interview on 14th May 2012
CFA500,000 had not been claimed and probably never will be, demonstrating that what was at stake for OREZONE was less material than symbolic. As in the case of the donation for the reforestation campaign, the intervention by OREZONE for a contribution for the broken drill was less about material necessity, than about the legitimation of authority. The way local decentralised authority responded to these interventions, allying with OREZONE, asserted their own position of authority vis-à-vis the miners, while at the same time aimed to preserve cordial relations with OREZONE in an uncertain context about the future investments of OREZONE in industrial mining in Nebnooma.

Conclusion

The central point of this paper is to show that the ability of legislation to meet the needs of the local residents whose livelihoods depend on the gold sector may be less a function of ownership rights and rules regimenting relations in codes, than in the power imbalances and conflicts of interests across actors and institutions involved in arbitrating these rights and rules. The liberalisation of the sector has contributed to making artisanal miners ungovernable. The privatisation of the CBMP has gradually burnt away the bridge between the State and artisanal miners. Worse, the case of AAM shows that the elaboration of a mining title regime that aimed to integrating miners in the formal economy has contributed to marginalising them. AAMs are acquired by private comptoir owners among the national elite, forcing artisanal miners to sell gold extracted at low prices, pushing them to evade this formal channel and fuelling confrontations at AAM sites. For the central government, AAMs are an attempt to regain control over artisanal mining, an attempt that is unsuccessful and called for the creation of an anti-fraud brigade that downgrades artisanal mining to the rank of ignorant trespassers and criminals. Understanding what really is in a right requires that we question the political economic antecedent to the formulation of resource right regimes, and confront these with how rights play out in practice.

Investigating the gap between the theory and practice of rights informs us about the different stakes of resource control for different players, and how these players relate politically. In the commune of Nebnooma, artisanal miners are tolerated on the exploration permit held by OREZONE, who has also protected them from the troubles of having an AAM settle in the area. Miners and Juniors tolerate each other insofar as their workplaces do not overlap. When they do, conflicts occur and decentralised authorities are expected to intervene as arbitrators. In the commune, some miners have become particularly well-off and have emerged as an important social and economic class of actors in the commune. Their artisanal activities however poses some challenges for local government, and attempts to address these often fail because the municipality lacks enforcement power and resources, which undermines their legitimacy and exacerbates antagonisms between authorities and artisanal miners. This antagonism dissolves somewhat when negotiations take place between a Junior Canadian company undertaking exploration activities in the commune, and 'the community'. In this case, artisanal miners make a space for local authorities to represent their interests vis a vis the Junior. However local government has to face the 'contentious and ambiguous' development prospects that the Junior may bring in a legal environment that does not define its role and powers for enforcing Juniors' Social Responsibility. This pushes the Junior and the municipality to engage in acts of mutual recognition at the expense of artisanal miners, as the case of the broken cement bearing illustrates.
As pointed out by Lund (2011: 901) there is an institutional dimension of the agrarian question that requires we shift attention from dispossession of land, to dispossession of autonomous control. Neoliberal projects of the state do not flatten out or dissolve public life, rather they bring about new and emerging political configurations with specific classes of actors and objects of contestation. Neoliberal agents like gold mining Juniors in Burkina cannot substract themselves from these fields of power and authority, and indeed need to compose within them in order to legitimise their own presence. The fact that they sought and gained recognition from elected local authorities through their contributions towards the reforestation campaign demonstrates that. What these vignettes aim at is not to make a point about elite capture, and how local authorities should have responded, but the way that they did is relevant, with specific implications for the political positioning of subjects, positionings that are likely to become relevant when CLUFF starts working, and when material negociations need to take place.

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