



IN BRIEF



OPPORTUNITIES FOR WOMEN IN THE LEGAL AND REGULATORY FRAMEWORKS ON MINING

Mining and Gender in Africa

Gender equality is a key driver of poverty reduction, economic growth, sustainable development, and human well-being. In many communities, women are the basic economic force and the main supporters of their families. As such, access to decent employment opportunities is a vital intervention for empowering women. These earnings help boost women's self-esteem and bargaining power at home and within their communities, delay early marriage and pregnancy, and reduce the likelihood that they will be exposed to domestic violence. When women are economically empowered, entire communities benefit, as research shows that women invest their earnings in children's education and health.

The mining sector in Africa offers an opportunity for equal economic growth for both governments and communities. The African Union and United Nations Economic Commission for Africa (UNECA) conservatively estimate that there are more than eight million artisanal and small-scale miners in Africa. According

to the 2014 report *Encyclopedia of Gender and Mining: Key Initiatives, Best Practices and Actors* by GIZ, African artisanal and small-scale mining – a key component of the mining sector – has a large female workforce, estimated at between 40 and 50 percent. The World Bank, in its *Gender Dimensions of Artisanal and Small-Scale Mining: A Rapid Assessment Toolkit*, indicates that in some African countries, such as Ghana and Malawi, the percentage is more than 50.

Despite the significant involvement and contribution of women to artisanal and small-scale mining (ASM), a growing body of evidence reveals that women have not fully benefited from the sector, since their presence has been mainly at the bottom of the value chain. Indeed, their role is largely as workers or supporters (e.g. as cooks or service providers), with minimal participation in decision making relating to the management of the sector.

At the same time, engagement in ASM can affect women negatively. This is mainly due to existing gender inequalities related to division of labour and

cultural norms. It is compounded by the stratification and social, environmental, and economic pressures the industry can create. The joint UNECA, African Minerals Development Centre, and UN Women Eastern and Southern Africa Regional Office report on the Democratic Republic of Congo, Ghana, Guinea, Tanzania, and Zambia highlights women's critical lack of access to capital and financing from mainstream financial facilities for mining operations; lack of appropriate machinery and technology (resulting in, for example, the extremely hazardous use of mercury to amalgamate gold); lack of access to information on availability of mining claims; extreme difficulty in acquiring mining licences; and lack of geological information on the output capacity of mines/concessions.

In addition, women's needs and opportunities often have not been considered in extractive industry operations. Aside from the economic inequalities and limited employment, this negatively impacts on family welfare, the environment, health, and security. In an April 2013 *Insomnia Index* survey by the global advisory firm Deloitte and Women in Mining South Africa, three main challenges were identified for women in mining – operating in a male-dominated culture, legislation, and retaining the skills and talent shown by women.

The survey highlighted the male dominance that is prevalent in the industry: “The mining industry in the past, as well as nowadays, is dominated by men, especially in the more senior executive roles. Although this is true, we encourage a focus on those women who are holding these executive positions and are paving the way for women moving up the ranks. This is still, however, not on the scale or at the rate at which the development of women in the workplace should be taking place. Women regard this male-dominated culture as a challenge to encourage and enforce change, as well as perceive it as a ‘glass ceiling’ to be reached, where career development is hindered by leadership. Companies need to actively seek out to [sic] empowering and developing women and

grooming women to prepare them for entering more senior positions.”

A study by Women in Mining (UK) and PricewaterhouseCoopers suggests that women make up just 10 percent of the global mining workforce and 5 percent of board positions in the top 500 globally listed mining companies. According to a study of the Australasian Institute of Mining and Metallurgy in 2014, the working conditions for female professionals in the sector have not improved much in the past few decades. Claire McMaster, chairperson of Women in Mining South Africa, states: “The challenge is not to increase the number of women in mining due to historical target setting, but because it makes good business sense and the mining industry becomes a great place for women to work.”

Women make up only 7 percent of the global extractive industry. Of these, only 1 percent reach leadership positions, 10 percent are professionals, 88 percent are operators, and 1 percent occupy administrative positions.

Mining and Gender in Kenya

The mining sector in Kenya is diverse: there are more than 120 types of minerals, which are categorized into 7 groups, as outlined in the First Schedule of the Mineral Bill 2014. The minerals include base metals (gold, silver, and copper), dimension stones (granite, marble, and limestone), industrial minerals (fluorspar, titanium, and limestone), gemstones (ruby, sapphire, and theodolite) and chemical minerals.

