GENDER DIMENSIONS OF THE EXISTING POLICY AND REGULATORY FRAMEWORKS, THEIR IMPLEMENTATION AND MONITORING THAT CAN ADVANCE FORMALIZATION OF ASGM IN KENYA
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EXECUTIVE SUMMARY

Women make up over 30% of the national Artisanal and Small-Scale Gold Miners (ASGM) yet their work is undervalued, impeded and under compensated compared to their male colleagues.

The study involved reviewing the existing ASGM related policy and regulatory framework in light of gender dimensions in the ASGM sector.

Artisanal and Small-Scale Mining (ASM) sector forms an important livelihood source in Kenya. It is estimated to employ approximately 250,000 miners. Women make up over 30% of the national Artisanal and Small-Scale Gold Miners (ASGM) yet their work is undervalued, impeded and under compensated compared to their male colleagues. The Ministry of Environment and Forestry, thus, sought to assess the gender dimensions of the existing policies and regulatory frameworks that impact the ASGM sector. The Specific objectives of the study are to (I) identify and review ASGM related policy and legal framework at National and Project Counties (II) to identify and document the gaps, clarities and overlaps in light of gender dimensions; and (III) Make recommendations to address the identified gaps in the existing ASGM Policy and Regulatory Framework.

The study was conducted on the relevant government agencies in the national government and county governments of Narok, Vihiga, Migori and Kakamega. Relevant government officers and women gold miners in the four counties were interviewed. Desk review of the relevant laws, policies and institutional framework was undertaken. It was established that women in ASGM are involved in less physical but low paying jobs such as ore crushing, washing, panning, sieving, sorting, mercury-gold amalgamation. Very few women are involved in the mining sites because of cultural and traditional beliefs. Discriminatory customary practices that hinder or limit women from owning or inheriting land further constrain their ability to own the mining rights or pits hence relegating them to support services such as gold processing and cooking for miners.

The mining regulations are mostly gender neutral. That is, the laws, policies and practices do not attempt to address gender issues. However, gender-sensitive or progressive provisions are in: Community Development Agreement Committee Guidelines, 2021; Mining (National Mining Corporation) Regulations, 2017; and, Mining (Use of Local Goods and Services) Regulations, 2017. Artisanal Mining Committee plays a great role in giving permits to artisanal miners and require county nominations to observe two-thirds gender rule. Mining and Mineral Policy promotes gender
equitable participation, ownership and decision-making in mining value chains. Besides, women in mining benefit from affirmative action such as 30% procurement rule, and Kenya Women Finance Trust (KWFT), Youth Enterprise Development Fund (YEDF) and Women Enterprise Fund (WEF) in financing their mining activities. The National Land Policy (2009) recognizes women’s rights to own property just as men. Land Act and Land Registration Act secure women’s rights to land. Sexual Offences Act, 2006 outlaw violence against women and soliciting sex for employment in the gold mining and processing sites.

It is recommended that the Ministry of Petroleum and Mining should institutionalize periodic (annual) gender disaggregated data of ASGM sector for policy planning and budgeting start affirmative action through establishing different categories of licenses, fees and permits for women miners to boost women involvement in gold mining. There is need to institutionalize gendered training and civic education to address gender inequalities at ASGM sites. Further there is need for gender-champions in ASGM communities to raise awareness on gender and change the community attitude towards women working in mines. Encourage female miners to form women-only cooperatives and associations.

Conclusions and Recommendations

I. The assessment shows that a high number of women are majorly involved in mineral processing activities such crushing, washing, panning, sieving, sorting, mercury-gold amalgamation, amalgam decomposition.

II. The exclusion of women from the mining sector has also been influenced by the traditionally infused social constraints which have seen women banned from main mining activities due to myths that the minerals will disappear when a woman is in her menses. There are also discriminatory customary practices that hinder or limit women from owning or inheriting land which further increase their vulnerability in the industry.

III. The assessment shows that apart from the Constitution which is gender transformative, the mining laws and regulations in Kenya have largely been gender neutral, that is they are without express affirmative provisions to encourage and foster women engagement in ASGM. These include charged gender blind permits and fees charged enabling regulations are all gender blind.

IV. There is need to identify male gender champions in ASGM communities to raise awareness on gender and change the community attitude towards women working in mines. There is also need to provide increased technical support to mining institutions and associations such as ASM Cooperatives to do gender mainstreaming of their internal and external operations.

Figure 1: Woman working at an ASGM site
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<thead>
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<th>Abbreviation</th>
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<tbody>
<tr>
<td>AMC</td>
<td>Artisanal Mining Committee</td>
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<tr>
<td>ASGM</td>
<td>Artisanal Small-scale Gold mining</td>
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<tr>
<td>ASM</td>
<td>Artisanal Small-scale Mining</td>
</tr>
<tr>
<td>LSM</td>
<td>Large-Scale Mining</td>
</tr>
<tr>
<td>ASMNET</td>
<td>Artisanal and Small-scale-Mining Network</td>
</tr>
<tr>
<td>ASMSO</td>
<td>Artisanal Small Scale Miners’ Organization</td>
</tr>
<tr>
<td>BAP</td>
<td>Best Available Technologies</td>
</tr>
<tr>
<td>BET</td>
<td>Best Environmental Practices</td>
</tr>
<tr>
<td>CBO</td>
<td>Community Based Organization</td>
</tr>
<tr>
<td>CEJAD</td>
<td>Center for Environmental Justice and Development</td>
</tr>
<tr>
<td>CIRDI</td>
<td>Canadian International Resource and Development Institute</td>
</tr>
<tr>
<td>COVID-19</td>
<td>Coronavirus Disease of 2019</td>
</tr>
<tr>
<td>DOENR</td>
<td>Department of Environment</td>
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<tr>
<td>DOPH</td>
<td>Department of Public Health</td>
</tr>
<tr>
<td>DOSHS</td>
<td>Directorate of Occupational Safety and Health Services</td>
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<td>DOT</td>
<td>Department of Trade</td>
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<tr>
<td>EA</td>
<td>Environmental Audit</td>
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<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<tr>
<td>EMC</td>
<td>Environmental Management and Coordination</td>
</tr>
<tr>
<td>EMCA</td>
<td>Environmental Management and Coordination Act</td>
</tr>
<tr>
<td>FGD</td>
<td>Focus Group Discussion</td>
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<td>Acronyms</td>
<td>Abbreviation</td>
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<tr>
<td>GDP</td>
<td>Gross Development Product</td>
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<tr>
<td>GEF</td>
<td>Global Environment Facility</td>
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<tr>
<td>GOK</td>
<td>Government of Kenya</td>
</tr>
<tr>
<td>GOLD</td>
<td>Global Opportunities for Long-term Development</td>
</tr>
<tr>
<td>KII</td>
<td>Key Informant Interview</td>
</tr>
<tr>
<td>MICMA</td>
<td>Migori County Miners Association</td>
</tr>
<tr>
<td>MICODEPRO</td>
<td>Mining Community Development Programme</td>
</tr>
<tr>
<td>MOE&amp;F</td>
<td>Ministry of Environment and Forestry</td>
</tr>
<tr>
<td>MOP</td>
<td>Mining Operations Permit</td>
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<td>MTP</td>
<td>Mid-Term Plan</td>
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<td>SEA</td>
<td>Sexual Exploitation and Abuse</td>
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<td>NCCK</td>
<td>National Council of Churches of Kenya</td>
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<td>NEMA</td>
<td>National Environment Management Authority</td>
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<tr>
<td>PPEs</td>
<td>Personal Protective Equipment</td>
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<tr>
<td>SACCO</td>
<td>Savings and Credit Cooperatives Organization</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Program</td>
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<tr>
<td>NLC</td>
<td>National Land Commission</td>
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<td>UTM</td>
<td>Universal Transverse Mercator</td>
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<td>WHO</td>
<td>World Health Organization</td>
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# GLOSSARY OF TERMS

<table>
<thead>
<tr>
<th>ACRONYMS</th>
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<tr>
<td>ASGM Actors</td>
<td>Persons or institutions directly involved in the ASGM supply chain, which add value to gold production or trade. Depending on the context, these may include miners (diggers, transporters, and processors, such as crushers, washers, and panners), pit bosses, leaders of mining entities, traders, investors, goldsmiths, exporters, refiners, smelters, importers, end consumers and bullion banks <em>(UNITAR &amp; UN Environment, 2018)</em></td>
</tr>
<tr>
<td>ASGM Operations</td>
<td>Areas where ASGM production including extraction, transport, and processing takes place <em>(Cammack, 2012)</em></td>
</tr>
<tr>
<td>ASGM Stakeholders</td>
<td>Persons or institutions that are indirectly involved in gold production and trade. Depending on the context, these may include landowners, community leaders, customary leaders, large-scale mining (LSM) companies, non-governmental organizations (NGOs), financial institutions, universities, government agencies and specialized services, and bilateral and international development organizations. <em>(UNITAR &amp; UN Environment, 2018)</em></td>
</tr>
<tr>
<td>Gender blind (neutral)</td>
<td>Laws, policies and practices that do not attempt to address gender.</td>
</tr>
<tr>
<td>Gender sensitive (accommodating)</td>
<td>Laws, policies and practices that accommodate gender differences in pursuit of an outcome</td>
</tr>
<tr>
<td>County</td>
<td>An entity that is either private or public and has jurisdiction covering a specific location within a country. <em>(Ovadje &amp; Calys-Togoe, 2021 and UNITAR &amp; UN Environment, 2018)</em></td>
</tr>
<tr>
<td>Gender</td>
<td>Socially constructed norms and ideologies which determine the behaviour and actions of men and women.</td>
</tr>
<tr>
<td>Artisanal Mining</td>
<td>Traditional and customary mining operations using traditional and customary ways and means</td>
</tr>
<tr>
<td>Small-Scale Mining</td>
<td>Is operation in which: in case of prospecting operations, the prospecting area does not exceed 25 contiguous blocks and mining operations, the proposed mining area does not exceed two contiguous blocks.</td>
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# Gender Dimensions on Existing Policy & Regulatory Frameworks in Kenya's ASGM

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<th>ACRONYMS</th>
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<tr>
<td>Illegal ASGM</td>
<td>ASGM actors who are either prohibited by law or lack mining licenses, and do not adhere to other requirements set in national regulations. (UNITAR &amp; UN Environment, 2018)</td>
</tr>
<tr>
<td>Gender discriminatory (exploitative)</td>
<td>Laws, policies and practices that exploit gender inequalities and stereotypes.</td>
</tr>
<tr>
<td>Gender transformative</td>
<td>Laws, policies and practices that seek to transform gender relations to promote equity as a means to reach an outcome.</td>
</tr>
<tr>
<td>Gender Dimension</td>
<td>Also known as gender perspective refers to integrating sex and gender analysis into public discourse. That is, understand the relationships between men and women, their access to resources, their activities, and the constraints they face relative to each other.</td>
</tr>
<tr>
<td>Sex</td>
<td>Refers to the biological and anatomical differences between females and males, gender refers to the socially and culturally constructed norms, values and expectations related to men or women, boys or girls.</td>
</tr>
<tr>
<td>Gender Equality</td>
<td>Implies that women, men, boys and girls have equal value and therefore should be accorded equal opportunities and treatment.</td>
</tr>
<tr>
<td>Gender Analysis</td>
<td>Refers to critical examination of how differences in gender roles, activities, needs, opportunities and rights/entitlements affect women, men, girls and boys in certain situation or contexts. Gender analysis examines the relationships between females and males and their access to, and control of, resources and the constraints they face relative to each other.</td>
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<tr>
<td>Gender Equity</td>
<td>This refers to a situation when women and men enjoy the same rights and opportunities across all sectors of society, including economic participation and decision-making, and when the different behaviours and aspirations of women and men are equally valued and favoured.</td>
</tr>
<tr>
<td>Gender Disaggregated Data</td>
<td>Refers to data on women, men, boys and girls in relation to all aspects of their gender orientation</td>
</tr>
<tr>
<td>Informal ASGM</td>
<td>Regardless of their legal status, these ASGM actors are not organized in or effectively represented by a legal entity; they do not receive governmental support; or do not benefit from enforcement of policies that enable them to understand and comply with the requirements set in national regulations. (UNITAR &amp; UN Environment, 2018)</td>
</tr>
<tr>
<td>Legal ASGM</td>
<td>ASGM actors recognized by national law, who are in possession of mining licenses and permits, and adhere to any other standards as required by national regulations. (UNITAR &amp; UN Environment, 2018)</td>
</tr>
<tr>
<td>National</td>
<td>An entity that is either public or private and has jurisdiction covering the whole country. (Ovadje &amp; Calys-Togoe, 2021 and UNITAR &amp; UN Environment, 2018)</td>
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Figure 3: Alluvial mining along River Yala.
SECTION 1.
INTRODUCTION TO GENDER
DIMENSION STUDY

1.1 Background

Artisanal and Small-Scale Mining occurs in approximately 80 countries worldwide. There are approximately 100 million artisanal miners globally. Artisanal and small-scale production supply accounts for 80% of global sapphire, 20% of gold mining and up to 20% of diamond mining. It is widespread in developing countries in Africa, Asia, Oceania and Central and South America. Though the informal nature and on the whole the un-mechanized operation generally results in low productivity, the sector represents an important livelihood and income source for the poverty affected local population. It ensures sustenance for millions of families in rural areas of developing countries. About 100 million people – workers and their families - depend on artisanal mining compared to about 7 million people worldwide in industrial mining.

As already stated, the sector is responsible for producing as much as about 20% of the gold produced globally. Lack of proper monitoring and regulatory mechanisms for most ASGM communities translates to indecent working conditions which include reports of child labour and hazardous working environments. The rampant use of mercury as well as the mining methods employed in ASGM has also been a major contributor to environmental degradation. It is imperative to note that the sector accounts for 35 per cent (UNEP 2013) of the total anthropogenic emissions of mercury around the globe.

In Kenya, ASM forms an important livelihood source and is estimated to employ approximately 250,000 miners which in total result in 800,000 Kenyan citizens being dependent on the sector. According to Kenya National Action Plan (NAP) for ASGM 2020 – 2025, the total gold production from ASGM is at an average of 2,789.32 Kgs (2.8tons) annually of which 1.034 tons is produced using mercury.

The Ministry of Environment and Forestry (ME&F) with the support of the Global Environment Facility (GEF) and United Nations Development Programme (UNDP) is implementing the Integrated Sound Management of Mercury in Kenya’s Artisanal and Small-Scale Gold Mining as part of the Global Opportunity for Long Term Development (GOLD) in the Artisanal Small-Scale Gold Mining (ASGM). The project mission is to make small-scale gold mining safer, cleaner and more profitable. In furtherance of this mission, ME&F sought to assess the gender dimensions of the existing policies and the regulatory frameworks that impact the ASGM sector.
1.2 Assessment of Scope and Specific Objectives of the Assignment

The assessment targeted project Counties of Migori, Narok, Vihiga and Kakamega targeting specifically the following mining sites: Lolgorian, Kehancha, Masara, Osiri, Ikolomani, Chavakali and Rosterman.

The scope of the consultancy includes review of National and county policies, laws and regulations that impact gender dimensions in the ASGM sector, consultation with key stakeholders at national and county levels in the ASGM sector and carrying out desktop review of laws and regulations which impact on gender dimensions in the ASGM Sector.

The Specific objectives of the assessment included the identification and the review of the ASGM related policy and legal framework at national and at the project counties, the identification and documentation of gaps, clarities and overlaps that exist in the ASGM related policy and legal framework at the National and at the project Counties in light of gender dimensions and Making recommendations that address the identified gaps in the existing ASGM policy and regulatory framework.

