

CLAUSE INSIGHTS



**Contract negotiations:
Implications for women
in the mining and
infrastructure sector**

Women play a crucial, if not underappreciated, role in mining and infrastructure projects. They perform important work either as direct employees in mining companies or as business owners in mining affected communities. Globally, women make up around 10% of the large-scale mining workforce (*Women in Mining: Towards Gender Equality, International Labour Organisation, 2021*).

However, women are still faced with discrimination at the workplace, unconscious bias and a lack of regulatory support systems that hinder their long-term involvement in the sector (ILO, 2021). The gender gap in infrastructure has been equally highlighted (*Women in infrastructure: Selected stocktaking of good practices for inclusion of women in infrastructure, 2021*). Sustainable development cannot be achieved if 50% of the population is structurally disadvantaged.

Long swept under the carpet, the issue of gender parity (or disparity) is (finally) getting its day. The problem is highlighted, but often, practical policy advice is missing to guide government officials keen to address those issues or is difficult to pass it into legislation. With mining and infrastructure contracts lasting up to 25 years or even more, challenges for women and other marginalised groups can potentially be addressed in investment contracts. As women represent the largest marginalised group, this article specifically looks at gendered implications of mining and infrastructure contracts on women.

HOW WOMEN ARE IMPACTED

Women have diverse needs that must be translated to ensure benefits are inclusive throughout the project lifecycle. Below are just some of the areas in which women are impacted in mining and infrastructure projects:

- » **Employment and income:** While mining and infrastructure projects often create jobs, significant gender disparity in male and female access to different types of jobs is commonplace. The gender pay gap is still a reality with women earning less on average in the mining sector. Also, only a small percentage of women occupy high-level positions in mining companies (McKinsey, 2023). Men and women tend to prioritise and spend income differently, which has an impact on investments made in health, nutrition, and education at the community and household level.

- » **Environment/Livelihood:** Mining operations and infrastructure development often have substantial environmental impacts. Conversion of land away from traditional uses as well as environmental changes and degradation are just two examples. These changes tend to impact agriculture, as well as the time it takes to collect water, firewood, and food (tasks often undertaken by women) in addition to creating health implications that often have greater ramifications for women, in terms of burden of care. This additional burden also raises the risk and frequency of violent attacks against women.
- » **Community Consultations:** Women are often excluded from community decision-making processes, giving them less say on how resources, and mitigation programmes, are spent. In addition, men and women often prioritise spending differently (ILO, 2021; *Gender Dimensions of the Extractive Industries: Mining for Equity, World Bank 2009*).

When negotiating mining and infrastructure contracts, governments could craft legislation (or negotiate contracts) in which companies are obliged to implement programmes that minimise or ideally avoid negative consequences for impacted communities.

Clauses related to gender in contract negotiations can increase women's employment, improve economic and financial opportunities for all, alleviate some of the multiple burdens on women and offset some of the negative impacts of mining and infrastructure development. These clauses would "lock" gender into the contract and be legally enforceable. Given the slow pace of most legislative processes, contracts can be a faster way to address gender issues at a project level (*Gender and Extractive Governance: Lessons from Existing Legal and Policy Frameworks, World Resources Institute, Natural Resources Governance Institute, 2021*) which overall contributes to the promotion of more gender-sensitive operations. One example could be the inclusion of maternity, paternity and parental leave policies to facilitate continued employment for women. These policies safeguard the well-being of those pregnant and their children, while

also upholding their job security. Furthermore, they serve to prevent any form of discrimination based on individuals' reproductive responsibilities (Parental Leave Policies in the Mining Sector, Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, 2023).

THE BUSINESS CASE OF GENDER IN NEGOTIATIONS

Based on our preliminary findings for this Clause Insights, only a very limited number of contracts include gender provisions (resourcecontracts.org). The few clauses that do exist focus on inclusion in consultation activities, fairness in existing policies, gender in site security, non-discrimination in the workplace, and identification of affected groups.

The fact that so few contracts include gender demonstrates that there is a large gap that needs to be closed to improve the situation in many countries. To note, gender considerations, and their impact on women's and men's access to decision-making and employment are highly contextual, differing per country and the social and cultural reality in which people live. Contracts should be mindful of this and identify and address the specific needs of marginalised groups, with a view to ensuring that infrastructure and mining projects are inclusive and representative.

Considering this gap, governments should encourage the inclusion of gender-specific provisions in contracts for the following reasons:

1. **Enhances expertise within the workforce** – A broader talent pool with diverse perspectives and backgrounds contributes to comprehensive and innovative solutions which can lead to increased productivity.
2. **Builds trust with local stakeholders** – A mining operation or infrastructure project is more likely to be accepted if concerns of local communities, including women, are addressed, ultimately securing the social license to operate. That social license to operate through the creation of meaningful relationships can mean the difference between a smoothly run project or one mired by delays and substantial cost overruns.
3. **Create more sustainable outcomes in social development** – because women tend to handle income/money differently from men, the quality of social investment projects in local communities may be more thought-

ful, more inclusive and more long-term if the voice of women is heard (*Gender Dimensions of the Extractive Industries: Mining for Equity, World Bank, 2009*).

It is crucial that government negotiation teams carry out due diligence on companies with which they are negotiating. If the company has a gender policy, there is a good chance that they also have other human rights related policies, including environmental, and social standards (see below).