However, these minerals are vastly underexplored, and the mining sector is currently dominated by the production of non-metallic commodities. According to the Ministry of Mining Kenya Strategic Plan 2015–2017, Kenya is the third largest producer of soda ash in the world and the seventh largest producer of fluorspar. Metallic minerals currently produced in the country include titanium, gold, and iron ore. In February 2014,



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Kenya exported 25,000 tons of titanium ore, and this is expected to increase with improved infrastructure.

Kenya also possesses world-class deposits of rare earth elements in the coastal region (estimated to be worth USD 62.4 billion), placing Kenya in the top five countries in the world in the rare earth category. In addition, the country has the world's sixth largest deposits of niobium.

Commercial deposits of coal have been discovered in the north eastern region of Kenya and are currently under review for potential use and production. With these discoveries, which occur in 27 counties (in the Rift Valley, Nyanza, Central, Coast, and Northern Eastern regions), the mining sector has the potential of accelerating growth by diversifying exports, providing raw materials for industry, developing infrastructure, creating employment, and contributing to poverty alleviation.

Small and isolated deposits of minerals are scattered in different parts of Kenya and are often exploited through small-scale mining. With modest demand on capital expenditure and a short lead time, they also provide employment opportunities for the local population, especially women. The predominant artisanal and small-scale mining activities relate to gold (panning), gemstones, sand, gravel, clay, and stone (quarrying).

Artisanal mining is poorly regulated and often not taxed, and artisanal miners are exploited by companies who buy their produce cheaply. The use of child labour and mercury in small-scale mining are critical human rights and health issues that need to be addressed. The legalization of artisanal mining in Kenya's new Mining Law 2016 provided a great opportunity for artisanal miners, including women, to properly organize their activities and have potential access to legal markets.

In counties such as Turkana, Migori, and Taita-Taveta, most of the mining has been on community land. Access to such land is traditionally controlled by patriarchal and gender-prejudiced power structures that limit the entry of women into the sector. Gender-biased attitudes towards mining skills have ensured that very few women have the ability or opportunity to get involved in mining activities. This reality, along with the prevailing concept of gender roles (men are providers for their dependants, while women shoulder the domestic or reproductive responsibilities), has kept women above ground where they provide value addition in low-risk, low-return activities.

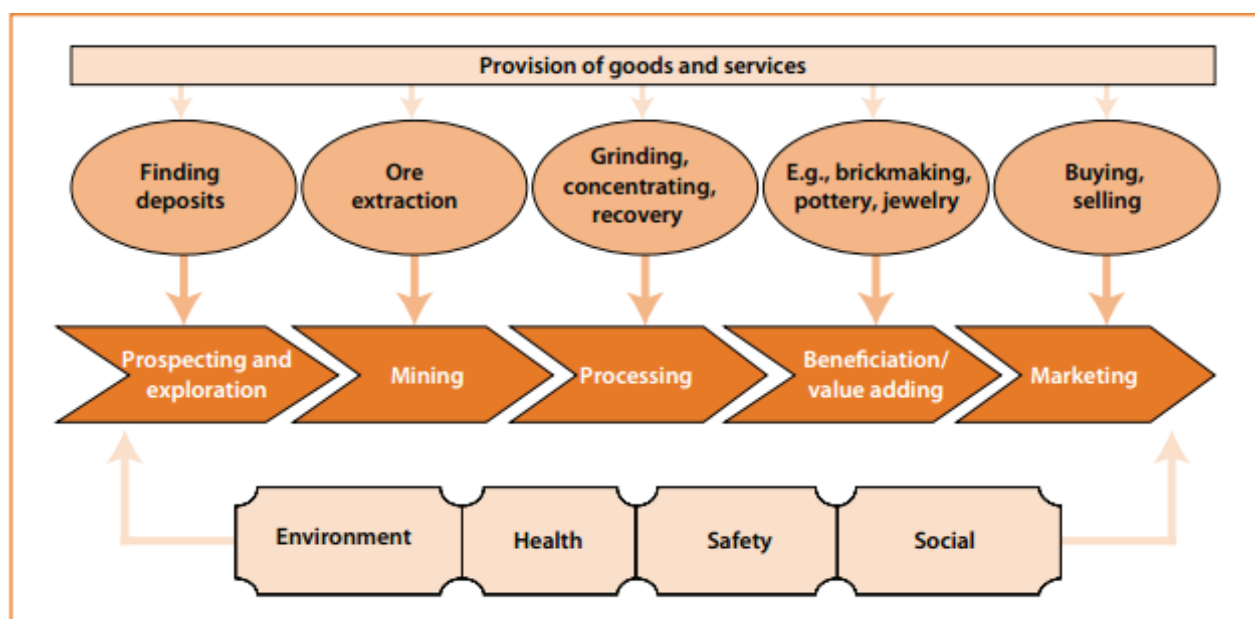
Despite the challenges faced by women, an initial analysis by UN Women established that women do participate in the extractive industry value chain.