The assignment broadly gives an overview of gender aspects related to ASGM, explored challenges of integrating gender dimensions into the ASGM sector, shared information and discussed recommendations and best practices for considering gender guiding formalization of ASGM.

The scope includes review of National and relevant county policies, laws regulations that impact gender dimensions in the ASGM
SECTION 2
APPROACHES AND METHODOLOGY

2.1 Gender-Assessment: Approach and Methodology

The study employed the review of National and relevant County policies, laws and regulations that impact gender dimensions in the ASGM sector. There was also consultation with key stakeholders at national and at the county levels in the ASGM sector and the carrying out desktop review. Field data assessment tools were used to acquire data qualitatively and quantitatively in details required in order to provide quality and measurable indicators. The qualitative tools included: Key Informant Interviews (KII); Focus Group Discussions (FGD) and community consultative meetings and field observations/validation. Quantitative tool involved mainly questionnaires.

Assignment tasks were approached by specified assessment data tools in order to be more focused and detailed enough. The table below summarizes assessment tools and methodology employed against task.

<table>
<thead>
<tr>
<th>TASK</th>
<th>ASSESSMENT DATA TOOL</th>
</tr>
</thead>
<tbody>
<tr>
<td>To identify and review ASGM related policy and legal framework at national and project counties</td>
<td>i. Desk Study and Literature Reviews</td>
</tr>
<tr>
<td></td>
<td>ii. Key Informant Interviews (KII)</td>
</tr>
<tr>
<td></td>
<td>iii. Focus Group Discussions (FGD)</td>
</tr>
<tr>
<td></td>
<td>iv. Consultative meetings</td>
</tr>
<tr>
<td></td>
<td>v. Field observations</td>
</tr>
<tr>
<td></td>
<td>vi. Questionnaires</td>
</tr>
<tr>
<td>To identify and document the gaps, clarities and overlaps existing in the ASGM related policy and legal framework at the National and project Counties in light of gender dimensions</td>
<td>i. Key Informant Interviews (KII)</td>
</tr>
<tr>
<td></td>
<td>ii. Focus Group Discussions (FGD)</td>
</tr>
<tr>
<td></td>
<td>iii. Consultative meetings</td>
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<td></td>
<td>iv. Field observations</td>
</tr>
<tr>
<td></td>
<td>v. Questionnaires</td>
</tr>
<tr>
<td>To make recommendations to address the identified gaps in the existing ASGM policy and regulatory framework</td>
<td>i. Key Informant Interviews (KII)</td>
</tr>
<tr>
<td></td>
<td>ii. Focus Group Discussions (FGD)</td>
</tr>
<tr>
<td></td>
<td>iii. Consultative meetings</td>
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<tr>
<td></td>
<td>iv. Field observations</td>
</tr>
<tr>
<td></td>
<td>v. Questionnaires</td>
</tr>
</tbody>
</table>
2.2 Desk Study and Literature Review

Desk or literature review of ASGM policies, legislations and regulatory frameworks were undertaken in their literary form and a deep-dive undertaken to establish the gender sensitive gaps. This also included international frameworks adopted and ratified by Kenya. This approach was used to identify and review ASGM related policy and legal framework at national and at the project counties. The review was done on the following policies, legislation and regulatory frameworks:

IV. National Policy on Gender Development
V. Mining Act 2016
VI. National Resources Act 2016
VII. Explosives Act, Cap 115
VIII. Mining and Minerals Policy 2016
IX. Employment Act 2012
X. National Youth Employment Authority Act 2015
XII. National Policy for Prevention and Response to Gender Based Violence 2014
XIII. Kenya Mining Strategy 2030
XIV. Artisanal and Small-Scale Mining Strategy
XV. Mining (Employment and Training) Regulations 2017
XVI. National Action Plan for Artisanal and Small-Scale Gold Mining in Kenya
XVII. Mining (License and Permit) Regulations, 2017
XVIII. Mining (Use of Assets) Regulations, 2017
XIX. Mining (Dealings in Minerals) Regulations, 2017
XX. Mining (Employment and Training) Regulations, 2017
XXI. Mining (Work Programme and Exploration Reports) Guidelines
XXII. Mining (State Participation) Regulations, 2017
XXIII. Mining (Use of Local Goods and Services) Regulations, 2017
XXIV. Mining (Strategic Minerals) Regulations, 2017
XXV. Mining (Award of Mineral Rights by Tender) Regulations, 2017
XXVI. Mining (Community Development Agreement) Regulations, 2017
XXVII. Mining (Mine Support Services) Regulations, 2017
XXVIII. Mining (Reporting on Mining and Mineral Related Activities) Regulations, 2017
XXIX. Mining (National Mining Corporations) Regulations, 2017

2.3 Fieldwork Study

Field survey aimed to identify and document the gaps, clarities and overlaps existing in the ASGM related policy and legal framework at the National and at the project Counties in light of gender dimensions. Qualitative and Quantitative tools were implored including Desk Study and Literature Reviews, Key Informant Interviews (KII), Focus Group Discussions (FGD), Consultative meetings, Field observations and Questionnaires.
Fieldwork was conducted in the following four (4) project counties:

I. Narok County: Gold mining activities take place within areas located in Lolgorian.
II. Migori County: Gold mining activities take place within Masara, Kehancha Macalder, Masaba, Nyatike, Kitire, Kamwango, Mikayi, Kuria-Transmara border and Osiri.
III. Kakamega County: Gold mining occurs in Ikolomani and Lurambi areas of Roasterman.
IV. Vihiga County: Gold mining occurs in Chavakali in Vihiga subcounty.

2.4 Data Collection Tools and Procedure

Both qualitative and quantitative data were collected through observation and document checklist, interview guide and questionnaire. For quantitative data, structured questionnaire was the main tool (see Appendix I to The data was collected by enumerators who were recruited by the Consultant and were trained for the data collection.

Key informant interviews were conducted on main persons of interest to validate the information gathered during fieldwork and desk reviews.

2.5 Data Analysis and Reporting

The Consultant analyzed the data which were disaggregated by the parameters of interest through thematic content analysis. The analysis and presentation of findings were well tailored to the objectives of the study. The overall focus was to identify patterns or associations and causal relationships in the identified themes. In general, themes were developed in accordance with the objectives of the study and the expected outcomes. Data was then grouped according to these themes for subsequent interpretations.

The gender dimensions’ thematic areas of enquiry focused on issues that require attention and actions from the relevant authorities, ASM association leadership, institutions and civil society-based organizations (CSOs). Consequently, gender-specific gaps were identified and targeted key recommendations were made to influence the ASGM in the following thematic areas:

I. Legal, Policy and Cultural Context,
II. Gender Dimensions of ASM,
III. Gender Based Violence (GBV), Sex Work and Conflict in mining and processing sites,
IV. Gender Dimensions of Environmental Impacts of ASM gold mining,

The Consultant benchmarked with global best practices and mapped out Kenya’s ASGM regulatory environment and identified the gender dimensions thereon.

As shown below, this was done by identifying the applicable ASGM laws, policies and institutional framework, conducting interviews and desk reviews, identifying the gaps and grouping them in accordance to gender responsiveness.
Figure 4: Gender Analysis Framework

TABLE 2: GENDER RESPONSIVENESS OF LEGAL FRAMEWORK

<table>
<thead>
<tr>
<th>NO</th>
<th>LEGISLATIVE FRAMEWORK</th>
<th>GENDER DISCRIMINATORY</th>
<th>GENDER NEUTRAL</th>
<th>GENDER SENSITIVE</th>
<th>GENDER TRANSFORMATIVE</th>
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<td>5</td>
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<td></td>
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<td></td>
</tr>
</tbody>
</table>
SECTION 3
GOLD MINERALISATION IN KENYA

Figure 5: Map of Mineral Occurrences in Kenya
3.1 Background

Kenya has four belts of minerals - Archean Greenstone terrain in western Kenya which extends to Tanzania; the Neoproterozoic “Pan- African System” Mozambique Belt which underlies the central part of the country and is the source of Kenya’s unique gemstones; the Rift belt which has a variety of resources including soda ash, fluor spar and diatomite and the Upper Palaeozoic, the Mesozoic Karoo to the Recent sediments underlying the eastern and the coastal areas, which has titanium.

The Nyanzian and the Kavirondian System forms the Nyanza Craton which are the oldest rocks in the country (2,500 million years). The Nyanzian system is mainly composed of lavas and pyroclastics with minor sediments and banded ironstones. The Kavirondian system mainly consists of grits, sandstones, grewackes and conglomerates. The mineral occurrence is thus gold, copper, silver and iron. As shown in the figure below, gold occurs generally in the West and the North of the Country but specifically, the remote regions of western Kenya near Lake Victoria are rich in gold ore.

Most of the country’s artisanal and small-scale gold mining (ASGM) activities are carried out in these rural areas where mining and subsistence agriculture are the major ways of earning a living.

Kenya aims to increase the mining sector’s contribution to the gross domestic product (GDP). In 2015, the share was 0.8% and the government targets 10% by 2030 through value addition, the implementation of Mining and Minerals Policy that outlines a 20-year mining strategy and the Mining Act 2016. Data from the Ministry of Petroleum and Mining shows that 24 gold mining Dealer Processing, Prospecting and Special Mining Licences had been issued and were active by May of 2022. Several licences and permit issuance had also been pending owing to a moratorium against the granting or the renewal of any mineral right. Moreover, the Ministry through the help of Artisanal Mining Committee had not issued ASGM permits as at May 2022.

<table>
<thead>
<tr>
<th>NO</th>
<th>LICENCE CODE</th>
<th>PARTIES</th>
<th>TYPE</th>
<th>LOCALITY</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>PL/2018/...3</td>
<td>Mid Migori Mining Company Ltd</td>
<td>Prospecting Licence</td>
<td>Migori, Narok</td>
</tr>
<tr>
<td>2</td>
<td>PL/2018/...2</td>
<td>Mid Migori Mining Company Ltd</td>
<td>Prospecting Licence</td>
<td>Migori,</td>
</tr>
<tr>
<td>3</td>
<td>PL/2018/...8</td>
<td>Nichau International (Kenya) Company Limited</td>
<td>Prospecting Licence</td>
<td>Migori, Narok</td>
</tr>
<tr>
<td>4</td>
<td>PL/2018/...7</td>
<td>Nichau International (Kenya) Company Limited</td>
<td>Prospecting Licence</td>
<td>Migori,</td>
</tr>
<tr>
<td>5</td>
<td>PL/2018/...</td>
<td>Bao Gold Hill Kenya Limited</td>
<td>Prospecting Licence</td>
<td>Narok</td>
</tr>
</tbody>
</table>

Kenya Source: Ministry of Petroleum and Mining
TABLE 3: LICENCES WITHIN WESTERN KENYA COUNTIES OF NAROK, MIGORI, VIHIGA & KAKAMEGA

<table>
<thead>
<tr>
<th>NO</th>
<th>LICENCE CODE</th>
<th>PARTIES</th>
<th>TYPE</th>
<th>LOCALITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>PL/2014/...</td>
<td>Hengli International (Kenya) Limited</td>
<td>Prospecting Licence</td>
<td>Migori, Narok</td>
</tr>
<tr>
<td>7</td>
<td>PL/2018/.....</td>
<td>Kilimapesa Gold (Pty) Limited</td>
<td>Prospecting Licence</td>
<td>Narok</td>
</tr>
<tr>
<td>8</td>
<td>PL/2017/.....</td>
<td>Kenya Sunny Industries Company Limited</td>
<td>Prospecting Licence</td>
<td>Migori, Narok</td>
</tr>
<tr>
<td>9</td>
<td>27</td>
<td>Kilimapesa Gold (Pty) Limited</td>
<td>Special Mining Licence</td>
<td>Narok</td>
</tr>
<tr>
<td>10</td>
<td>213</td>
<td>Afriore International (Barbados) Ltd</td>
<td>Prospecting Licence</td>
<td>Kakamega, Vihiga</td>
</tr>
<tr>
<td>11</td>
<td>PL/2019/.....</td>
<td>Acacia Exploration Kenya Limited</td>
<td>Prospecting Licence</td>
<td>Kakamega, Vihiga</td>
</tr>
<tr>
<td>12</td>
<td>PL/2018/...0</td>
<td>Gold Rim Exploration Kenya Ltd</td>
<td>Prospecting Licence</td>
<td>Kakamega</td>
</tr>
<tr>
<td>13</td>
<td>PL/2018/...1</td>
<td>Gold Rim Exploration Kenya Ltd</td>
<td>Prospecting Licence</td>
<td>Kakamega</td>
</tr>
<tr>
<td>14</td>
<td>PL/2018/...2</td>
<td>Gold Rim Exploration Kenya Ltd</td>
<td>Prospecting Licence</td>
<td>Kakamega</td>
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<td>15</td>
<td>PL/2018/....</td>
<td>Ngira Exploration and Mining Works Ltd</td>
<td>Prospecting Licence</td>
<td>Migori</td>
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<tr>
<td>16</td>
<td>PL/2017/....</td>
<td>Kenya Sunny Industries Company Ltd</td>
<td>Prospecting Licence</td>
<td>Migori</td>
</tr>
<tr>
<td>17</td>
<td>DPL/2022/....</td>
<td>Tender Wood Industries Limited</td>
<td>Prospecting Licence</td>
<td>Kakamega</td>
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<tr>
<td>18</td>
<td>DPL/2022/....</td>
<td>Enzyne Creations Limited</td>
<td>Dealer Processing Licence</td>
<td>Migori</td>
</tr>
<tr>
<td>19</td>
<td>DPL/2022/....</td>
<td>Osman Mohamed</td>
<td>Dealer Processing Licence</td>
<td>Migori</td>
</tr>
<tr>
<td>20</td>
<td>DPL/2022/....</td>
<td>Ngira Exploration and Mining Works Ltd</td>
<td>Dealer Processing Licence</td>
<td>Migori</td>
</tr>
<tr>
<td>21</td>
<td>DPL/2022/....</td>
<td>Jane Dwasi</td>
<td>Dealer Processing Licence</td>
<td>Migori</td>
</tr>
<tr>
<td>22</td>
<td>DPL/2022/....</td>
<td>John Karuku Mburu</td>
<td>Dealer Processing Licence</td>
<td>Migori</td>
</tr>
</tbody>
</table>

*Kenya Source: Ministry of Petroleum and Mining*
SECTION 4
ARTISANAL AND SMALL-SCALE GOLD MINING SECTOR IN KENYA

4.1 Background

Artisanal and small-scale gold mining in Kenya is predominant in the western region counties of Migori, Narok, Siaya, Kakamega and Vihiga. ASGM is associated with individuals or small collectives of miners extracting, processing and selling of small granules of gold acquired. In the project counties areas, ASGM forms a major part of the economy and provides the livelihood for a large proportion of the local population who can earn more money from mining than from agriculture. AGSM tends to be poorly regulated and can cause severe environmental problems due to clearance and soil degradation in addition to the use of harmful chemicals which include mercury and cyanide. The extraction process involves deep vertical shafts of about 2 metres square which are supported by wood and descends from fifteen to sixty metres down to a quartz reef. The reef is extracted with explosives from cramped horizontal tunnels with poor ventilation and inadequate mine dewatering. The ore is manually winched out of the mine and crushed using hammers. It is then milled using ‘ball mills’, locally built and fabricated. After this, it is washed down sluices where the heavy gold particles settle in a bed of thick sacking ready to be washed out whilst the lighter rock particles are washed away into silt filled ponds. The concentrate from the mats are then mixed with liquid mercury by hand where the mercury will bond with any gold present. The gold-mercury amalgam is heated thereby boiling off the mercury as vapour to leave a small ball of ‘sponge gold’ behind.

