

Report



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in small-scale gold mining.

A GEF Initiative

Documentation of planetGOLD Programme: Formalization Activities in Kenya

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Abbreviations/Acronyms

Abbreviation/Acronym	Definition
ASGM	Artisanal and Small-scale Gold Mining
ASM	Artisanal and Small-Scale Mining
CSO	Civil Society Organization
MENR	Ministry of Environment and Natural Resources
NGO	Non-Governmental Organization
UNDP	United Nations Development Programme

Executive Summary

The planetGOLD Kenya project, launched in 2019, aims to reduce the use of mercury in artisanal and small-scale gold mining (ASGM), in part by facilitating the formalization of the ASGM industry and promoting responsible mining. However, the unique challenges related to regulation of ASM in Kenya's mining sector during project execution, which coincided with the moratorium on artisanal mining between 2019 and 2023, created a catalyst for collaborative efforts among stakeholders to advocate for sector reforms to render the legal and regulatory framework more conducive for ASM operators. This advocacy resulted in various stakeholder consultative meetings, facilitated by the project in partnership with the State Department for Mining, for the drafting of the Mining Amendment Bill 2023. The bill is currently under consideration by the country's parliament, awaiting enactment into law.

In addition to advocating for revisions to the mining law, the project also has facilitated the following regulations and governance achievements.

1. Formation of county mining committees prescribed under the Mining Act 2016, to advise the representative of the Director of Mines in the granting, renewal or revocation of artisanal mining permits.
2. Formation of artisanal mining cooperatives to facilitate the acquisition of mining permits
3. Training and capacity of miners regarding permitting and licensing protocols
4. Gender mainstreaming of ASM through the formation of all female cooperative groups to promote female participation in the mining sector.

The overarching implication for this formalization achievement is the advancement of the sector to facilitate the adoption of mercury free technology and alternatives as well as access to finance through the mining cooperatives.

1 Introduction

The artisanal and small-scale gold mining (ASGM) sector in Kenya, which holds significant but underexplored gold reserves, has the potential to drive socially and environmentally sustainable economic development, particularly in the western areas (UNDP, 2022). In western Kenya, rapid population expansion and a lack of employment opportunities for youth render ASGM a vital source of revenue for miners to cover their daily expenses. Miners often work under poor and substandard conditions, utilizing primarily primitive tools and basic technologies that often employ the use of hazardous chemicals like mercury and cyanide, which release harmful pollutants into the environment, impacting the health of miners and other individuals in the mining community.

The majority of ASGM enterprises in Kenya continue to operate informally. The country lacked a regulated legal framework for ASM until 2016, with the enactment of the Mining Act, 2016 formalization efforts have been taking place since then. Formalization presents an opportunity for the advancement and adoption of environmentally sustainable alternative technologies that benefit both the ecosystem and miners. Comprehensive formalization of the sector would enable miners to access assistance such training on cleaner, mercury-free technologies and, importantly, would enhance their access to funding and investment in these technologies.

The planetGOLD Kenya project, launched in 2019 and implemented by Ministry of Environment, Climate Change and Forestry through the United Nations Development Programme (UNDP) seeks to reduce the use of mercury in ASGM. The project is supporting six mining communities, with the aim to reduce mercury use by 1.5 tonnes over the course of the five-year project period. The project utilizes four key strategies in its implementation.

1. Support formalization of the ASGM sector, by enhancing the capacity of the government and business sectors, and by improving regulatory frameworks for ASGM, which will enable access to sufficient financial and technical services for the adoption of mercury-free ore processing.

2. Provide technical assistance and training on alternative mercury-free technologies.
3. Help miners access financing for mercury-free technologies.
4. Raise awareness and disseminate best practices.

This report describes the activities of planetGOLD Kenya under the first pillar, the formalization strategy.

2 Formalization Intervention

Background and Context

Artisanal and Small-Scale Mining (ASM) has been present in Kenya since pre-colonial times but was not recognized in the country's legal framework until 2016 when the Mining Act was enacted. This act set the stage for the legal framework for regulating the sector by establishing a dedicated ministry for mining and its related agencies. Prior to this, mining was managed as a department within the Ministry of Environment and Natural Resources (MENR). Currently, the State Department for Mining is one of three departments under the Ministry of Mining, Blue Economy, and Maritime Affairs. The mining sector contributes approximately 0.8% to Kenya's GDP, with a projected target to elevate this figure to 10% by 2030¹. ASM in Kenya provides livelihood support for many unemployed youth and women just like other resource rich countries in Africa (Hilson, 2016)². A 2022 study by Solidaridad highlighting the economic impact of ASM in Kenya indicated that approximately 250,000 individuals were directly involved in ASM activities, while nearly 1,000,000 were reliant on it³.