POTENTIAL WAYS TO ADDRESS GENDER IN CONTRACTS

- » **Clear commitment to environmental and social standards (and which standards).** Include a clear statement regarding the benefits for women the project is expected to achieve – as a part of the workforce/supplier as well as an impacted community member. For example, distributing a proportion of royalties and taxes to respond to women's priorities.
- » **Integration of safeguards documents.** Include detailed gender commitments in resettlement plans to make them legally enforceable.
- » **Establish a gender-sensitive grievance and redress mechanism** (in coordination with local women and their representatives) to receive and facilitate the resolution of concerns raised by community members about the parties' performance, taking the special needs of women into account, who may feel more comfortable if they can speak with other women. Grievance mechanisms play an integral role in the "Protect, Respect and Remedy" framework, which serve as the triumvirate of the United Nations Guiding Principles on Business and Human Rights.
- » **Enforceable technical and key performance indicators (KPIs) together with financial incentives to comply with set standards:** Ensure that all key gender-specific technical requirements are included in the contract as outputs, and are measurable in terms of KPIs (such as requirements to include physical-design features that are beneficial for women [e.g., surveillance cameras, bus-stop ramps, and sidewalks]; to hire a certain number of skilled and unskilled local men and women during construction and operation; or to develop and maintain ancillary infrastructure that is needed). In PPP contracts KPIs usually focus on project performance and service quality, rather than socio-economic objectives such as gender equality

and women’s empowerment. This practice is shifting and KPIs are starting to provide a stronger emphasis on social sustainability in PPP frameworks and projects.

- » **Effective monitoring mechanism:** Establish clear responsibilities for monitoring between the private partner and the contracting authority: 1) Collection of gender-disaggregated data throughout the implementation phase, to measure performance against a baseline.; 2) Reporting obligations of the private partner that detail performance against gender commitments, based on gender-disaggregated data ; 3) Obligations related to disclosure of project documents and performance data to ensure transparency and compliance with gender obligations, and to enable stakeholders to monitor performance of the parties.

EMBEDDING PERFORMANCE CLAUSES IN CONTRACTS

Performance clauses are used to specify **how a contract is to be carried out to achieve specific goals**. Some examples could be:

- » Clauses could mandate contractors to take measures to promote women within their organisation (and measure it) as well as to comply with their obligations under the relevant non-discrimination legislation and local content obligations.
- » Provisions could be included in a contract for the reconciliation of work and family life within the contractor’s own enterprise.
- » Clauses specifying that both the main company and the sub-contractor will ensure that all line managers for the staff performing the contract complete training on gender equality aspects of recruitment and employment, including pregnancy and maternity; menopause; sexual harassment; family related leaves, such as parental leave and work/life balance.

These trainings are not about box-ticking with an online training. Those managers should lead by example, and have gender/social aspects as a criteria related to their bonus. These activities should lead to a gender-sensitive culture, both within the company and the government. Women should also be proactively encouraged to take on more responsible roles within the company.


Some examples of gender considerations that can be included in performance clauses are listed below:

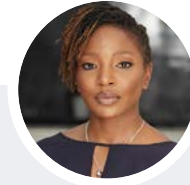
- » **Procurement:** Include commitments related to procurement through “local content” (or for example develop a Code of Conduct or Supplier Diversity Plan, together with a requirement to pass on all gender-specific requirements to sub-contractors, and an obligation to solicit, select and supervise subcontractors in accordance with gender commitments). Local content plans are increasingly very data driven – a great way to measure how gender is being incorporated.
- » **Community Engagement:** target men and women separately in stakeholder relations (for example, household surveys to track users’ satisfaction with new or upgraded infrastructure services, or income-generating activities enabled by the project)
- » **Workforce diversity and/or entrepreneurship:** Ensure that commitments related to employment and/or entrepreneurship take concerns and priorities of men and women into account (for example, commitments around gender-sensitive recruitment, hiring, training, management and promotion of a diverse and competent workforce throughout all project stages; development of a strategic equality and diversity plan; development of a training plan; development of or compliance with child-care, equal pay for equal work, and anti-sexual-harassment policies; and provision of separate facilities).
- » **Training and capacity building:** The contract can require the provision of training and capacity-building programs (towards specific certification requirements) specifically targeted at women, to enhance their skills and promote their career advancement within the mining or infrastructure industry.
- » **Health and safety:** The contract can include provisions to ensure that health and safety measures are gender-sensitive, taking into account the specific needs and vulnerabilities of women in the mining workplace. Measures such as separate changing areas play a role in promoting safety for women in the workplace.

Contract performance clauses are powerful tools only if their fulfillment is properly monitored and verified during contract implementation. Continuous monitoring, evaluation and accountability is essential to strengthen the incentives for the private sector to develop socially responsible and gender-inclusive services, products

and business models. The requirements must therefore be clearly defined to ensure easy monitoring. All of the above, as well as continuous learning should create a culture of inclusion for women. When these clauses are not met, it provides the government with the opportunity to penalise the company. These penalties act as a lever to ensure change in behaviour.

Gender has long been an issue in mining and infrastructure and will also likely be relevant in the context of the extraction of critical/green minerals for the energy transition. Given the importance of non-technical risk, which has and will likely continue to damage the bottom line and value for many projects, it is essential to consider the role of women in a project’s success. The advantages of involving women in a project are multiple. They could serve as a workforce. They have a significant influence in communities. They also contribute different views, which often lead to even more success, such as the sustainability of community projects.

They also make up half of humanity – no company, government or project can be successful in the long-term without actively including them. 



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