It is estimated that the number of women involved in Artisanal Small-scale Gold Mining (ASGM) is very large but there is very little explanation of women’s involvement and experiences. Unfortunately, formal data are also not found from official agencies from the village level and above. This lack of recognition is also due to stereotypes that consider mining as a masculine area. ASM take place in many parts of Kenya though not at a level that the mineral endowment of the Country may justify. Artisanal Small-Scale Gold Mining (ASGM) has been a long- time economic activity in Kenya dating back to the early 19th century during the colonial times and is characterized by the use of mercury with the consequent environmental and health implication to the surrounding community and the aquatic ecosystem. The predominant artisanal and small-scale mining activities are panning for gold in underground pit or open cast/surface digging, ore transportation, ore sorting and milling, panning and sluicing, tailing, washing, amalgamation and burning.

ASM take place in many parts of Kenya though not at a level that the mineral endowment of the Country may justify. Artisanal Small-Scale Gold Mining (ASGM) has been a long- time economic activity in Kenya, dating back to early 19th century during colonial times and is characterized
by use of mercury with environmental and health implication to the surrounding community and aquatic ecosystem. The predominant artisanal and small-scale mining activities are panning for gold underground pit or open cast/surface digging, ore transportation, ore sorting and milling, panning and sluicing, tailing washing, and amalgamation and burning.

Not limiting to the above-mentioned areas, livelihood activities in ASM takes place at all stages of the mining production and value chain. Across all of these stages, ASM includes a wide variety of participants performing a range of functions, including wage laborers, laborers paid by production, distributors, license holders, cooperatives, dealers or marketers, cooks, and supporters (financiers, who are often license/permit holders).
FIGURE 8: WOMAN WORKING AT AN ARTISANAL GOLD MINING SITE IN LOLGORIAN, NAROK COUNTY

FIGURE 9: WOMEN WORKING AT AN ARTISANAL SITE IN LOLGORIAN, NAROK COUNTY
Without limitation to the above mentioned areas, livelihood activities in ASM takes place at all stages of the mining production and value chain. Across all these stages, ASM includes a wide variety of participants performing a range of functions including wage laborers, laborers paid in production, distributors, license holders, cooperatives, dealers or marketers, cooks and supporters (financiers who are often license/permit holders).

Kenya recognizes three levels of mining rights:

I. **Artisanal mining (AM):** This is recognized as a traditional and customary mining operations using traditional or customary ways and means.

II. **Small-scale mining (SSM):** This is recognized as a prospecting operation whose area does not exceed 25 contiguous blocks and/or mining operations whose area does not exceed 2 contiguous blocks.

III. **Large-scale mining (LSM):** This is recognized as a prospecting or mining operation that is at a higher scale of operation and mining than a Small Scale Mining (SSM).

**FIGURE 10: ASM VALUE CHAIN**
TABLE 4: CLASSIFICATION OF ASM OPERATIONS

<table>
<thead>
<tr>
<th>TYPE OF OPERATIONS</th>
<th>ESTIMATED ANNUAL EXTRACTION OF MINERALS OR MATERIAL BEARING MINERALS</th>
<th>INVESTMENT/EXPENDITURE</th>
<th>TECHNOLOGY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Artisanal mining (AM) operation</td>
<td>Not defined</td>
<td>No defined yet</td>
<td>Traditional and customary mining operations using traditional or customary ways and means</td>
</tr>
<tr>
<td>Small-scale reconnaissance operation</td>
<td>Not applicable</td>
<td>Not defined yet</td>
<td>Not defined</td>
</tr>
<tr>
<td>Small-scale reconnaissance operation</td>
<td>Not applicable</td>
<td>To be defined in the regulation</td>
<td>Does not employ specialized prospecting</td>
</tr>
<tr>
<td>Small-scale mining (SM) operation</td>
<td>Not exceeding 25,000m² per year</td>
<td>To be defined in regulations</td>
<td>Does not use mechanized mining technologies or chemicals including mercury</td>
</tr>
</tbody>
</table>

There is one permit for AM operations and three permits for SSM operations. Reconnaissance is an optional permit which means that SSM operations can directly apply for a prospecting permit. Artisanal and small-scale operations perform prospecting activities that are a combination of reconnaissance and prospecting but the characteristics of these activities are different from LSM.

There are more than 40,000 ASGM miners and processors in Kenya—a number that is continually increasing as more people are recruited into gold mining as a main livelihood source. With a high population growth in western Kenya and insufficient jobs for the youth, ASGM provides a critical income to meet the miners’ daily living costs.

The vast majority of ASGM operations in Kenya are still informal because no legal framework for regulating the sector existed until 2016, and formalization has proceeded slowly since then. Although ASM is an income generating activity for the vulnerable groups, its association with smuggling, tax evasion, health and safety risks, gender disparity, socio-cultural dislocation and a variety of illicit activities taint the sectors’ image. Indeed, the haphazard nature of ASM makes it difficult to regulate as it often takes place outside the mainstream industry (formal sector).

Proper management of ASM can lead to economic opportunities and minimize associated environmental damage. Improperly managed ASM can exacerbate inequalities and lead to economic, social and environmental risks for and within the associated communities. Challenges often associated with ASM include child labor, physical and sexual abuse of women, population migration which creates unsustainable communities, HIV/AIDS, and poor sanitation. ASM can also
create unsustainable or damaging environmental impacts including unrehabilitated excavations, effluent dumping, improperly stored waste, dust emissions, release of chemicals such as cyanide and mercury, acid mine water, river siltation and deforestation. All of these aspects of ASM can differ from site to site and community to community.

ASGM activities are widespread in the counties of Migori, Kisumu, Siaya, Narok, Vihiga, Kakamega, Pokot and Tukana with an estimated total population of 400,000 ASGM miners. However, most gold activities take place in Narok, Migori, Kakamega and Vihiga counties.

1. Narok County:

In Narok County gold mining operations active at Teng Teng in Lolgorien area. The exact coordinates of the mining site are Zone 36M 0698946.97 and UTM 9864062.01 and as further illustrated in this Satellite extract:

FIGURE 11: SATELLITE EXTRACT SHOWING LOLGORIEN MINING SITE (SOURCE: GOOGLE EARTH)

2. Migori County:

In Migori County, gold mining activities were observed at Osiri, Masara and Kehancha sites.

OSIRI Mining Site
The exact coordinates of the mining site are Zone 36M 0641113 and UTM 9890609 and as shown in the satellites extract:

FIGURE 12: SATELLITE EXTRACT SHOWING OSIRI MINING SITE (SOURCE: GOOGLE EARTH)
3. Masara Mining Site:

The exact coordinates of the mining site are Zone 36M 0646689 and UTM 9887500 and as shown in this satellite extract:

Figure 13 Satellite extract showing Masara Mining site (Source: Google Earth)

4. Kehancha Mining Site

Kehancha Mining Site

The exact coordinates of the mining site are Zone 36M 0679738.66 and UTM 9872209.31 and as shown in this extract below:

Figure 14 Satellite extract showing Kehancha Mining site (Source: Google Earth)
5. Vihiga County:
(Hamugen Village, Chavakali Sub-County)

In Vihiga County, gold mining operations were observed at Hamugen Village, Chavakali Sub-County. The exact coordinates of the mining site are Zone 36M 0689240 and UTM 11600 and as shown in this satellite extract.

Figure 15 Satellite extract showing Chavakali Mining site (Source: Google Earth)

6. Kakamega County:

In Kakamega County, gold mining occurs in Ikolomani and Rosterman Mining Sites. ● Ikolomani Mining Site The exact coordinates of the mining site are Zone 36M 0687586 and UTM 21243 and as shown in this satellite extract:

Figure 16 Satellite extract showing Kehancha Mining site (Source: Google Earth)
7. Rosterman Mining Site

The exact coordinates of the mining site are Zone 36M 0691458 and UTM 28609 and as shown in this satellite extract:

Figure 17 Satellite extract showing Rosterman Mining site (Source: Google Earth)
SECTION 5
ASM LEGISLATIVE AND POLICY FRAMEWORK: A GENDER ANALYSIS

5.1 Introduction

This encompasses the regime of laws that regulates the industry: constitution, policies, statutes (and regulations made within the statutes) and the interrelationships amongst these documents. A policy is a document that identifies issues in a particular industry that the government wishes to address and then it provides a road map on how to address such issues for purposes of socio-economic development. Currently, the regime of the law governing the industry is majorly the Constitution of Kenya 2010, the Mining Act of 2016, the Land Act of 2012, Environmental Management and Coordination Act of 1999, Micro and Small Enterprises Act No. 55 of 2012, Sessional Paper No. 7 of 2016 on Mining and Minerals Policy, Sessional Paper No. 2 of 2019 on National Policy on Gender and Development, National Action Plan for Artisanal and Small-Scale Gold Mining in Kenya, Artisanal Mining Strategy 2021-2025 among others.

5.2 International Conventions on Gender Equality

Kenya is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 whose 30 articles enshrine a series of civil, political, economic and social rights for women. Among other things, the Convention recognizes the full equality of women and men under the law and proscribes discrimination against women in education, employment, political participation, health care and economic life. At the regional level Kenya has also ratified the New Economic Partnership for Africa’s Development (NEPAD) and its gender component the African Union (AU)’s Solemn Declaration on Gender Equality of 2004 whose Agenda 2063 has also provided mandates for fostering greater gender equality. In Kenya, gender equality and non-discrimination are development goals anchored in the Constitution of Kenya 2010, legislation and national policies and international treaties and conventions to which Kenya is party. In addition, Kenya’s Vision 2030 which is the Country’s long-term development blueprint, seeks to mainstream gender equality in all aspects of society by making fundamental changes in four key areas: opportunity, empowerment, capabilities and vulnerabilities. The Constitution of Kenya allows Kenya to adopt any general rules of international laws and as such that any treaty or conventions ratified by Kenya form part of the Law of Kenya (Article 2(5) and 2(6)). The State is further obligated under Article 21(4), to enact and implement legislation to fulfill its international obligations in respect of human rights and fundamental freedoms.
5.3 The Constitution of Kenya 2010

The Constitution of Kenya 2010, under Article 1, clearly states that sovereignty belongs and is vested in the People of Kenya. The People of Kenya include both male and female natural persons. Article 10(2) on national values and principles of governance promotes human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized. The outlined values and principles of governance are fundamental in reducing gender disparities and inequalities and promoting girls’, womens’, boys’ and men empowerment. Chapter 4 provides for the Bill of Rights. Article 21 outlines the implementation of rights and fundamental freedoms and emphasizes that it is the fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights. Article 27 provides for equality before the law and the right of every person to equal protection and equal benefit of the law. Discrimination of any form, either directly or indirectly by the State and persons is prohibited and illegal. The State is required to take legislative and other measures including affirmative action programs and policies designed to redress any disadvantages suffered by individuals or groups because of past discrimination and to ensure that rights which are guaranteed under Article 27 are realized.

Other additional gains for women from the Constitution of Kenya 2010 include:

a. Equality in leadership with 33% as the critical mass preferred for women leadership,

b. Equality in marriage,

c. Equality in employment,

d. Equality in access to education,

e. All discriminatory customary practices are prohibited,

f. Matrimonial property is protected,

g. Women rights to inheritance and own land are guaranteed and;

h. Equal parental responsibility

There is a requirement for both public and private entities – e.g the institutions under the Mining Act 2016 to comply with the inclusion principles and gender among others. Indeed, Kenya has made strides in realizing gender equality but a lot more needs to be done to make the legal framework a reality. The State is equally obligated to take legislative, policy, and other measures, including the setting of standards, to achieve the progressive realization of the rights guaranteed under Article 43.
Additionally, it is the duty of all State organs and all public officers to address the needs of vulnerable groups within society including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities and members of particular ethnic, religious or cultural communities.

The Kenyan parliament has passed enabling legislative frameworks that give implementation impetus to the Constitution. These include:

a. Marriage Act (No. 4 of 2014);
b. Protection Against Domestic Violence Act (No. 21 of 2015);
c. Basic Education Act;
d. Matrimonial Property Act (No. 49 of 2013);
e. Micro and Small Enterprises Act (No 55 of 2012);
f. Employment and Labour Relations Court Act;
g. Treaty making Ratification Act 2012;
h. The prohibition of female Genital Mutilation Act 2011;
i. Counter Trafficking in Persons Act 2010;
j. Sexual offenses Act no 3 of 2006;
k. Citizenship and Immigration Act, 2011;
l. Law of Succession Act 2012;
m. National Gender and Equality Act No 15 of 2011;

Nationally, there is a robustly developed gender-responsive policy framework:

a. National Gender and Development Policy 2000 is now under review to align it to the new constitution;
c. Sessional paper No 2 on gender equality and Development 2006;
e. National Land Policy;
f. National Policy for Response to Gender-Based Violence; and, National Policy for the Abandonment of Female Genital Mutilation.

5.4 Kenya Vision 2030 and Sustainable Development Goals (SDGs)

The Kenya Vision 2030 acknowledges and appreciates that women are disadvantaged in accessing labour markets and productive resources and are underrepresented in social and political leadership.
5.5 Mining Act, 2016 and Subsidiary Regulations

The Mining Act of Kenya, 2016 was enacted to align the regulation of the mining sector with the Constitution of Kenya 2010 as well as international and regional best practices. Prior to the Mining Act, the government had developed the Mining and Minerals Policy (Sessional Paper No. 7 of 2016) to provide a basis for reviewing the sector’s outdated legal framework. The Mining Act replaced the previous Mining Act of 1940 (Cap 306) to become the main law governing mining in Kenya. The current Act also repealed the Trading in Unwrought Precious Metals Act, and the Diamond Industry Protection Act. However, it does not apply to oil and gas, which are regulated by the Petroleum Act 2019.

The Acts key constitutional provisions include:

I. **Article 62 (1)(f) & (3):** Public land includes minerals and mineral oils which shall vest and be held by the national government in trust for the people of Kenya;

II. **Article 66 (2):** Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies;

III. **Article 69:** In respect to the environment, the State shall ensure sustainable exploitation of natural resources and ensure equitable benefit sharing of the accruing benefits; and encourage public participation;

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The reason behind this is that capabilities of women have not been developed to full potential due to limited access to capital, education, training and restrictive cultural practices. Additionally, it recognizes that the full potential of youth has not been exploited with a great need for political decision-making inclusion and adequate investment in skills.

The Vision aims at specific policy measures that will be taken to correct the glaring gender gaps in access to and control of resources, economic opportunities, and in power and political voice. Some of the initiatives proposed under the Vision which is applicable in the ASGM include: gender mainstreaming in Government policies, plans, budgets and programmes and affirmative action for at least 30% representation of women at all decision-making levels.

Kenya’s SDG 5th Goal seeks to achieve gender equality and to empower all women and girls by:

I. Strengthening policy, legislative and institutional frameworks.
II. Socioeconomic empowerment.
III. Leadership and decision-making.
IV. Gender mainstreaming in policies and budgets.
V. Elimination of gender-based violence.
VI. Elimination of harmful practices.
VII. Access to sexual and reproductive health.
VIII. Gendered research, data collection and analysis.
IX. Coordination and stakeholder engagement.
IV Article 71: Agreements relating to exploitation of natural resources in Kenya (whether it is a right or a concession) are subject to approval by Parliament;  
V Article 232: Requires participation by the people in policy making.

The Act applies to mining and the processing of all classes of minerals such as construction and industrial minerals, precious stones, precious metal group (where gold falls), semi-precious stones group, base and rare metals group, fuel mineral group (other than petroleum products) and gaseous minerals (other than petroleum gas).

**5.6 Environmental Management and Co-Ordination Act, 1999**

Addressing gender in the context of the environment, it must be non-biased from the forefront as studies have proved that women, men and children are not homogenous groups and neither are their interactions with the environment. Where women and men live, their age, social class, ethnicity, religion, sexual orientation and other variables interact in shaping the links between gender and the environment.