Notwithstanding the significance of ASM in providing income for low-income individuals and rural populations, several reports have highlighted concerns over inadequate working conditions, land degradation, water pollution, health, safety, and other environmental challenges stemming from mostly illegal ASM activities.

¹ <https://www.mining.go.ke/sites/default/files/SDM%20SP%20DRAFT.pdf>

² Hilson, G. (2016). Farming, small-scale mining and rural livelihoods in Sub-Saharan Africa: A critical overview. *The Extractive Industries and Society*, 3(2), 547-563.

³ <https://www.solidaridadnetwork.org/news/working-towards-self-regulation-in-small-scale-gold-mining-in-kenya/>

The sector's challenges have resulted in marginalization of formal funding and access to finance due to its predominately informal character. The sector's informality facilitated the proliferation of illegal mining activities prior to the implementation of the Mining Act of 2016, with miners encountering significant challenges related to financing, access to viable land, formal operating licenses, equipment, and technological issues, among others. These challenges persist with several government and donor initiatives ongoing targeted at formalizing the sector.

Formalization Intervention Chosen

The primary objective of planetGOLD Kenya's formalization strategy is to help formalize and regulate the artisanal and small-scale mining (ASM) sector in accordance with Kenya's mining legislation. Licensing and permitting are necessary to set the stage for the project to implement its focus on the mercury reduction within a legal and regulatory framework. Before the enactment of the Mining Act of 2016, the operations of artisanal and small-scale mining (ASM) in Kenya were not acknowledged in the nation's legislation, despite ASM's existence since precolonial times. The Mining Act's introduction recognized the ASM category as a distinct kind of mining and established an institutional structure to address ASM-related challenges. However, the Act inadequately defined critical aspects of licensing, permitting, and operational scope for ASM, especially for the artisanal mining category. The Mining Act of 2016 also failed to sufficiently define ASM beyond the degree of mechanization and the categories of equipment to be employed. This benefited small-scale miners capable of investing in heavy gear, while distinctly marginalizing artisanal miners who lack the means to get a mining license or permission.

Thus, the primary project intervention for formalization focused on improving the processes for the permitting and licensing of artisanal miners, given that the Mining Act failed to have adequate provisions for the artisanal mining category. Additionally, the government's implementation of a moratorium in December 2019, which restricted the processing and issuance of mining licenses and renewal applications, prompted public demands for a review of the Mining Act and associated regulations. Consequently, the project's intervention capitalized on heightened attention to pre-existing issues associated with licensing and permitting

in the sector. The project's activities were consistent with stakeholder requirements and the government's pursuit to efficiently regulate the ASM industry in Kenya following the recent gold rush in mining regions, which has resulted in the proliferation of ASM operations.

Specifically, the project supported the development of amendments to the Mining Act to include permitting for artisanal miners; to adjust the Mining Act's definitions of ASM activities based on operational output, production; and to clarify the requirements and procedures for licenses/ permit acquisition. The goal is to ultimately have an operational mining law with requisite regulations and guidelines favorable for ASM operators in supporting formalization of ASM, are guidelines for delineation of ASM areas.

In addition to its advocacy for revisions to the Mining Act, the project also engaged in the following activities to support ASGM formalization:

1. Advocating for lifting of moratorium on artisanal mining, which was eventually lifted in October 2023.
2. Gazetting of Counties' Artisanal Committees, according to the provisions of the law, with the aim of having these committees able to advise the representative of the Director of Mines in the granting, renewal or revocation of artisanal mining permits.
3. Training and capacity building of miners and key sector stakeholders on licenses and permitting procedures.
4. Formalizing mining cooperatives across the project areas.
5. Gender mainstreaming to facilitate women's acquisition of requisite mining licenses and permits.

Target Areas, Groups and Partners

Target Areas: The project is focused on four (4) counties out of forty-seven (47) in the country: Kakamega, Vihiga, Narok, and Migori Counties. The project supports six ASGM sites in these counties. These counties are among the mining counties in the country where artisanal mining activities are prevalent.