Women in the extractive sector in the regions outlined in the table are typically victims of a vicious cycle: low skills – low capital input – low productivity – low income.

UN Women believes that the extractive value chain in Kenya offers a great opportunity to increase income for women in both artisanal and small-scale mining and large-scale mining. Processing of precious stones and products using the right techniques, legal trading of these precious stones and products, and providing support services to companies and traders in the extractive sector could spur economic growth for both women and communities. Opportunities for women in large-scale mining should include leadership and management roles and participation in decision making.

Ensuring inclusion, equity, and affirmative action/ investment in women in the extractive sector will require an enabling policy environment at national and county levels. This must support the capacity of women to effectively engage in the extractive sector value chain through access to knowledge, skills, capital, and markets. Women and communities will also need to be supported by monitoring and demanding

Artisanal and Small-scale Mining Value Chain



ASM/Oil Value Chain Participation by Women in Taita-Taveta, Kakamega, Migori, Turkana, and Kwale

Artisanal and small-scale miners/engineers	Processing of precious stone/products	Traders of precious stones/products	Support industries, traders/companies	Employees of extractive industry companies
Taita-Taveta				
Less than 5 percent of women are involved in mining gemstones. It entails back-breaking manual work with basic equipment in extremely dangerous conditions. A compressor for mechanized digging is USD 17,000, and an excavator is USD 50,000.	Only one woman was reported to be involved. The capital investment is prohibitive, given the income levels in the area. A gem-cutting machine costs USD 6,000.	Only one woman was reported to be involved. The capital investment is prohibitive, given general income levels. Most miners sell for cash. Also, there was limited knowledge among women about markets and prices of stones.	The majority of women were involved in providing services to the mining sector. This related to food, water, shelter, fuel for generators, the retail of household goods, etc.	There were no female employees.
Kakamega (Ikolomani)				
No woman was reported to be involved, as it is extremely dangerous. Most pits begin at 120 feet and are water-logged.	No woman was reported to be involved. The capital investment is prohibitive, given the income levels in the area. A gold-ore crushing machine costs USD 6,000. However, women were involved in reprocessing waste ore (<i>machicha</i>) to extract residual gold from already processed ore.	No woman was reported to be involved. The capital investment is prohibitive, given general income levels.	The majority of women were involved in providing services to the mining sector. This related to food, water, shelter, fuel for generators, the retail of household goods, etc.	There were no female employees.
Migori (Nyatike)				
No woman was reported to be involved, as it is extremely dangerous. Most pits begin at 120 feet and are water-logged.	No woman was reported to be involved. The capital investment is prohibitive, given the income levels in the area. A gold-ore crushing machine costs USD 6,000. However, women were involved in reprocessing waste ore (<i>machicha</i>) to extract residual gold from already processed ore.	Fewer than five women were reported to be involved. The capital investment is prohibitive, given the low income levels in the area.	A thriving mining town exists of more than 2,000 households. The majority of women were involved in providing services to the mining sector. This related to food, water, shelter, fuel for generators, the retail of household goods, etc.	There were no female employees.
Turkana				
			Tullow Oil has a policy for sourcing goods and services from local communities.	Most of the female employees are in menial positions. Skills among local women are extremely limited.
Kwale				
			As part of its corporate social responsibility, Base Titanium sources agricultural produce and basic services from local communities. No gender policy was reported.	Very few female employees exist, and most are in menial positions. Skills among local women are extremely limited.

gender equity, transparency, and accountability from both extractive players and governments.