ASGM activities brings with it dire environmental concerns as listed below:

I Land acquisition and displacements and crowding out of agricultural activities,  
II Waste management pollution, water and land pollution,  
III Clearance of forestry resources for wood fuel and timber for underground pit construction,  
IV Air pollution from milling and hazardous emissions from burning of amalgam,  
V Noise pollution from ball mills,  
VI Climate change impacts and;  
VII Occupational health and safety concerns (Occupational accidents)

Environmental Management and Co-Ordination Act, 1999 (revised in 2019) provides the appropriate legal and institutional framework for the management of the environment. Second Schedule of the Act requires environmental impact assessment study report for medium risk projects such as Artisanal mining of precious metals and gemstones.

The Act establishes a County Environment Committees responsible for the proper management of the environment within the county and developing a county strategic environmental action plan every five years. The Act expressly provides that the Committee composition shall observe equal opportunities for persons with disabilities and other marginalized groups and that not more than two-thirds of the members are of the same gender.

National Guideline on Mine Site Decommissioning and Rehabilitation provide guidance on the preparation of mine site decommissioning and rehabilitation plans to meet regulatory requirements and best practices and to promote effective engagement including Disposal of Mining Machinery and Equipment and Tailing Storage Facility (TSF) management; and, inclusive participation of Project Affected Persons (PAPs) and communities in decision making processes relating to mine site decommissioning, rehabilitation and after use.
5.7 The Climate Change Act, 2016

The objective of the Climate Change Act 2016 is to provide a regulatory framework for an enhanced response to climate change, and to provide mechanisms and measures to improve resilience to climate change and promote low carbon development. The Climate Change Act adopts a mainstreaming approach and provides a legal basis for climate change activities through the National Climate Change Action Plan and establishes the National Climate Change Council and the Climate Fund.

5.8 Mining and Minerals Policy, 2016

The Mining and Minerals Policy, Sessional Paper No. 7 of 2016 preceded the Mining Act to provide a basis for reviewing the sector’s outdated legal framework. The Policy was informed by lack of predictability and certainty hence low investment in the mining sector. It also aligned the industry’s strategic direction with African Mining Vision (2009), Vision 2030 and Constitutional Provisions.

The Policy takes a holistic approach to the sector, ensuring that key issues related to sustainable exploitation of natural resources such as community engagement, environmental issues and beneficiation from mining are addressed. It specifically, provides a framework for

I  Ensuring sustainable utilization of mineral resources,
II  Harmonizing mining and environmental legislations,
III  Mainstreaming activities of artisanal and small-scale miners.,
IV  Local participation in the mining investment ventures,
V  A well-structured mining fiscal regime and;
VI  Equitable sharing of mineral benefits.

The 10th Strategy sought to develop a framework for mainstreaming and formalizing artisanal and small-scale mining operations in order to support livelihoods and entrepreneurship. The Government is to remove barriers that hold back the development of artisanal and small-scale mining particularly lack of access to finance, recognized mineral rights, inadequate technical capacities and incentives to operate legally by:

I  Assisting artisanal and small-scale miners to obtain fair market prices through control of illicit dealings in minerals through appropriate licensing and provision of market information and training
II  Facilitating access to credit through various means such as cooperative savings, Pooled equipment leasing arrangements, government supported concessional lending schemes and assistance in obtaining finance and business training skills.
III  Setting up a minerals licensing system under the new mining legislation that will offer specific mineral titles suited to small scale mining expressly reserved for Kenyans using simplified application procedures
IV  Facilitating access to land for artisanal and small-scale miners
V  Providing advice and support on forming representative associations and assisting them in tax compliance
The Mining Act makes provision for artisanal mining. Artisanal mining is defined under Section 4 of the Act as traditional and customary mining operations using traditional and customary ways and means. The Cabinet Secretary is tasked with establishing offices in the Counties headed by a representative of the Director of Mines. This representative shall have the function of granting, renewing and revoking artisanal mining permits amongst other duties.

An Artisan Mining Committee is to be established in every County. This Committee shall be tasked with advising the representative of the Director of Mines in the granting, renewal or revocation of the artisanal mining permits.

On Gender the 12th Strategy of the Policy seek to develop and implement frameworks, structures and mechanisms that ensure equitable participation, ownership and decision-making value chains by women, youth and disadvantaged groups. The Government is to create a community liaison framework that ensures that women, youth, persons living with disabilities, marginalized groups and communities are involved in decision making and programmes in mining. Through the implementation of regulatory frameworks and programmes, the Government seek to ensure that ASM minority groups have equitable access to ownership, technology, capital, local content and value addition opportunities, employment, training, knowledge and decision-making value chains.

Similarly, the 13th strategy posits to develop and enforce measures that will ensure a competitive local workforce, facilitate knowledge and skill transfer and promote the use of local goods and services. The Government is to ensure that local content is used in the Mining Sector. The Director of Mines is tasked with establishing a specialist pool of Kenyans with expertise or knowledge across the entire mining industry value chain. As well, the Ministry of Mining is required to develop a register of local suppliers and services which can be accessed by license/permit holders. Although applicable to LSM, before mineral rights are issued to any applicant, the government is to ensure that the LSM:

I Demonstrate their plans to employ and train Kenyans to work in their operations;
II Provide justification to employ expatriates;
III Procure and use local goods and services: this will entail the submission of a procurement plan showing that materials and services will be sourced locally; and,
IV Demonstrate evidence of a research and development plan through collaboration with universities or other institutions of higher learning.

5.9 Land Access Laws and Policies

The Constitution creates a legal avenue for developing extensive jurisprudence on the land rights of women. In particular, Article 60 (1) (f) of the Constitution includes “elimination of gender discrimination in law, customs and practices related to land and property in land” as one of the principles of land policy. Article 40(3) and (4) of the Constitution, 2010, provides that prompt, full, and just compensation should be paid to any person who losses land, including occupants who may not hold title to that land.

The National Land Policy, 2009 is an important guide towards efficient, sustainable and equitable use of land in Kenya (Laws of Kenya, 2009) It addresses issues that call for special intervention such as historical land injustices and gender equality in land use, management and ownership.
Importantly, the Policy recognizes the fact that women play diverse roles in pastoral systems yet they lack access to land use rights. The Policy, therefore, underscores the need to protect land rights of women (including divorcees and widows) and to develop a matrimonial framework that articulates the equal rights to land for men and women during marriage and upon the dissolution of marriage. These provisions are replicated in the Constitution 2010, the new land laws and the Marriage Act, 2014.

Section 30 of the Community Land Act, 2016, provides that “every member of the community has the right to equal benefit from community land. Women, men, youth, minority, persons with disabilities and marginalized groups have the right to equal treatment in all dealings in community land.” This effectively underscores the principle of non-discrimination. Further, in its consideration of applications for allocation, the registered community should have regard to the principles of equality and equal treatment of men and women and non-discrimination on the basis of gender, disability, marginality, culture or marital status.

Section 2 of the Matrimonial Property Act, 2013 recognizes indirect or non-monetary contribution. The Act lists spousal rights over matrimonial property as one of the overriding interests and, therefore, all registered property is subject to these rights. The provision will undoubtedly prevent clandestine dealings that dispossessed women of their matrimonial homes. The Act also provides for the presumption of joint and equal tenancy where property is registered in the names of both spouses. Section 12 of the Act provides for spousal consent. Section 14 of the Act, provides for a rebuttable presumption that property acquired during marriage and registered in the name of one spouse is held in trust for the other spouse. The legal implication of this trusteeship upon the demise of one spouse is unclear as the Law of Succession 1981.

Section 4(2) of the Land Act, 2012, provides for the elimination of gender discriminatory practices and customs related to land and property in land. This provision is in line with Articles 21(3) of the Constitution, 2010, which obliges all State organs and public officers to address the needs of vulnerable groups such as women, children, older people, persons with disabilities and youth. The Land Act further requires spousal consent for the execution of any charge on a matrimonial home. In situations where land is compulsorily acquired, section 134(4) of the Land Act requires that the beneficiaries of the settlement programme are identified by a sub-county selection committee which must include a women’s representative elected by a local women’s organization. (Laws of Kenya, 2012)

The Land Registration Act, 2012, provides for a unified land title registration system in Kenya. It includes strong protections for land rights of spouses by allowing for joint tenancy and a presumption of joint tenancy for any land obtained for ownership and use by both spouses. Section 93(2) of the Act grants spouses a legal interest in land that is held in one spouse’s name where the other has contributed to it through his/her labour. The aspect of spousal consent for the disposition of any land or dwelling is also entrenched in the Act.

The National Land Commission Act, 2012, establishes the National Land Commission in line with Article 67 of the Constitution of Kenya, 2010. One of the functions of the Commission is to develop criteria and guidelines for compulsory acquisition and regulation on compensation. The Act encourages gender equity in the appointment to the Commission. Under section 12 of the First Schedule, no more than two-thirds of the members of the Commission should be of the same
gender. Therefore, the current land laws have provided a legal platform for equal ownership of land in accordance with Article 60(1) (f) of the Constitution. However, significant efforts need to be taken to ensure these laws are effectively implemented to eliminate patriarchal customary rules that continue to limit women from exercising and enforcing their land rights.

5.10 National Policies on Gender and Development

Women make up 51% of the population in Kenya but gender disparities are still persistent in most sectors. Gender equity has been promoted in Kenya through legal and policy interventions including:

I. Enactment of the National Commission on Gender and Development Act in 2003;
II. Establishment of the National Commission on Gender and Development in 2003;
III. Introduction of gender desks in key parastatals and police stations;
IV. Introduction of the Access to Government Procurement Opportunities (AGPO)
V. The introduction of the women’s enterprise fund; and
VI. The National Policy on Gender and Development in 2006, later called National Gender and Equality Commission among others.

Besides, there have been several policies on gender:

I. National Policy on Gender and Development (NPGAD), 2000
II. Sessional Paper No. 05 of 2005 or Sessional Paper No. 2 of 2006 on Gender Equality and Development
III. National Policy for Prevention and Response to GBV of 2014
V. Sessional Paper No. 2 of 2019 on National Policy on Gender and Development

Policy aims at achieving equality of opportunity and outcomes with respect to access to and control of national and county resources and services; and equality of treatment that meets the specific and distinct needs of different categories of women and men. Special programmes and the commitment of additional resources will be required to achieve these outcomes. Although the Policy is concerned with all categories and aspects of gender, special focus will be on the empowerment of women who are currently the marginalized gender.

On labour and the economy, the policy seeks to eliminate discrimination in access to employment, promotion and training including equal remuneration to enhance income security for men and women. Its policy actions on the same is to, among others:

I. Strengthen and review the legal and administrative framework for labour administration to integrate women in hitherto non-traditional trades i.e. construction, mining, infrastructure development among others;
II Enhance compliance to the ‘not more than two thirds’ gender principle in recruitment, appointment and promotion of women and men in all spheres for greater inclusion and visibility;

III Implement labour policies that support minimum wage guidelines, regulations on work hours and protection for trade union and collective bargaining rights, particularly for women to close the differences in access to economic opportunities, earnings and productivity gaps;

IV Establish a database on employment records of women and men in formal and informal sectors to track, evaluate and improve employment conditions for all particularly women.

On ensuring a clean, secure and sustainable environment and natural resources, the proposed policy action is to, among others:

I Develop and review environment and other natural resources (including forests, water, mining, petroleum and energy) management laws, policies and programmes to ensure gender and equity compliance;

II Ensure women participate in and benefit equitably from investments in various natural resources development initiatives;

III Support interventions aimed at equitable participation of women, men, girls and boys in the sustainable utilization of natural resources for economic benefits including opportunities for carbon trading

The Policy builds on National Policy for Gender and Development of 2000 and Sessional Paper No. 2 of 2006 on Gender Equality and Development which envisaged women empowerment and mainstreaming the needs of women, men, girls and boys in all sectors of development in Kenya so that they can participate and benefit equally from development initiatives.

Gender-based violence (GBV) has been noted to increase in communities with increased investment and engagement in mining industry. Sexual Transmitted Infections (STIs), Sexual Transmitted Diseases (STDs) and HIV/AIDS increase through sexual mixing patterns associated with labour migration. Hence, there is need for reexamination of the relationships between the mining community members to minimize gendered risks and promote equality of opportunity for women and men as the sector develops. Kenya enacted Sexual Offences Act 2006 which provides for the prevention and protection of all persons (women, men, boys and girls) from harmful and unlawful sexual acts including Sex Exploitation Abuse (SEA) in work place.

5.11 Employment Act 2007

Employment Act 2007 highlights sexual harassment at work places. It states that an employee is deemed sexually harassed if the Employer of that employee or a representative of that employer or co-worker:

a. Directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express: promise of preferential treatment in employment, threat of detrimental treatment in employment, or threat about the present or
Figure 18: Gold Mining Institutional Framework
future employment status of the Employee
b. Uses language, whether written or spoken of a sexual nature;
c. Uses visual material of a sexual nature;
d. Shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that Employee and that by its nature has detrimental effect on that Employee’s employment, job performance or job.

Section 6(2) of the Act states that an employer who employs twenty or more employees shall, after consulting with the employees or their representatives if any, issue a policy statement on sexual harassment. The policy statement on sexual harassment must contain the definition of sexual harassment; and a statement that:

i. that every employee is entitled to employment that is free of sexual harassment;
ii. that the employer shall take steps to ensure that no employee is subjected to sexual harassment;
iii. that the employer shall take such disciplinary measures as the employer deems appropriate against any person under the employer’s direction, who subjects any employee to sexual harassment;
iv. explaining how complaints of sexual harassment may be brought to the attention of the employer;

and that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purpose of investigating the complaint or taking disciplinary measures in relation thereto.

While implementing this is important given the labor-intensive nature of the ASGM site where a single site can have more than 30 workers, the consultant found no documented sexual harassment policy at the mining or processing sites. SEA cases are generally resolved by the ASM associations.

5.12 Institutional Framework

The Cabinet Secretary in charge of mining is responsible for the overall implementation of the Mining Act and has powers to develop regulations and policies for its implementation. The daily functions of the State Department of Mining are carried out through the office of the Principal Secretary by the Directorate of Mines and the Directorate of Geological Survey. The two directorates manage the activities and information related to mining operations in Kenya including establishing operational linkages between the national and county governments. The Act also establishes the Mineral Rights Board to advice and give recommendations to the Cabinet Secretary on the management of mineral rights and mineral resources. Other agencies established under the Act include the National Mining Corporation and the Mineral and Metal Commodity Exchange.

Appointments to these institutions is in accordance to the Mwongozo Code of Governance which outlines gender mainstreaming in Ministries, Departments and Agencies (MDAs). According to the Code, appointments must adhere to diversity of gender, competencies and skills required for the effective leadership of an Organization.

5.12.1 Directorate of Mines

The Directorate of Mines is in charge of administration and management of policies and laws affecting the sector; provision of technical services; automation of licensing for exploration and
mining concessions; compilation and management of mining data; arbitration of mining disputes; and health, safety and environmental issues.

5.12.2 Directorate of Geological Surveys

The Directorate of Geological Surveys consolidates GoK’s efforts in collection and storage of geological data related to prospecting in a national repository. Using state of the art technology, the Directorate is charged with systematic geological mapping of the whole country to assess and provide information on the mineral wealth of the country. It will also: produce and publish geological reports and maps to assist in planning and investment in mining; undertake laboratory analysis of rocks, mineral ores, and precious and semi-precious metals; and, undertake research related to geological and tectonic activities including monitoring of geological and mining hazards.

5.12.3 Directorate of Mineral Promotion and Value Addition

The Directorate of Mineral Promotion and Value Addition is in charge of marketing opportunities in investments in minerals and promotion of value addition of minerals as well as providing technical assistance and extension services on mineral processing and value addition to small scale and artisanal miners.