Target Groups: The primary beneficiaries of the licensing and permitting

activities Kenyan artisanal miners and prospective miners presently operating without the necessary licenses and permits, and prospective miners above the age of 18 years, in accordance with the mining laws. The project also addressed gender issues through assisting in formation of women owned and led mining cooperatives. While miners were the target beneficiaries, groups that work directly with miners, such as concession owners, pit owners, gold dealers, marketers etc., also benefit from the interventions

Partners and Key Stakeholders: The project works in close collaboration with various stakeholders including government agencies like the State Department for Mining, the county mining committees, local and traditional authorities, mining cooperatives, mining associations, Non-Governmental Organizations (NGO) and Civil Society Organizations (CSO), and private partners. The project works with these groups through meetings, workshops, sensitization campaigns, media and reports shared with stakeholders.

Main Activities and Outputs/Achievements

Main governance and regulation outcomes

The following are the main governance and regulatory achievements of the project.

1. Review of the Mining Act of 2016: The project participated in consultative review of the provisions of the Mining Act, 2016, which was led by the State Department for Mining, with the aim to recommend amendments to incorporate permitting and licensing of artisanal mining operations. The project supported this process with the organization of consultative stakeholder engagements and advocacy for the drafting of proposed Mining (Amendment) Bill (2023). The bill introduced a new definition for artisanal mining and application fees for permits, which would be included in an amendment to the relevant regulation governing licenses and permits (known as draft Mining (License and Permits) (Amendment) Regulations, 2023). This regulation would amend the 'principal' regulation known as the Mining (License and Permits) (Amendment) Regulations, 2017. The bill currently before parliament is waiting to be passed into law.

It should be noted that at the same time these amendments were being drafted and considered, the government was working toward the delineation of areas designated for artisanal mining in the mining cadastre, as part of the government's efforts to consolidate all mining permits/ licenses in Kenya into the mining cadastre. The mining cadastre is a digital platform that shows all mineral rights holders in Kenya and facilitates direct engagement between players in the mining sector and the State Department of Mining on license and permit application. All applications for a mining license and permit are currently granted through an online application through the mining cadastre; artisanal mining will now be included in that system.

2. Gazetting⁴ of 30 County Committees in compliance with provisions of the law which prescribes representations of members of the committee. The role of the county committee is to advise the representative of the Director of Mines in the granting, renewal or revocation of artisanal mining permits.
3. Implemented the formation of 23 ASM cooperatives at the directive of the government through the State Department for Mining, to facilitate acquisition and license/ permits. The project's role was to support the formation of the cooperatives by bringing miners together through advocacy on the importance of cooperatives to their operations.
4. Training: The project also engaged in the training and capacity building of miners and other key stakeholders on licensing acquisition and permitting procedures including deliberate targeting women who have exclusivity to some of the cooperatives as part of gender mainstreaming. The project trained 1,600 miners as well as 100 government staff on these topics.

Gender dimensions

The mining legislation in Kenya is predominantly gender neutral. However, the Artisanal County Mining Committee, which advises on issuing of permits to artisanal miners, is required to adhere to the two-thirds gender norm, which states

⁴ Gazetting in mining refers to the practice of issuing notices about mining activity in a government published document. These notices may provide information concerning permits, regulations, and other important details.

that not more than two-thirds of the members of elective public bodies shall be of the same gender (Article 81b of Kenya's 2010 constitution). Further, the project supported gender mainstreaming through the formation of all-female cooperative groups, by offering training and assistance to women-led groups to establish mining cooperatives and complete the registration process. This in turn facilitated the issuance of necessary licenses and permits to the women who own and work in these cooperatives and enhanced the ability of women and marginalized groups to access financial products in the market.

3 Findings, Experiences and Lessons Learned

The projects team reflected that to effectively implement mining interventions, it is necessary to incorporate the following strategies into project implementation:

1. Earn trust of miners to be able to effectively implement interventions and get their buy in to champion implementation
2. Give opportunities to miners to participate in decision making
3. Provide regular updates and engage targets beneficiaries and stakeholders through clear communication channels to manage expectations of beneficiaries.
4. Facilitate productive stakeholder engagement with all pertinent and principal parties to tackle formalization concerns.
5. Foster a conducive climate for artisanal operators to flourish.
6. Ensure that the government is offering support and financial options in collaboration with private organizations to incentivize miners to formalize their operations.
7. Enhance awareness of environmental stewardship and compliance with mining regulations.
8. Establish synergies between the planetGOLD project and similar initiatives to strengthen formalization efforts.