In response to the various challenges, the Ministry of Mining, with the support of UN Women, is supporting the formalization of Women in Extractives (WEX) as an institution that enables:

- Women in extractives to prioritize and plan their effective participation in the sector
- Women to effectively engage with the ministry and industry stakeholders
- Women to hold the ministry and stakeholders to account

Gender Equality and the Constitution of Kenya

Article 10 of the Constitution of Kenya espouses equity, social justice, equality, non-discrimination, and protection of marginalized groups. Article 20(4) on equality and equity further interprets the Bill of Rights, and Article 21(3) places a duty on state actors to address the needs of vulnerable groups in society, including women and youth.

These sections and others place an imperative on government ministries, departments, and units to formulate and implement policies and regulations that adhere to the letter and spirit of the constitution. It is in this vein that the Ministry of Mining has formulated laws and regulations that present opportunities for women in the mining sector.

UN Women has partnered with Ministry of Mining to mainstream gender in the legislative process. Through this partnership, UN Women has supported the ministry to do the following:

1. Review the Mining Policy
2. Review the Mining Bill, which is now an act
3. Review regulations and engage stakeholders on 16 regulations in Nairobi, Kisumu, and Voi

The Draft Mining Policy 2014

Women are often overlooked by initiatives and development programmes directed at transforming the mining sector, as previous regulations did not take into account the exclusion of women and other vulnerable groups in the extractive value chain. Gender inequalities exacerbate women's access to and control of capital and resources (including productive assets) for engagement in the sector. They are excluded from decision-making processes and generally have limited access to information and technology, limited knowledge and capacity on mining, and limited knowledge of enterprise development.

In April 2016, the Cabinet of Kenya passed the draft Mining and Minerals Policy, which proposes interventions that, when implemented, will present opportunities for women in mining.

Transparent Licensing System: Online Cadastre

The ministry is already implementing the online cadastre system, which offers equal access by all to information and licensing, irrespective of gender. It also offers the ability to audit existing licences and their compliance with the gender requirements of the constitution.

Development of Health and Safety Systems and Standards

Women currently work in risky situations within the mining value chain. The policy proposes interventions to ensure a safe working environment for women in mining.

Support for Women and Youth

The draft policy proposes that the ministry develop specific programmes for women and youth. There is therefore an opportunity to develop targeted



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interventions that would address bottlenecks such as gaining skills and access to capital and concessions.

Formalization and Mainstreaming of Artisanal and Small-scale Mining

The majority of women in mining in Kenya are in the informal artisanal mining sector, which has little regulation and is often dominated by men. The policy proposes to formalize the sector so that it can be equitable and safe for stakeholders, including women, with all fully capacitated. While artisanal mining has been legalized, detailed regulations are needed to guide the operationalization of this provision.

Ministry of Mining Strategy

The strategy proposes that the government implement a community liaison framework that ensures that women, youth, and persons with disabilities are able

to efficiently and effectively inform mining-related decisions, policies, and programmes. The government will ensure equitable access to the benefits of resource development, and that citizens working in the mining sector are not unduly or unfairly placed at risk. In addition, the government will facilitate dialogue and exchange among mining stakeholders to ensure that the various issues are negotiated in an informed manner.

The strategy promises that, through the implementation of its regulatory frameworks and programmes, the government will ensure that communities, women, youth, persons with disabilities, and marginalized groups have equitable access to ownership, technology, capital, local content, value addition opportunities, employment, training, knowledge, and decision making in the mining value chain. As such, the strategy offers not only an opportunity for women to benefit from the sector, but also to participate in its management.

The Mining Act

In April 2016, parliament passed the Mining Act. Though not explicit in its gender equity provisions, the act presents various opportunities for equity and for women. The regulations that operationalize the act are however specific on the opportunities for women in the mining sector.

Part II – Ownership of Minerals

This part of the act vests ownership of natural resources with the people of Kenya. As such, the negotiation for their use through instruments such as licensing and prior-informed consent from communities must constitutionally include the representation and views of women.