5.12.4 Directorate of Resource Surveys and Remote Sensing

The Directorate of Resource Surveys and Remote Sensing is mandated to collect, store, analyze, update and disseminate geo-spatial information on natural resources, including land use and land cover mapping.

5.12.5 Mineral Audit Agency

The Mineral Audit Agency is to determine the rightful royalties and taxes payable to Government from minerals produced; prevent the smuggling of minerals and evasion of royalties; monitor and audit minerals produced and exported; audit capital investments and operating costs of mining companies; and advise on competitiveness of Kenya’s mining environment and fiscal regime in relation the rest of the world.

5.12.6 National Mining Corporation

The National Mining Corporation serves as the investment arm of the national government in the mining industry. It is responsible for investing the proposed 10% free carry interest in large scale mining operations or purchase of shares on the Nairobi Securities Exchange on behalf of the government. It also carries out its business related to mining alone or in conjunction with any other person, firms or bodies.

5.12.7 National Mining Institute

National Mining Institute will build capacity and address the skills gap which has over the years slowed down the growth of the mining sector. The Institute is to offer technical training in extractive industry related disciplines and ensure the availability of adequate numbers of skilled personnel.
such as mining engineers, geologists, geophysicists and metallurgists. The Institute is also tasked with undertaking innovative research on the extractive industry.

5.12.8 Mineral Rights Board

The Mineral Rights Board advises and gives recommendations in writing to the Cabinet Secretary Mining on various issues including: granting, rejection, renewal, revocation and transfer of Mineral Rights Agreements; areas suitable for small scale and artisanal mining; areas where mining operations may be excluded and restricted; declaration of certain minerals as strategic minerals; cessation, suspension or curtailment of production in respect of mining licenses; fees, charges and royalties payable for a mineral right or mineral; and other pertinent matters referred to it.

5.12.9 Minerals and Metal Commodity Exchange

The Exchange is to facilitate efficiency and security in mineral trade transactions.

5.12.10 County Office of Mining

The County Office of Mining is established by the Cabinet Secretary and is the representative of the Directorate of Mines in the counties with responsibility for granting, renewing and revoking artisanal mining permits; maintaining a register of artisanal miners; maintaining fair trade; and facilitating the formation of artisanal association groups or cooperatives for the miners. It is headed by an officer who reports to the Director Mines.

5.13 ASM Licensing and Permits

The institutions involved in licensing and permitting of gold mining activities are:

I  County Artisanal Committee
II  Directorate of Mines
III  Mineral Rights Board
IV  Inspectorate Unit
V  Mineral Audit Unit
### TABLE 5: CLASSIFICATION OF ASM OPERATIONS

<table>
<thead>
<tr>
<th>OPERATIONS</th>
<th>LICENSE TYPE</th>
<th>ELIGIBILITY</th>
<th>AREA</th>
<th>TERMS</th>
<th>RESTRICTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small Scale</td>
<td></td>
<td>Citizen or corporate body with at least 60% shareholding by citizens</td>
<td>Not specified</td>
<td>Non-exclusive rights</td>
<td>If rights are over community land, must have consents from community land</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Consent will be given by signing a legally binding agreement with Government or mining rights holder, or adequate</td>
</tr>
<tr>
<td>Prospecting permit</td>
<td></td>
<td>Citizen or corporate body with at least 60% shareholding by citizens</td>
<td>Minimum - not specified</td>
<td>Maximum: 5 years</td>
<td>Doesn’t specify whether rights are exclusive or non-exclusive</td>
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<tr>
<td>Mining permit</td>
<td></td>
<td>Citizen or corporate body with at least 60% shareholding by citizens</td>
<td>Minimum - not specified</td>
<td>Maximum: 5 years</td>
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5.14 Gender Statistics

Gender statistics are central in understanding the dynamics and promoting gender equality because they provide relevant information, including indicators and benchmarks for measuring progress and analyzing underlying factors. Kenya developed a Gender Sector Statistics Plan (GSSP) in 2020 with an aim of enhancing the capacity of generating and use of gender statistics for measuring progress towards gender related development goals. The Ministry of Mining has not collected gender disaggregated data. The Ministry's data is gender neutral. Annual data or report collected from the small and large-scale miner only seek information on the citizenry and profession of the employees/owners and not their gender. The county government too don’t have gender disaggregated data on ASGM.

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<th>ELIGIBILITY</th>
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<th>TERMS</th>
<th>RESTRICTIONS</th>
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<tbody>
<tr>
<td>Artisanal Mining</td>
<td>Artisanal I Mining Permit</td>
<td>Citizen having attained age of majority belonging to an artisanal mining</td>
<td>Not</td>
<td>Maximum: three (3) years</td>
<td>Permit valid only for the minerals specified in application</td>
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<td>cooperative association or group</td>
<td>specified</td>
<td>Condition: Applies to an area whole, or a part, of the area covered by a</td>
<td>Can apply to convert it to a small-scale permit as per Regulations to be</td>
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<td>prospects license</td>
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<td>Renewable, once</td>
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<td>Permit valid only for the minerals specified in application</td>
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<td>Can apply to convert it to a small-scale permit as per Regulations to be</td>
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<td>Diamond export operations are required to conform to international best</td>
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SECTION 6  
COUNTY GOVERNMENT LEGAL AND INSTITUTIONAL FRAMEWORK

6.1 Introduction

This encompasses the regime of laws that regulates the industry: constitution, policies, statutes (and regulations made within the statutes) and the interrelationships amongst these documents. A policy is a document that identifies issues in a particular industry that the government wishes to address and then it provides a road map on how to address such issues for purposes of socio-economic development. Currently, the regime of the law governing the industry is majorly the Constitution 2010, Mining Act of 2016, Land Act of 2012, Environmental Management and Co-ordination Act of 1999, Micro and Small Enterprises Act No. 55 of 2012, Sessional Paper No. 7 of 2016 on Mining and Minerals Policy, Sessional Paper No. 2 of 2019 on National Policy on Gender and Development, National Action Plan for Artisanal and Small-Scale Gold Mining in Kenya, Artisanal Mining Strategy 2021-2025 among others.

6.2 International Conventions on Gender Equality

Kenya is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 whose 30 articles enshrine a series of civil, political, economic and social rights for women. Among other things, the Convention recognizes the full equality of women and men under the law and proscribes discrimination against women in education, employment, political participation, health care and economic life.

At the regional level Kenya has also ratified the New Economic Partnership for Africa’s Development (NEPAD) and its gender component, the African Union (AU)’s Solemn Declaration on Gender Equality of 2004 and its Agenda 2063 have also provided mandates for fostering greater gender equality.

In Kenya, gender equality and non-discrimination are development goals anchored in the Constitution of Kenya 2010, legislation and national policies and international treaties and conventions to which Kenya is party. In addition, it is also anchored in Kenya’s Vision 2030.
SECTION 7
GENDER ROLES AND SOCIO-CULTURAL RELATIONS IN ASGM

7.1 Introduction

Field studies conducted the four (4) mining counties of: Kakamega, Migori, Narok and Vihiga, show that artisanal and small-scale gold mining in Kenya is dominated by men who make up 60.1% of the workforce with 39.9% being women.

The mine sites are characterized by a clear division of labor and separation of roles where women are mostly in charge of processing (sluicing, panning and amalgamation) while men perform ore extraction and porting. Men form 92% of the workforce in extraction, while women constitute 84.6% of the gold processing (crushing, sluicing, panning and amalgamation) workforce.

Female ASGM miners’ work is undervalued, impeded and earn as much as 60% less than men for the same work. Women are also saddled with health burdens in ASGM due to the roles they occupy in the value chain. These hazards include exposure to silica-rich dust because they do most of the manual rock crushing. Thus, the roles of women and men in the ASGM value chain are gendered. Women are also well represented in jobs that provide ancillary services to the ASGM value chain, for example: sale of mining goods (including mercury), personal protective equipment, food, grocery shops, sex work etc.

Table 2-2 shows the differences between women and men’s roles in the ASGM value chain with brief descriptions of why the differences exist and their impact. The reasons for the differences in the roles of men and women in the ASGM value chain can be grouped broadly under 3 categories:

- a) Socio-economic reasons (i.e. values and perceptions, gendered access to resources and networks),
- b) Policy, regulatory and institutional issues (i.e. non-gender responsive policies, ownership of land and mineral rights)
- c) Health and environmental concerns (i.e. security, health issues)

Much like the gender imbalance present in the value chain, the gender related challenges in the wider ASGM sector can be grouped into three broad categories: a) policy, regulatory and institutional challenges, b) socio-economic and access challenges, and; c) health and safety challenges.
Figure 19  Men involved in ore extraction and mining operations at Kehancha Gold mining Site in Migori County.

Figure 20  Women involved in Gold Processing, i.e Crushing, Milling, Sluicing, amalgamation etc
Figure 21 Women involved in the processing of gold ore at Rosterman mining site in Kakamega County.

Figure 22 Women waiting for mined gold ore for processing at Kehancha mining site.
7.2 Employment and Gender Division of Labour

Field investigations revealed certain levels of organisation and division of labour within the mining sub-sector. Men were mainly involved in the excavation works inside the mines. Once the ore is brought to the surface, both men and women were engaged in crushing activities. The roles of women and men in the ASGM value chain are gendered. The division of labor within the ASGM value chain is typically gendered with women more often occupying non-digging jobs such as washing and crushing of stone and creating ancillary businesses such as selling food and goods around mining sites. Men form 92% of the workforce in extraction while women constitute 84.6% of the gold processing (crushing, sluicing, panning and, amalgamation) workforce (see the Figure below). Women are also well represented in jobs that provide ancillary services to the ASGM value chain, for example: sale of mining goods (including mercury), personal protective equipment, food, grocery shops, sex work etc.

Figure 23: ASGM Value Chain
7.2.1 Ore Extraction

Ore extraction involve open cast, underground or pit and alluvial mining. Alluvial mining is undertaken by artisanal and small miners involving digging and sifting through materials such as mud, sand or gravel using shovels, jembes or grub hoe, sieves or a miner’s bare hands along River Yala in Kakamega County. The miners also use water pumps to pump out water sipping from underground. Both women and men are involved in the ore extraction and transportation. However, during rainy season when River Yala water level rises, mining is mostly suspended but male miners still mine despite the risks.
Underground Pit or Shaft Mining: Once miners identify the gold ore veins and the ore becomes scarce just under the surface of the ground, miners turned to digging deep holes or shafts into the ground. These shafts would approximately be 1 metre squared and could be up to 150 metres deep. The shaft walls are reinforced using timber. The shaft initially run perpendicularly/vertically to the ground then horizontally depending on the ore veins. The pit’s opening is usually sealed using timber door or wire mesh.

The tools used in shaft mining are jembes, mallet, mattock, pickaxe, shovels or spade, hammer, rock chisel, water pump, electric or manual hoisting machine (winch), sacks, head lamps, compressor etc. Use of explosives is discouraged in the shafts. Owing to the physical straining exercise involved, shaft mining is male dominated. The women find it physically straining to used mallet and chisel to break the rocks. Given that the shafts/pits are societally isolated, women feel that they can be sexually and physically assaulted without getting recourse as the evidence of such can be compromised before they get to the surface.

Besides, the mining pits are environmentally and structurally unconducive for women. Structurally, the shafts are constructed without latrines and women find it hard to relieve themselves in front of men. Environmentally, the pits are too hot and various harmful vapours which are produced during mining operations further precluding women from such harsh working environment. A shaft, depending on the richness of the ore, can employ between 30 to 100 men. Women involvement is limited or none existent since they are considered bad omen by tradition and beliefs. It is generally believed that during their menstrual period women shouldn’t go to the mines because the spirits which control the mineral, do not like blood. It is allegeded that incase the spirits smell blood, it can get angry thereby allegedly causing landslides or the ores disappearance. Since by the appearance it cannot be known when a woman is in her period, they are normally denied access to the shafts. However, this double standard does not apply to opencast where women are generally allowed to get involved.
7.2.2 Ore Transportation

Field investigation revealed that ore transportation from the subsurface shaft to the ground is male dominated. Once on the ground, it is transported by men or women to the nearby processing sites. Mostly, the ore is poured into sacks to an average weight of 50kgs. Often these sacks are sold to processors by women.

![Figure 27: Ore being Hoisted up the Shaft using a Wench](image)

![Figure 28: Transported Ore in Sacks](image)

7.2.3 Ore Crushing and Milling

The gold ore is usually then crushed into small pieces before milling. The ore that has been crushed is then aired in open field to remove moisture. These activities are dominated by women. There are ASGMs that aerate the ore then use milling machines such as jaw crusher instead of manual labour, to break the ore into small pieces before feeding into ball mills. The dry crushed ore is then usually milled to fine powder using ball mills. The ball mills are mostly operated by men. The ball mills can be electricity driven as observed in Osiri but most are diesel driven.

![Figure 29: Crushing of Gold Ore and Aeration](image)

![Figure 30: Crushing of Gold Ore and Aeration](image)
7.2.4 Sluicing and Panning

Sluicing and Panning is predominantly done by women. Sluicing is the use of running water to break down goldbearing earth, and a sluice box used to recover the gold. A sluice box is a metal or wood, channel that has “riffles” and sack or burlap mat in it to catch gold. The sluice box is placed in a tilted angle, milled ore is then placed at the top and water is slowly run through the box to wash away the lighter blonde milled powder and gold is tapped in the burlap mat grains or fibres. Sluices are usually inclined at 5 to 15 degree angle. As moving water travels down a sluice, it generates great force which keeps gold particles from sinking easily. Sluicing can be performed individually or in teams of two where one person carries out sluicing and the other conducts amalgamation. Once a sack has been processed, the mat is carefully removed and washed in a plastic basin to remove particles retained in the fibres. Throughout the process, tailings (waste) is collect in a small cemented pond at the end of the sluice and are periodically removed with a shovel.In gold rich ore or alluvial mining, panning is used whereby water is used to separate heavy gold particles from other lighter particles within a medium sized pan. Once sluicing is completed, the burlap mat or sack is washed and rinsed in a pan or bucket of little water to remove the trapped gold to produce a gold ore concentrate.
7.2.5 Amalgamation

In amalgamation, the miners squeeze out mercury that was used to amalgamate gold using a piece of nylon cloth. It was observed, throughout the sites visited that amalgamation or mixing of gold concentrate and mercury is done by bare hand which poses serious health risks to the women.

7.2.6 Amalgam Roasting

After washing and filtration using nylon cloth, the amalgam is heated or burnt in open field to remove off or evaporate the mercury by the gold buyer and processing site supervisor or secretary. The roasting is done in open fire using a spoon and Jiko a charcoal stove (Jiko)
7.2.7 Buying and Selling

Each processing site has a small office where buyers - mostly women - observe the purity of the processes and wait for the final product (amalgam). The buyer and site supervisor together burn the amalgam and weigh the final product. Payment is normally made by the buyer and is commensurate to the weight of the product.

7.2.8 Tailings Leaching

During sluicing, there is tailings build-up in the sluicing ponds. Occasionally, these tailings are shoveled from the ponds and heaped. The tailings heaps are then sold to the leaching plants. At the leaching plants, the tailings are taken through chemical leaching process which uses small quantities of Cyanide to extract fine gold. Though extremely toxic, Cyanide leaching obtain very high gold recovery rates. Unlike mercury, it degrades rapidly in the environment. Owing to its toxic nature and extremely poisoning risks, the workers at the leaching plants are predominantly men.
7.2.9 Ancillary/Support Services

There are support services in the ASGM gold mining value chain such as fetching water and firewood, food production, small-scale trading, shaft building and repairs, sex work etc that support mine and processing sites. At the gold mining downstream value chain we have beneficiation which is beyond the scope of ASGM. Field observation shows that fetching water and firewood, food production and smallscale trading (in some sites) are exclusively female roles. Shaft building and repairs are exclusively men’s work. However, the fieldwork failed to observe conspicuous sex work within the mining and processing sites. The interviews revealed that such arrangements are private affair and aren’t entrenched or institutionalized in the ASGM sectors. The mining groups and SACCOs have banned sex work within the sites.