Highlights of Formalization Interventions

The key highlight of the formalization intervention is the establishment of an operator friendly legal and regulatory framework for artisanal and small-scale mining enterprises in Kenya. The project's advocacy for a revised definition of ASM within the legal framework and facilitation of stakeholder consultative meeting was crucial for the drafting of sections of the Mining (Amendment) Bill, 2023 related to artisanal mining. The Bill is presently under consideration by parliament, awaiting enactment into law. This is considered a notable achievement in the history of Kenya's mining sector, as artisanal and small-scale mining (ASM) provides opportunities for job creation and serves as a livelihood source for numerous individuals in mining regions. This successful drafting of amendment to a licensing regime for ASM which gives new definition to artisanal mining as well as permitting requirement and procedures is a foundation for the promotion of a vibrant mining sector contributing to broad based growth for socio-economic transformation.

In addition, the formation of county artisanal committees within the legislative framework establishes inclusive entities in all mining counties to oversee the management of artisanal small-scale mining (ASM) at the local level, thereby fostering local participation. Furthermore, the establishment of mining cooperatives facilitates the permitting process by recognizing miners, hence simplifying the process for obtaining necessary permits. These collectively will also help maximize benefits accruing from mineral resources value chains for socioeconomic development in a sustainable environment.

Broader Implications of Formalization

The formalization interventions of the planetGOLD project have affected the overall formalization of ASM activities in Kenya and helped create the foundation for a broader strategy that integrates environment, social and economic considerations. Firstly, amendment of the legal framework, which now recognizes artisanal mining activities, provides miners and other ASM actors legal access to mineable lands and designated areas for their operations once all legal and regulatory requirements are met in the application for requisite licenses and

permits to operate. Additionally, the ability to obtain a legal license and permits offers miners and ASM participants a pathway to secure formal financing from banks and financial institutions for the procurement of essential logistics for their operations. This includes the ability to purchase the needed equipment for the efficient and sustainable extraction of gold which effectively reduces the use of mercury and other negative impacts on the environment and communities. Another implication of the licensing and permitting intervention on ASM formalization in Kenya is its potential to help with land use planning and reduction of conflicts associated with mining activities. Central Government and local authorities can build on this success and collaborate with the right partners to provide designated areas exclusively to promote ASM activities.

Long-term Sustainability

The licensing and permitting intervention underpin the broader ASM formalization strategy by establishing the legal framework necessary for ASM activities to thrive. It aligns with other pillars of planetGOLD by offering a platform to educate and enhance the capabilities of miners regarding sustainable mining techniques and the hazards associated with mercury usage, facilitated by the mining cooperatives formed under the Mining Act. Moreover, the involvement of County Mining Committees, which oversee artisanal and small-scale mining (ASM) operations locally, improves awareness of hazardous working conditions and the dangers linked to mercury utilization at mining sites, and allows a route for promoting alternative and safe mercury-free methods and techniques for mining. The long-term sustainability of this intervention requires building on its successes by continuous engagement and capacity building of miners and other key stakeholders on sustainable mining practices and compliance with the provisions of Mining Act and its related regulations.

4 Recommendations for Future Interventions on Formalization

The success of the formalization activities of the planetGOLD Kenya project was mostly due to their alignment with the existing challenges with licensing and permitting of Kenya's mining sector at the project's inception, which coincided with the moratorium on ASM activities to facilitate a comprehensive audit of the sector. The insights gained from this work can be leveraged for future interventions. The following considerations are recommended for future ASM formalization interventions in Kenya:

1. ASM interventions should be tailored to local demand that usually drives the mining sector. This can be achieved through extensive stakeholder engagement during project conceptualization and design.
2. Alternative mining techniques and mercury free equipment must be introduced with consideration of affordability, accessibility, efficiency and the ability of miners to access the requisite financial assistance for adoption which in turn relies on their formal status.
3. ASM interventions must draw synergies with other efforts from like-minded projects aligned to governments plans, policies and projects to ensure continuous formalization of the ASM sector.



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