Part V – Mining Institutions and Bodies

The act establishes strategic institutions/bodies or mechanisms critical to the democratic governance and effective utilization of mineral resources. These include the following:

- National Mining Corporation: organ for government participation in mining investments
- Minerals and Metal Commodity Exchange: organ to facilitate efficiency and security in mineral trade transactions
- Database of geoscience and information: mechanism for collating and distributing information on mineral prospects
- Mineral Rights Board: entity for awarding and supervising mining licences

It is constitutionally imperative that one-third of the representation in these bodies be of either gender. It



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is also imperative that, in undertaking their respective mandates, each body takes into account their gender equity obligations.

Part VI – General Provisions on Mineral Rights

This part pertains to the mechanisms for the acquisition and maintenance of mineral rights. These are further elaborated in the draft mining regulations.

Mining Regulations

Regulations are the instruments by which the policies, strategies, and laws pertaining to a ministry in Kenya are implemented. The Ministry of Mining has developed 14 draft regulations and is in the process of developing 2 others. The regulations range from those that outline the allocation of rights to those that ensure safety, fairness, and equity in the utilization of the resources:

1. Mineral Royalty
2. Reporting of Mining and Mineral Related Activities 2015 (still under development)
3. Guidelines for Work Programmes and Exploration Reports 2015
4. Licensing Regulations
5. National Mining Corporation Regulation
6. The Mining (Award of Mineral Rights by Tender), still under development
7. Mining (Employment and Training Requirements)
8. Mining (State Participation)
9. Mining (Use of Local Goods and Services) Regulations
10. Community Development Agreements
11. Strategic Minerals Regulations 2015
12. Mining (Use of Assets)
13. Dealing in Minerals 2015
14. Mine Support Services
15. Mine Health and Safety Regulations (still under development)
16. Artisanal and Small-scale Miners (still under development)

The following ten regulations particularly pertain to gender equity and opportunities for women.

Licensing Regulations

These regulations mainly deal with licensing and permitting of mineral rights in accordance with the act. This will be implemented through the online cadastre system. It offers a transparent method of issuing licences, which women miners can also benefit from.

The regulations put in place a Mineral Rights Board. It is imperative that the composition meets the gender requirements of the constitution. It is also crucial that the board creates policies that equitably benefit women and men on licensing and permits.

National Mining Corporation Regulation

This regulation establishes the above corporation as a vehicle for government participation in the mining sector. It is through the corporation that the government will own shares in mining companies and also own and exercise mining rights. The regulation puts in place a National Mining Corporation Board. It is imperative that the composition responds to gender requirements of the constitution.

The Mining (Award of Mineral Rights by Tender)

The purpose of this regulation is to ensure that the bidding and tendering process relating to the mining of natural resources is competitive and transparent. This policy considers Kenya's development interests; the cabinet secretary, on the advice of the Mineral Rights Board, is to designate certain locations as mining areas.

Though not explicit in the regulation, it is imperative that the Mineral Rights Board and stakeholders uphold the law in awarding 30 percent of tenders to women and youth and 5 percent to persons with disabilities.

Mining (Employment and Training Requirement)

The purpose of these regulations is to do the following:

1. Promote job creation through the use of local expertise in the mining industry value chain and retain the skills within the country
2. Develop local capacities in the mining industry value chain through education, skills and technology transfer, research, and development
3. Achieve the minimum local employment level and in-country spending across the entire mining industry value chain
4. Provide for the submission of the Employment and Training Plan in the mining industry, including:
 - a. A recruitment and training programme
 - b. The supervision, implementation, and monitoring of holders of mineral rights to ensure that Kenyan nationals are employed and properly trained

The regulations make no mention of equity in the selection of citizens for training and employment.

However, it is imperative that the ministry and stakeholders uphold the law in awarding 30 percent of opportunities to women and youth and 5 percent to persons with disabilities.

Mining (State Participation)

This regulation aims to provide for state participation in prospecting or mining operations carried out by the holder of a mineral right. It establishes the National Mining Corporation as the investing arm of the state.

It is imperative that its composition responds to the gender requirements of the constitution.