7.3 Gender, Mine Ownership and Organization

We established from interviews with the miners that, most of the miners in almost all of the mining sites visited are employed as workers by site supervisor/secretary and owners who generally might be the processing site owner, landlord or pit owner. The ‘owners’ (processing site owner, landlord or pit owner) have invested in equipment and the infrastructure used in the excavations and processing of the gold ores such as crushers, winch, mills and sluice boxes among others. They also supply the workers with mercury used in the processing of gold. The workers are mainly employed as casuals and are controlled by the ‘owners’. The mode of payment is based on agreements between the landlords, the investor and the workers. In some cases, payment is done in cash, while in other cases, payment is based on a percentage sharing of the excavated ore or the value of the processed product.

7.3.1 Mining Site

Mining Site organization is as follows:

I  Landlord
II  Pit owner (can still be the landlord)
III  Pit sponsor or investor (can be the landlord and pit owner)
IV  Working staff

The working staff is composed of:

I  Site manager
II  Secretary who acts as the human resource manager,
III  Watchman who provides security in the ASGM sectors. The mining groups and SACCOs have banned sex work within the sites,
IV  Support staff including cook and utensil washer/cleaner,
V  Mining pit inspectors,
VI  Miners who double up as sub-surface carriers within the pit/shaft and;
VII  Surface ore carriers.
In this organization, only surface ore carriers, support staff and secretary (rarely) are women. The support staff are always women. The secretary is required to enter the shaft hence women rarely take the job. Mining pit, depending on the gold potential, employs between 30 to 100 people. This organization does not apply to alluvial mining whose organization is haphazard.

![Image](image.png)

**Figure 43: An active Woman-Owned Shaft Mining Site in Kochuodho, Migori**

### 7.3.2 Processing Site

Organization at the processing site is as below:

I. Processing site owner,
II. Equipment lessors or investors (can still be the site owner) and;
III. Working staff.

The working staff is composed of:

I. Site chairperson (mostly ladies or site owner),
II. Site secretary who is also the supervisor,
III. Garage (machine) operators,
IV. Sluicers,
V. Ore carriers (mostly done by the crushers and sluicers),
VI. Amalgam worker (who are also the sluicers)
VII. Ore crushers who are also the aerators and;
VIII. Watchman to ensure that no worker misappropriate the amalgam.

Some processing sites have internal buyers while others have external buyers also known as marketers. The mining sites are dominated by women who make approximately 90% of the entire establishment of the sites.
7.4 Gender and Mining Remuneration

There are instances where the excavated gold-ore is sold at the mining sites to the processing site in sacks. The value of each sack load dependents on the gold content of the excavated ore. Other than that, proceeds from mining is usually shared between the ownership (landlord, pit owner and investor), mining and processing site workers. In the gold sharing formula, the sharing formulae is as follows:

Ownership : Mining Site : Processing Site = 20%-50% to 20%-40% to 10%-30% From the above sharing ratio, working, owning or controlling the mine pit are the most lucrative ASM jobs and are mostly occupied by men. Each ore in a sack which brought for 64 processing is traced by the Site Secretary or Supervisor to the valuation of the burnt amalgam. It is this proceed that is shared by the workers along the gold mining value chain. Given that women work in the processing sites, they get the lowest wages as shown in the sharing formulae above. From the sharing ratio, women share between 10%-30% of the proceed from mining activities. Empirical evidence also show that women earn only one quarter of what men earn in the ASGM sector. The findings attribute this disparity to gender-based occupational differences between men and women in the artisanal mining sector despite women working longer hours than men.
7.5 Gender and Domestic Work

The mining work possibilities for women were strongly shaped by family and community pressures concerning their gendered “duties.” The majority of the women miners, when compared to women revealed that family obligations are a major factor which influences their mine work hours. As a home maker (involved in providing care and support to the family), women in ASGM communities manage their homes as their primary responsibility. Others work such as the work of Danielsen and Hinton (2020) also avers that because social norms and beliefs which assigned to women and girls the primary responsibility for care and domestic work, women, on average, spend twice as much time as men on domestic work - child and elderly care, cooking, cleaning, and fetching water and wood.

Women miners revealed that they do domestic work between 5am - 7am and 6pm - 9pm 6 days a week then engage in mining activities from 8am to 6pm, 6 days a week. Globally, women spend at least twice as much time in unpaid domestic work as men. The aforesaid disparity is much greater in the countryside where ASGM takes place. Empirical evidence from Kenya revealed that women on average spent about 5 hours a day on primary care compared to about 1 hour a day spent by men.

7.6 Women’s Representation in Decision-Making and ASM Association Political Representation

Despite women accounting for slightly more than 50% of the population in Kenya, their representation in politics and decision making remains low. However, substantial progress has been made in reducing the gender gaps in political representation. The Government has put in place several legislations and policies that are meant to promote women representation in politics and decision making even though the two-thirds gender rule has not been adequately implemented. In the Mining Sector, the Mining Act 2016 and the accompanying regulations established a robust ASGM leadership. The Act established Artisanal and Small Scale Mining (ASM) Committees in every county. It requires that the ASM Committee and political representation must reflect the two-third gender rule. Other than the ASM Committees, there is a robust leadership organization within the mining/processing site, ward-level, sub-county and county level. Each mining/processing site or group of sites have institutionalized a mining group or association that takes care of the miners’ welfare and rights. Notably, each site has at least three leaders:

I  Site foreman or manager,
II  Shaft builder or pit inspector and
III  Secretary, preferably a female as they are trusted by the owners

Each ward, especially in Kakamega County, has a Community-Based Organizations, that is the umbrella body of the sites’ mining groups. These CBOs are grouped into a Savings and Credit Cooperatives (SACCO) in each sub-county. At the county-level there is a County Mining Group/Association which is the umbrella body of all the groups or associations within the county. In Kakamega we have Kakamega Artisan and Small-Scale Miners Association, Migori has Migori County Miners’ Association, Narok has
Narok County Miners Association, and Vihiga has Vihiga County Miners Association. These County umbrella groups association have recently formed an inter-county umbrella body known as Western Kenya ASM Federation composed of 9 officials and out of which four (4) are women. The County mining groups elect three (3) members to the ASM Committees gazette by the Cabinet secretary in-charge of mining. ASM Committees are mandated to recommend issuance of artisanal mining permits. Each ASM Committee must have a female member with the Narok ASM Committee chairperson being a woman. Each County has a County Resilience and Conflict Resolution Committee. The Committee’s roles are conflict resolution, safety enforcement to prevent accident and death, overseeing environmental mitigation measures especially of abandonment of mines among others. The Committee are composed of both male and female members with county Commissioner being an ex-officio member at the County and Deputy County Commissioner holding the same position at the Sub-County.

Some counties have women only miners’ groups:

I In Kakamega County there are four (4) women only miners’ groups: Kakamega Women Mining Group, Inuka Women Mining Group, Tinga Tinga Women Mining Group and Lirembe Women Mining Group. There is a similar number of youth only miners’ groups. Bushiangala Gold Youth Miners, Rosterman Youth Gold Dust, Visheyeye Youth Gold Prospectus and Idakho Youth Gold Organization.

II In Migori County there are two (2) women group Mikei Golden Women Group and Radienya Mining Women Group in the same county has one (1) youth only miners’ group :Macos Youth Group miners’ groups.

Unfortunately, both Vihiga and Narok counties don’t have any women-only miners’ groups.

7.7 Women’s Equal Rights to Land and Economic Resources

Both men and women are challenged by the inability to access finance but, the ASGM context generally privileges men in terms of ownership, access to assets finances and authority. While the eviction from and/ or the disinheriting of a widow from her matrimonial land is illegal under Kenyan law, in rural areas, women have limited access to justice and as such discriminatory traditional practices operate by default.

7.7.1 Ownership and Access to Land

In ASGM, land access and ownership are crucial to ownership of the mining pits hence mining rights. Rights to land also confer on women an added advantage of access to markets, better standards of living and access to finance as ASGM mining requires considerable financial outlay which the women do not have. In case of external financing an improvement in women’s independent property rights would accord women greater control over mining income and gain higher shares of mining proceeds. Kenya’s Constitution is gender transformative on women land rights. However, due to the deeply entrenched prevailing patriarchal attitudes especially in remote ASGM areas, it is still often a challenge to attain gender equality in access to land. In these remote areas, coupled with ignorance as most miners are semi-literate, women face constraints based on customary/traditional practices and beliefs. Teh
7.7.2 Access to Financial Resources

Women encounter poor access to credit because they have little or no collateral, have poor education and face discriminatory attitudes of bankers toward women miners. Owners of financial resources doubt women capacity to profitably operate mining and processing sites. In the absence of credit, women miners cannot afford to purchase or lease land, tools and equipment they need to achieve greater independence including building their own operational and mining pits to increase their earnings. Discriminatory attitudes and perceptions of women continue to restrict these rights in practice and explain the gender gaps in access to financial services.

Besides, women are not prioritized in employment in the artisanal mining sector and are undermined or overlooked in remuneration. This further undermines their ability to save money and build capital or boost their credit profile for future investment in mining. Fieldwork established that the ASM SACCOs in the counties have encouraged women to save and access credit. Given women prudence in financial planning and management, it was expected that with time they will access the much needed credit facilities. Most miners intimated lack of resources and access to credit as a major hindrance to full participation in ASGM.

7.8 Gender Based Violence and Sexual Exploitation

Patriarchy is a social and political system that treats men as superior to women where women cannot protect their bodies, meet their basic needs, participate fully in society and men perpetrate violence against women with impunity. Owing to normative role expectations associated with gender, along with the unequal power relationships between genders in the ASGM sector, women are generally considered a weaker sex and are vulnerable to sexual exploitation, abuse and gender-based violence. In rural areas where ASGM is located, sexual exploitation and violence against women is more acute due to less access to information and complaint channels that limit the monitoring of violence cases. Likewise, culturally, these areas are governed by a patriarchal model, which has been institutionalized by generations to the point of normalizing discriminatory practices or verbal aggression against women and girls. Increased demand for mining jobs against limited opportunities in the mining and processing sites augmented with an acute need to fend for themselves and family exposes women miners to physical abuse, harassment, discrimination and contempt for their job in order to be allowed to work. Unfortunately, the need to obtain income for their homes limits the options to denounce or express their disagreement with the abuses. This state of affairs facilitates the circle of the exploitative and violent practices that are exercised against women. Responses from the miners and leadership showed the cases of GBV and SEA are rare. This is owing to capacity building activities by the state and non-state actors such as...
7.9 Gender, Environmental and Occupational Health Hazards

ASGM-related health hazards are categorized as chemical, biological, biomechanical, physical and psychosocial which has disproportionate impact on miners especially on women of child-bearing age and pregnant women. Artisanal gold miners also expose themselves to grave health risks since they do not use safety gears such as ear plugs, safety glasses, masks, gloves and gumboots when extracting gold.

**Chemical Hazards:** Miners are susceptible to inhaling, absorbing and ingesting chemicals throughout the mining process. The most common chemical exposures in ASGM are to: mercury used to amalgamate the gold; cyanide used to extract gold for example from tailings; and other chemicals contained in dust and gases.

**Biological Hazards:** Although ASGM communities are susceptible to a variety of infections, very common biological hazards affecting them are waterborne and vectorborne diseases, sexually transmitted infections, HIV/ADTs and tuberculosis

**Biomechanical Hazards:** Biomechanical hazards such as heavy workloads, repetitive tasks, long working hours and unsafe equipment can lead to the development of musculoskeletal disorders, the most common of which are shoulder disorders, fatigue and lower back pain.

**Physical Hazards:** Physical hazards form a broad category that includes vibration, loud noise, heat and humidity and radiation, all of which are present in ASGM.

**Psychosocial Hazards:** Social, cultural and economic conditions can cause the emergence of psychosocial and physical hazards which manifest themselves in drugs and alcohol abuse, violence, and nutritional deficiency especially on sub-surface miners. Women perform many tasks in and around the ASGM process and are subsequently exposed to many of the environmental and occupational health hazards. Field observation revealed that none of the miners wore protective equipment. Women miners amalgamated the gold ore without gloves and buyers burnt the amalgam with face/gas masks. This exposed them to very real hazards of mercury poisoning to both the women and the environment. Mercury released during gold amalgamation and mercury removal (“burning off”) processes leads to Erethism, Irritability, Gingivitis, pneumonitis, pathologic shyness, pulmonary oedema and memory loss. Besides, it possesses dangers to pregnant women and women of child bearing age as unborn babies are the most vulnerable to the effects of mercury poisoning. In extreme cases, mercury poisoning leads to mental deterioration, paralysis and death. Cyanide poisoning from leaching plants can cause
neuropathological lesions, visual impairment and chemical asphyxiation/death. Other chemical concern that affect the health of women miners is nitric and sulfuric acid.

The ASGM process frequently leads to degradation and contamination of the general environment. These environmental hazards have implications for the health and wellbeing of miners, The surrounding communities as well as for the global environment. The most commonly ASGM associated environmental hazards include land degradation, mercury emissions/pollution, siltation, erosion and water contamination. The creation and subsequent abandonment of pits and trenches leave surrounding communities susceptible to loss of arable land, loss of livestock, lack of clean water, stagnant water and malaria-carrying mosquitos. Women, particularly, suffer from the crowding out of the farm-lands which they use for subsistence farming for feeding their families.
7.10 Child Labour

The field observation revealed women and men of all statutory majority age work in the mining and the processing sites. The majority of the miners were at least 30 years old as the younger generation view mining as a dirty job. Labour by people of the minority age (child labour) was non-existent. Interview with the mining organization leaders and site supervisors revealed that they do not encourage child labour and they educate parents against involving their children in mining activities. It was observed that there are attempts at children to work in processing sites during the weekends when ASGM leaders are not within the sites and sites are closed. However, such minors are chased away from the sites should their presence at the site come to their attention of the ASGM leaders. The ASGM leaders normally report incessant cases to the provincial administration as cases of child-neglect by the minors’ caregivers.

7.11 Gender and Non-Governmental Actors

There are a lot of non-governmental actors that carryout capacity building on gender inclusion and parity in ASGM in the four (4) project counties.

7.11.1 GROOTS Kenya

Groots Kenya has developed Gender Tracking Tool through its project Madini Yetu, Wajibu Wetu that maps women leadership in the mining sector and take them through various trainings and workshops to enable them articulate key issues and priorities in the mining sector including mining law. They also capacity build on: (i) financial management skills such as table banking in Ikolomani, Kakamega County and Village Savings and Loan Association (VSLA) model; (ii) formalizing mining both at the individual and at the group level to comply with the mining laws; (iii) occupational safety by following the regulations of mining law and mining responsibly; and, (iv) making more women get involved in decision making processes.

7.11.2 The Centre for Environmental Justice and Development (CEJAD), Kenya

CEJAD has been raising awareness on the effects of mercury and the need to adapt to alternative mercury-free technologies. Specifically, CEJAD has been:

I Conducting surveys and studies on the use of mercury in ASGM communities in Kenya and its impacts especially on the vulnerable populations such as women with a view to inform policy and regulatory frameworks in Kenya;

II Informing and contributing to policy and regulatory frameworks development in Kenya to reduce/where feasible eliminate mercury use in ASGM; and,

III Carrying out awareness to miners and mining communities on the dangers of mercury and its impacts to Human Health and Environment.

Women who are the primary mercury users in the ASGM community use no protective equipment. Hence exposure to mercury is highest among women which exposure CEJAD undertakes to eliminate by advocating for the use of mercury-free techniques.
7.11.3 Fairtrade Foundation

Fairtrade has been capacity building miners on safe working practices and eradicating child labour at mining sites. Fairtrade standards include protecting the environment by minimizing use of mercury, promoting personal safety equipment, eliminating child labour and promoting better working conditions and equal treatment of men and women. Through its African Gold Programme, several ASM groups have been trained in the 4 counties.

7.12 Summary

From the foregoing, it has been established that there is gender-based inequalities in mining communities owing to the nature of work and roles played by both men and women. Being that ASGM sites are deep in the rural areas, women often experience unequal ownership, rights and access over resources that are critical to livelihood in the mining area. Lack of collateral limit women’s ability to access finance and credit which inhibits their ability to invest in mining equipment and technology necessary to operate successful businesses. Traditional and cultural beliefs coupled with ignorance of land rights typically constrains women’s ownership of and access to land thus mining rights. Patriarchal norms that consider mining a ‘man’s job’ and uneven labour-intensive unpaid care work that takes time away women’s productive mining activities further undermine women’s success in ASGM. The fieldwork revealed that women are concentrated in the lowest-paid aspects of ASGM activity. The ASGM mine sites are characterized by a clear division of labor and separation of roles, where women are mostly in charge of processing (sluicing, panning and amalgamation) while men perform ore extraction and porting (see the Table below).
TABLE 6: GENDER ROLES AND TASKS ALONG THE ASGM VALUE CHAIN

<table>
<thead>
<tr>
<th>GENDER</th>
<th>ROLES</th>
<th>REASONS AND IMPACT</th>
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<tr>
<td><strong>Prospecting and Exploration</strong></td>
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</table>
| Men | • Finding deposits  
• Obtaining licenses and exploration permits | Gendered by society despite the fact that the law, regulations and the Kenya Constitution 2010 banned discrimination based on gender |
| Women | Few women are involved at this stage | |
| **Reasons** | | |
| | • Limited access to financing resources and equipment  
• Difficulty in attaining ownership of land and mineral rights |
| **Impact** | Marginalization at this stage has a knock-on effects down the rest of the value chain: | |
| | • Women have no ownership and as such cannot influence  
• Working conditions which result in being poorly compensated and are exploited (bonded labour at worst) |
| **Mining / Extraction** | | |
| Men | • Work in shafts and open pit excavations  
• Dredging and hoisting ore  
• Ownership and management of equipment, labour & finance  
• Installing underground supports | Impact  
Men are more exposed to underground hazards, such as rock falls, poor ventilation, poor sanitation etc. |
### Gender Roles, Reasons, and Impact

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<thead>
<tr>
<th>GENDER</th>
<th>ROLES</th>
<th>REASONS AND IMPACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women</td>
<td>Work in shallow and open cast pits and alluvial mining in riverbeds and banks</td>
<td><strong>Reasons</strong>&lt;br&gt;• Women are perceived as physically weak and in need of protection&lt;br&gt;• Risk of harassment or assault makes it undesirable and unsafe for many women to participate in roles that require going underground&lt;br&gt;• Superstitions e.g. women going underground makes the gold disappear impedes women’s access to the cast pits&lt;br&gt;<strong>Impact</strong>&lt;br&gt;Women are pushed to more dangerous work of mercury amalgamation</td>
</tr>
</tbody>
</table>

### Transportation (Ore, waste, water)

<p>| Men | Manual hauling bags for mine sites (including underground) to processing area | <strong>Reasons</strong>&lt;br&gt;Women are perceived as physically weak and in need of protection from the most physically taxing work&lt;br&gt;<strong>Impact</strong>&lt;br&gt;Women are less likely to suffer underground injuries&lt;br&gt;Higher numbers of injuries and fatalities are amongst men |
| Women | • Manual hauling of water and ore&lt;br&gt;• Providing sacks and buckets for dewatering and ore haulage |</p>
<table>
<thead>
<tr>
<th>GENDER</th>
<th>ROLES</th>
<th>REASONS AND IMPACT</th>
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<tbody>
<tr>
<td><strong>Mineral Processing</strong></td>
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</table>
| Men | • Manual crushing with ball mills  
• Operating processing plant equipment  
• Amalgamation and burning  
• Removing waste and tailings from the ponds | | |
| Women | • Collecting rocks Sorting by hand  
• Manual ore crushing and milling  
• Panning and sluicing  
• Re-washing tailings  
• Amalgamation and burning | **Reasons**  
• Women are generally not taught to operate equipment  
• Women are deemed not physically/ intellectually able enough for all jobs  
• Lack of trust by men | **Impact**  
High mercury exposure for women and their children (the mercury amalgam is also often burned in the open)  
Increased risks of musculoskeletal disorders in women exacerbated by manual work |
| **Mineral Trading** | | |
| Men | Site and intermediary traders Financiers (at the mine site) | | |
| Women | Buying and selling gold (usually at the mine site) | **Reasons**  
Lack of access to finance which limits production power & access to gold | **Impact**  
Without the ability to finance operations and increase their trade volume, women are stuck trading at a small scale which prevents accumulation of capital |
SECTION 8
FIELD OBSERVATIONS, FINDINGS & ANALYSIS AND DISCUSSION

8.1 Introduction

Gender refers to socially and culturally constructed norms, values and expectations related to men or women, boys or girls. Gender also refers to attitudes and behaviours related to what is regarded as masculine or feminine. The notion of masculine or feminine, manly or womanly, is often unconscious and the concept of gender varies over time and between cultures.

Gender dimension in research means that gender is part of the research design and is systematically controlled throughout the research process without necessarily being the main focus of analysis. Research that takes gender dimension into account is found in most scientific disciplines. In legal research, the gender dimension involves exploring how gender relations influence the distribution of rights and duties, benefits and disadvantages, legal protection and punishment.

Survey tools for this assignment were designed to ensure a comprehensive identification and to bring out aspects of gender dimensions of artisanal and small-scale gold mining in project counties and sites.

The survey questions were broadly geared to acquire information on:-

i. ASGM related policy and legal framework at national and the project counties
ii. Gaps, clarities and overlaps existing in the ASGM related policy and legal framework at the National and project Counties in light of gender dimensions
iii. Recommendations to address the identified gaps in the existing ASGM policy and regulatory framework

The following questions formed the basis of our research and field surveys; -

i. What are the existing National and County ASGM related policies and legal frameworks on ASGM?
ii. What are the knowledge levels in gender policies and regulations in ASGM among the miners and stakeholders
iii. What is the level of Implementation and monitoring of the existing national and county policies and regulatory frameworks in ASGM project sites
iv. How can the existing national and county policies and regulatory frameworks advance formalization in ASGM project sites?

v. What are the gender socio-economic status, roles, compositions, culture and challenges in relation to national and county policies and regulations in ASGM project sites and groups?

vi. What Gaps, Clarities and Overlaps exist in the ASGM related policies and legal framework at National and project Counties in light of gender dimensions?

vii. What are some of the recommendations that ASGM stakeholders have suggested to address the identified gaps in the existing ASGM policy and regulatory framework?

By comprehending gender dimension in the implementation of policies and regulatory frameworks, involvements of men and women can easily be understood and how they are affected by ASGM as well as factors surrounding their engagement in ASGM. By so doing, projects and policies can be put in place to ensure that men and women have equitable opportunities for participation at all stages of the ASGM value chain, access to the benefits of ASGM and bearing of risks among men or women in ASGM.

8.2 Observations, Findings and Analysis

Acquisition of field data and observation were done through questionnaires, focused group discussions and key informant interviews. Total of 210 questionnaires were distributed in all 7 project sites and one FGDs and KII in each site.

<table>
<thead>
<tr>
<th>EXISTING POLICY AND REGULATORY FRAMEWORK</th>
<th>ANALYSIS OF POLICY AND REGULATORY FRAMEWORK IN ASGM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minerals and Mining Policy 2016 (Sessional Paper No. 7 of 2016)</td>
<td>The policy aims at promoting the sustainable mineral exploration and development in the ASGM sector.</td>
</tr>
<tr>
<td>National Policy on Gender and</td>
<td>The aim of the policy is to achieve gender equality and women empowerment in national development. Section 4.9(c) on environment and natural resources, The policy advocates ensuring women participate in and benefit equitably from investments in various natural resources development initiatives.</td>
</tr>
<tr>
<td>The Kenyan National Occupational Health and Safety Policy-</td>
<td>The policy requires the stakeholders in the ASGM sector to implement local, national and international standards in safeguarding safety, health, security and environment at the mining sites.</td>
</tr>
<tr>
<td>EXISTING POLICY AND REGULATORY FRAMEWORK</td>
<td>ANALYSIS OF POLICY AND REGULATORY FRAMEWORK IN ASGM</td>
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</tr>
<tr>
<td>National Policy for Disaster Management in Kenya (2010)</td>
<td>The main objective of the policy is to provide mechanisms of controlling and managing disasters like the ones experienced at the ASGM sector during the mining operations. It also develops mitigation measures for the sites prone to accidents and disasters in the ASGM sector.</td>
</tr>
<tr>
<td>Kenya’s National Land Policy (Sessional Paper No. 3 of 2009)</td>
<td>The National Land Policy's overall goal is to protect land rights while also promoting long-term growth, investment and poverty reduction in keeping with the government’s general development goals.</td>
</tr>
<tr>
<td>Vision 2030 and the ASGM Sector</td>
<td>Since Kenya is at its early stages of development and exploration of its minerals, the Vision 2030 MTP III (2018-2022) is to ensure that the mining and mineral sector contributes at least 4% of the GDP to promote growth and development opportunities in Kenya.</td>
</tr>
<tr>
<td>The National Industrialization Policy (Sessional Paper 9 of 2012)</td>
<td>The policy targets value addition of its high value mineral products promoting the industrialization process hence formalization of the ASGM sector.</td>
</tr>
<tr>
<td>The National Environmental Policy (Sessional Paper No. 10 of 2014)</td>
<td>It focuses on protecting the environment hence developing standard procedures and mitigation measures of protecting and improving the environmental conditions around the mining sites in the ASGM sector.</td>
</tr>
<tr>
<td>The National Trade Policy, 2009</td>
<td>The policy which takes cognizant of the existing policies and the need to develop a coherent trade policy with a view to creating a policy environment that facilitates the development of the ASGM sector.</td>
</tr>
<tr>
<td>Mining Act 2016</td>
<td>This act gives effect to articles 60, 62 (1) (f), 66 (2), 69 and 71 of the constitution in so far as they apply to minerals; provide for prospecting, mining, processing, refining, treatment, transport and any dealings in minerals and for related purposes. The Act defines “artisanal mining” to mean traditional and customary mining operations using traditional or customary ways and means.</td>
</tr>
<tr>
<td>Occupational Health and Safety (OSH) Act 2007 (Rev.2010)</td>
<td>The objective of the act is to ensure that all the workers in the ASGM sector adheres to measures promoting safety, health and their welfare during mining operations.</td>
</tr>
<tr>
<td>The Water Act 2016 (No.43 of 2016)</td>
<td>The act ensures that there is national monitoring and information systems on water resources.</td>
</tr>
<tr>
<td>The wastewater regulation, 2006</td>
<td>It states that: No person shall abstract ground water or carry out any activity near any lakes, rivers, streams, springs and wells that are likely to have any adverse impact on the quality or quantity of the water without an EIA license issued.</td>
</tr>
<tr>
<td>EXISTING POLICY AND REGULATORY FRAMEWORK</td>
<td>ANALYSIS OF POLICY AND REGULATORY FRAMEWORK IN ASGM</td>
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<td>---------------------------------------------------</td>
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<tr>
<td>Environmental Management and Co-ordination (Amendment) Act 2015</td>
<td>The act states that every Kenyan citizen is entitled to a clean and healthy environment and has the duty to safeguard and enhance the environment. To achieve this, the Act in part VII section 58 directs that any proponent of any projects listed under schedule II should carry out an environmental impact assessment and prepare an appropriate assessment report for submission to NEMA who in turn may issue a license as appropriate.</td>
</tr>
<tr>
<td>The Physical Planning and Land Use Act No. 6 of 1996 Revised Edition 2012 [2010]</td>
<td>The Physical Planning Act has provisions to control development and use of land in particular areas, especially where a project may involve subdivisions or amalgamation of land parcels or located in an area otherwise reserved for other uses. It aims at guiding the development in the whole country irrespective of the land tenure limitations. Section 30 (1) of the Act stipulates that no person shall carry out development within the area of a local authority without a development permission granted by the local authority under section 33.</td>
</tr>
<tr>
<td>The County Government Act (2012)</td>
<td>The sections of the County Government Act 2012 that are relevant to this project include making bylaws in respect of suppression of nuisances, imposing fees for any license or permit issued in respect of trade or charges for any services. County Governments are given power to control or prohibit all developments which, by reason of smoke, fumes, chemicals, gases, dust, smell, noise, vibration or other cause, may be or become a source of danger, discomfort or annoyance to the neighborhoods and to prescribe the conditions subject to which such developments shall be carried on.</td>
</tr>
<tr>
<td>The Public Health Act (Cap.242). Revised Edition 2012 [1986]</td>
<td>The aim of the act is to provide all lawful, necessary and reasonably practicable measures to prevent all injurious conditions in premises, construction condition or manner of use of any trade premises. Nuisances under this Act include any noxious matter or wastewater, flowing or discharged from any premises wherever situated into any public street or into the gutter or side channel of any street or watercourse or any accumulation or deposit of refuse or other offensive matter. Every county government and every urban area may make by-laws as to buildings and sanitation.</td>
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### EXISTING POLICY AND REGULATORY FRAMEWORK

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<th>ANALYSIS OF POLICY AND REGULATORY FRAMEWORK IN ASGM</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Environmental (Impact Assessment and Audit) (Amendment) Regulations, 2019</td>
<td>The EIA/EA, (Amendment) 2015 provides the guidelines that have been established to govern the conduct of environmental assessments and environmental audits in Kenya. Section 31(1) of the EIA/EA regulation stipulates that an environmental audit study should be undertaken on ongoing projects commenced prior to the coming into force of these regulations and new projects undertaken after completion of an environmental impact assessment.</td>
</tr>
<tr>
<td>The Way Leave Act (Cap.292). Revised Edition 2010 [1989]</td>
<td>The areas zoned for communication lines, sewer lines, power lines, water pipes etc. are known as way leaves. The Way Leave Act prohibits development of any kind in these designated areas. Thus, any developer is bound by this Act to see to it that no development takes place in these areas. The proposed project will not encroach in any way leave and will leave the required space for such services.</td>
</tr>
<tr>
<td>EMC (Water Quality) Regulations, 2006</td>
<td>This requires all sectors including the ASGM sector to guard water resources against any form of pollution and require individuals to take the necessary precautions in an attempt to avoid water pollution.</td>
</tr>
<tr>
<td>EMC (Waste management) regulations 2006</td>
<td>The regulation requires that no one should dispose of any waste on a public highway, street, road, recreational area or in any public place except in a designated waste receptacle as mentioned in Part 11 Section 1. As per section 2 any person whose activities generate waste should collect, segregate and dispose or cause to be disposed of such waste in the manner provided for under these Regulations.</td>
</tr>
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**Figure 46: Knowledge levels in gender policies and regulations in ASGM among the miners and stakeholders**

![Knowledge levels in gender policies and regulations in ASGM among the miners and stakeholders](image)
Figure 47: Level of Implementation and monitoring of the existing national and county policies and regulatory frameworks in ASGM project sites

CHAVAKALI: 18% High Chances, 74% Medium Chances, 60% Low Chances
IKOLOMANI: 28% High Chances, 30% Medium Chances, 42% Low Chances
ROSTERMAN: 42% High Chances, 20% Medium Chances, 38% Low Chances
MASARA: 35% High Chances, 40% Medium Chances, 25% Low Chances
OSIRI: 40% High Chances, 35% Medium Chances, 25% Low Chances
KEHANCHHA: 25% High Chances, 45% Medium Chances, 30% Low Chances
LOLGORIAN: 20% High Chances, 50% Medium Chances, 30% Low Chances
Figure 48: How existing national and county policies and regulatory frameworks can advance formalization in ASGM project sites

<table>
<thead>
<tr>
<th>Location</th>
<th>High Chances</th>
<th>Medium Chances</th>
<th>Low Chances</th>
</tr>
</thead>
<tbody>
<tr>
<td>IKOLOMANI</td>
<td>28%</td>
<td>40%</td>
<td>32%</td>
</tr>
<tr>
<td>ROSTERMAN</td>
<td>22%</td>
<td>42%</td>
<td>36%</td>
</tr>
<tr>
<td>CHAVAKALI</td>
<td>25%</td>
<td>50%</td>
<td>25%</td>
</tr>
<tr>
<td>MASARA</td>
<td>35%</td>
<td>25%</td>
<td>40%</td>
</tr>
<tr>
<td>OSIRI</td>
<td>40%</td>
<td>25%</td>
<td>35%</td>
</tr>
<tr>
<td>KEHANCHE</td>
<td>25%</td>
<td>30%</td>
<td>45%</td>
</tr>
<tr>
<td>LOLGORIAN</td>
<td>20%</td>
<td>30%</td>
<td>50%</td>
</tr>
</tbody>
</table>

Legend:
- Teal: High Chances
- Orange: Medium Chances
- Gray: Low Chances
8.3 Gender Socio-Economic Status, Roles, Compositions, Culture and Challenges in Relation to National and County Policies and Regulations in ASGM Project Sites and Groups

8.3.1 Roles and Responsibilities

Almost all the female miners (77.4%) indicated that their role in the mining operation was that of a worker while 12.9% owners and 9.7% were buyers. This reveals that most of the female miners are workers with very few being owners of the mining pits or the processing sites. Majority of the owners did not have a valid mining permit. They mostly had County Government business permit for equipment such as ball mills.