Mining (Use of Local Goods and Services) Regulations

The purpose of these regulations is to:

1. Promote job creation through the use of local expertise, goods, services, businesses, and financing in the mining industry value chain and their retention in the country
2. Achieve the minimum local level and in-country spending for the provision of goods and services in the mining industry value chain
3. Increase the capability and international competitiveness of domestic businesses
4. Create mining and mineral-related supportive industries that will provide jobs and sustain economic development
5. Achieve and maintain a degree of participation by Kenyans or companies incorporated in Kenya for the local supply of goods and provision of services
6. Provide for a robust, transparent monitoring and reporting system
7. Provide for the submission of a plan in the mining industry, including:
 - a. The provision of goods and services
 - b. The supervision, coordination, implementation, and monitoring of such a plan

In these regulations, there ought to be provision for youth, women, persons with disabilities, and communities in the job creation and business development efforts. Though not explicit in the regulations, it is imperative that the ministry and stakeholders uphold the law in monitoring and advocating the awarding of 30 percent of local opportunities to women and youth and 5 percent to persons with disabilities.

Community Development Agreements

The purpose of this regulation is to ensure that companies negotiate and agree social licences through their contributions to the developmental aspirations of

host communities. The regulation provides for negotiated community projects and their management and monitoring. It is in line with the provisions of the Constitution of Kenya, which requires representation of women, youth, and the community, and provides an opportunity for women to be part of the decision-making process regarding mining activities. This is demonstrated through Section 7 of the regulation, which discusses the appointment of representatives during the formation of Community Development Agreement Committees.

Under this section, the requirements for representation are as follows:

1. One representative of the affected mine community in the County Assembly
2. One representative of women
3. Two recognized community leaders or elders
4. One representative of the youth
5. The Members of Parliament of the constituency or electoral area of the affected mine community

Inclusivity of women, youth, and the community is shown under Section 25 on the Dispute Resolution Committee. This committee has been required to include the following:

- The County Governor or his representative (who shall be the chairman)
- Four members representing the holder
- Four members representing the affected mine community appointed on ad-hoc basis by the affected mine community, with at least one member who shall be a woman and another member representing youth

Dealing in Minerals 2015

This regulation applies to the following:

1. Export by a holder of a mining licence or mining permit

2. The disposal or removal of minerals by a holder of a mineral right for the purposes of sampling, assay, or analysis
3. The buying and selling of any mineral in Kenya or export by a person other than a holder of a mineral right
4. The import of any mineral
5. Cutting, polishing, processing, refining, or treating a mineral
6. Any other person who is not a holder of a mineral right but requires the removal of minerals for analysis or testing for purposes other than exploration or mining

Though not explicit in the regulation, it is imperative that the ministry upholds the law in awarding 30 percent of licences and permits to women and youth, and 5 percent to persons with disabilities.

Mine Support Services

In order to offer mine support services, one has to apply for a licence through the Online Transactional Cadastre Portal. This regulation offers opportunity to do the following:

- Support women to identify and apply for licensing opportunities
- Audit the existing licences for gender equity and inclusiveness, and thereby take remedial action where necessary
- Mobilize women in mining for other support programmes within the ministry

Mine Health and Safety Regulations

The health, safety, and environmental impacts of mining adversely affect women. This regulation aims to ensure health and safety in the mining sector. Though not explicit in the regulation, it is imperative that the ministry designs evaluations that specifically analyse the impacts of mining on women, youth, and children.

Conclusion

The partnership between UN Women and the Ministry of Mining has been beneficial to women involved in mining in Kenya:

- Women in Extractives has been formally constituted with the support of the ministry and UN Women. This body will be an avenue for articulating women's issues in mining and channelling government support to women in mining.
- The mining policy, programmes, and regulations espouse gender equality and women's empowerment in a coherent manner, through close consultation with women stakeholders.
- UN Women supported the technical skills of ministry staff to internalize and roll out the Mining Act and 16 regulations to women and mining communities. UN Women will continue to support the development of regulations that are important for women's inclusion and effective participation in the sector.
- With the support of UN Women, the ministry has undertaken a consultative process in Voi and Nairobi on 16 draft mining regulations with women and communities to ensure women's input into the regulations. While gender is not explicit in the new Mining Act, UN Women will continue engaging with various relevant stakeholders to ensure that the mining regulations take into account women's issues and needs. UN Women will ensure that during the implementation of the act, the gender provisions in Kenya's constitution prevail.
- Most women in the extractive sector are involved in artisanal and small-scale mining. In the development of regulations pertaining to artisanal and small-scale mining, the Ministry of Mining, Women in Extractives, and UN Women will ensure that the issues affecting women in this subsector are effectively addressed.

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