Figure 49: Role in Mining Site and Validity of Permit

8.3.2 Nature of work

Most of the female miners (75%) conducted processing operations, 35% were carriers of ore, 29.4% were carriers of water and firewood while 6.3% were miners (diggers of pits). This shows that most female miners work at processing sites. However, some women were land owners, buyers and pit owners.

Figure 50: Nature of work
The female miners intimated that they worked at the mining and processing sites from 8am to 6pm, 6 days a week. They did house chores or domestic work between 5am - 7am and 6pm - 9pm 6 days a week and only rested on Saturday or Sunday depending on the land or pit owner’s day of worship. While most have been in mining operations for 5 years or less, some had been miners for more than 20 years.

The majority of the respondents (51.7%) indicated that they sold their products to unlicensed buyers or middlemen while 48.3% sold theirs to licensed buyers.

8.3.3 Age Groups

Most of the respondents (36.4%) were 31 to 40 years, followed by 41 to 50 years old (33.3%) 21 to 30 years old (21.9%) 51 to 60 years 3.1% and over 60 years 3.9%. Thus, most of the women miners were above the age of 30 years. Most youth frowned upon the mining work terming it as a dirty job.
8.3.4 Marital Status

The majority of the female miners were married (72.7%), 15.2% were widowed while 9.1% were single. This shows that most of the miners were responsible family members.

Figure 53: Marital status

8.3.5 Level of Education

The majority of the miners had primary education (63.6%) as their highest education attainment while 27% had secondary level education. While there was no miner with a university level education, 6.3% had diplomatic level education and 3% had no formal education. This signifies the semi-skilled nature of the work done at the ASM mining and processing sites.

Figure 54: Level of education
8.3.6 Daily Earnings

On the average earning per day, the findings reveal that 43.6% earned at most Ksh500, 26.4% earned an average of between Ksh501 and Ksh1,000 while 17.0% earned between Ksh1,001 and Ksh2,000. 5.7% earned between Ksh. 2,001 and Ksh. 5,000 and 5.7% earned between Ksh. 5,001 earned between Ksh. 2,000. However, 1.9% few earned more than Ksh10,000 daily.

8.3.7 Wage comparison

The women miners felt that their male counterparts earned more compared to the female miners (78.1%) signifying a huge wage disparity between female and male miners of same rank/position.
8.3.8 Head of household

The findings established that most of the female miners were the head of their household as intimated by 87.5% of the interviewed miners.

![Figure 57: Head of Household](image)

8.3.9 Socio-Cultural Context

On which structures (social, cultural, economic, institutional, and legal) that affect ASM needing transformation to improve the livelihood outcomes of women and men, findings show: traditions and customs, perception about women in mining (62.5%), miners’ associations (43.8%), research institutions and service providers including financial institutions (37.5%). Other are NGOs, civil society, and community organizations (21.9%) and government departments, agencies and parastatals (18.8%) and Law enforcement and judiciary (courts) (15.6%).

![Figure 58: Proposed Socio-Legal Structure Transformation for Improve ASM livelihood Outcomes](image)
8.4 How to Transform ASM-Related Structures

On how the structures that affect ASM can be transformed, the findings revealed: improve their accountability (78.1%) and decentralization of the structure (71.9%). Increasing the number of women in structures was the least considered at 65.6%.

Figure 59: Transforming the formal processes (policies, legislation, programs)

8.4.1 Transforming the formal processes

On how to transform the formal processes (policies, legislation, programs) that affect ASM, 81.3% suggested awareness raising and 78.1% proposed increasing participation in the review of policies, laws, and programs. Only 34.4% recommended development of new policies, laws, and programs.

Figure 60: Transforming the informal processes (cultures, norms, and values)
On the informal processes (cultures, norms, and values) that affect ASM, the respondents suggested: supporting change in norms, values and cultures (81.3%), reviewing traditional, indigenous, and community rights (68.8%), and awareness of legal and social rights (68.8%). This underscores the need to transform the societal norms, values, and cultures especially the ones that espouse that the women’s place is in the processing sites and not in the mining pits.

**8.4.2 Assets and Resources**

On the natural capital assets that the female workers had access to 81.3% had access to water, 34.4% had access to mineral deposits, 25.0% had access to forest or firewood used in mining while 21.9% had access to land.

On access to financial capital assets, the figure below illustrates that 65.6% of the female miners had access to savings in cash or M-Pesa, 56.3% had access to savings in banks or SACCOs, 43.8% had access to savings in livestock or harvest while a paltry 12.5% had access to credit. The female miners indicated that access to credit is hampered by:

I Banks do not recognizing miners,  
II Credit being collateralized by savings and security which they don’t have,  
III Failure by other SACCO members to pay for their shares,  
IV Financial institution requiring lots of details in order to access finance,  
V Financing depending on gold sold to the buyers hence payment is deducted from the gold,  
VI Lack of enough shares in SACCOs  
VII Perceived credit Risks due to outbreak of livestock diseases However, others had not sought credit owing to lack of information or fear.
On whether the miners felt excluded from accessing assets because they are women majority’s (71.9%) answers were negative while few (28.1%) were affirmative. On what constraints the female miners face in accessing county government services as a stakeholder in mining, 62.5% indicated poor infrastructure, 46.5% indicated lack of extension services, 31.3% indicated general neglect by government while 18.8% indicated sex or gender as a constraint.
On what constraints the female miners face in accessing county government services as a stakeholder in mining, 62.5% indicated poor infrastructure, 46.5% indicated lack of extension services, 31.3% indicated general neglect by government while 18.8% indicated sex or gender as a constraint.

![Figure 64: Constraints in Accessing County Government Services](image)

On information the miners lacked in accessing assets, 78.1% indicated market information leading to illegal trade and poor prices, 46.9% mentioned laws and regulations and 37.5% mentioned mineral deposits areas.

![Figure 65: Lack of Information in Accessing Assets](image)
8.4.3 Power and Decision Making

Most of the female miners participated in production (37.5%) and selling (34.4%) decision making in the mining operation, 21.9% participated in waste disposal, 13.5 accessing mineral deposits, 18.8% participated in sourcing inputs and 34.5% did in any decision making.

The majority of the female miners (93.8%) controlled the family care and household expenditure decision making, 75.0% controlled income-generating activities and 46.9% controlled sourcing of water and energy decision making.

Figure 66: Decision Making at Mining Operation

Figure 67: Decision making at household level
Half of the female miners (50%) belonged to artisanal mining cooperative

The constraints faced in decision making at the mining community level (artisanal mining cooperative) are: inadequate consultations (18.8%), lack of platform to voice opinion (15.6%) and intimidation being a woman (12.5%). However, most of the female miners (21.9%) did not experience constraints in decision making in their artisanal mining cooperative.
On decision making the respondents participated in at the county government level e.g. setting of mining licensing fee and other laws affecting mining in your area, a paltry 21.9% of the female miners were consulted in reviewing and developing policies, by-laws, programmes by the county governments.

**Figure 70: Consultation in review and development policy, by-laws, programs**

**Figure 71: Constraints decision making at the county government level**
On whether the female miners had been consulted by the National Government in reviewing and developing mining policy, laws, regulations, programs, 40.6% were positive while 59.4% contested.

Figure 72: Consultation by the National Government

8.4.4 Miners’ Needs, Priorities and Perspectives on Service Delivery.

The practical miners’ practical gender needs included training to improve skills (84.4%), equipment and technology for ASM (78.1%), improved income from ASM (75.0%) and Health and safety in ASM (68.8%). Information and services to optimize benefits from ASM and alternative livelihoods were ranked low by the female miners.

Figure 73: Miners’ Practical Gender Needs
Miners’ strategic gender needs included: equitable access to assets (75.0%), equitable access to capacity-building programs (68.8%). However, building capacity for collective organizations (43.8%) and formalization of ASM (34.4%) were not as significant to the miners.

**Figure 74: Miners’ Strategic Gender Need**
TABLE 8: GAPS, CLARITIES AND OVERLAPS WHICH EXIST IN THE ASGM RELATED POLICIES AND LEGAL FRAMEWORK AT THE NATIONAL AND AT THE PROJECT COUNTIES IN LIGHT OF GENDER DIMENSIONS

<table>
<thead>
<tr>
<th>POLICIES &amp; REGULATIONS</th>
<th>POLICY &amp; REGULATORY DIMENSIONS IN ASGM</th>
<th>GAPS, CLARITIES &amp; OVERLAPS</th>
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<tbody>
<tr>
<td>Mining Act No. 12 of 2016</td>
<td>The Mining Act No. 12 of 2016 Defines artisanal mining to mean “traditional and customary mining operations using traditional or customary ways and means” It provides legal and institutional framework in relation to the prospecting of minerals, mining, processing and de-aligning with minerals. It also mandates the holders of mining licenses to take all the appropriate measures for the protection of the environment in accordance with the existing laws and regulations (section 98(2). The mining act gives The Cabinet Secretary power to designate any area of land to be reserved exclusively for ASGM mining operations upon recommendations of the Minerals Rights Board. In addition, it establishes the County office of the State department of mining (sec.93) with the Cabinet Secretary designating a representative of the director of mines who is in charge of the county office overseeing the operations at the county level. It lists one of the functions (Sec.93.3. a) as granting, renewal and revoking artisanal mining permits. It also establishes the artisanal mining committee (section 94) with mandate of among others (sec.94.3) advising the representative of the director of mines in the granting, renewal or the revocation of artisanal permits. The mining act directs that the artisanal mining committee be comprised of: A representative of the Governor, a representative of the director of mines (secretary); three persons elected by the artisanal miners at the county; representative of inspectorate division of the ministry of mines; representative of NEMA and a representative of the county land board.</td>
<td>• The act definition of artisanal mining is in conflict with the actual definition of the artisanal miners on the ground in terms of tools and the prospecting/mining processes applied. • The established mining Act 2016 is not clear on gender equality and equity provisions in an ASGM sector. • The mining Act is not explicit on creating awareness on the standard gold processing practices where the majority of women are involved.</td>
</tr>
<tr>
<td>POLICIES &amp; REGULATIONS</td>
<td>POLICY &amp; REGULATORY DIMENSIONS IN ASGM</td>
<td>GAPS, CLARITIES &amp; OVERLAPS</td>
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</tr>
<tr>
<td>Environmental Management and Coordination Act 1992 (Rev. 2012)</td>
<td>The Act provides legal and institutional framework for sustainable management of the environment, prevention and control of pollution, waste management, environmental quality standards, public participation, compliance and enforcement and the basis for implementation of international instruments on the environment. It also promotes the protection of rivers, lakes and wetlands and further gives power to the minister to issue general and specific orders, regulations or standards that may include the management, protection or conservation measures in respect to any area at risk of environmental degradation including the ASGM areas (PART IV). Under its second schedule section 58 (1), (4) the instrument lists projects to undergo environment impact assessment which includes ASGM mining activities such as quarrying and open-cast extraction of precious metals; gemstones; metalliferous ores; coal; phosphates; limestone and dolomite; stone and slate; aggregate sand and gravel; clay; exploration for the production of petroleum in any form and the extraction of alluvial gold with the use of mercury. The Act provides for measures, on prior informed consent procedures, for certain hazardous chemicals (Sec.91) and the regulations of the hazardous and toxic materials and their subsequent prohibition of discharge into the environment (Sec.92 &amp;93).</td>
<td>● Most women in the ASGM sector are directly involved in gold processing including amalgamation process where mercury is used. The Act lacks specific provisions for the implementation of the Minamata Convention on Mercury.</td>
</tr>
<tr>
<td>National Policy on Gender and Development, (Sessional Paper No. 2 of 2019)</td>
<td>The aim of the policy is to achieve gender equality and women empowerment in national development. Section 4.9(c) on environment and natural resources, the policy advocates ensuring women participate in and benefit equitably from investments in various natural resources development initiatives.</td>
<td>● As observed on site, the majority of women working in mining site do not get an equal share of the obtained benefits. The policy does not enhance awareness on equitable provision of the benefits in ASGM sector. There are also inadequate law enforcement on sites at the local, county and at the national government. ● The policy gives county governments the role to collect, collate and disseminate county gender data including in the ASGM sector. This becomes difficult to implement since the issues of ASGM sector operations fall under the roles of the national government under the ministry of mining and petroleum.</td>
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## Policies & Regulations

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<tr>
<th>Policies &amp; Regulations</th>
<th>Policy &amp; Regulatory Dimensions in ASGM</th>
<th>Gaps, Clarities &amp; Overlaps</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupational Health and Safety Act No. 15 of 2007 [Rev.2010]</td>
<td>The Act provides for the protection of persons at work against hazards related to health and safety and arising as a result of the work they are involved in. It requires toxic materials or substances only to be used where the use of a non-toxic material or substances is not reasonably practicable. Further, inappropriate exposure preventive measures should be instituted including periodical medical examination. The Act provides for general precautions in handling chemicals including preventive or reducing contamination of the work environment to the lowest possible level.</td>
<td>● Inadequate provisions to address safety and health concerns in the context of the informal nature of the ASGM activities.</td>
</tr>
<tr>
<td>County Governments Act No.17 of 2012</td>
<td>The Act puts the responsibility on county government to facilitate public awareness and participation in a safe environment including in the ASGM sector. The Act also provides for the promotion of an economic, efficient, effective and sustainable use of resources the recycling of wastes and other appropriate environmental objectives (sec.120.h).</td>
<td>● Inadequate provisions that specifically addresses the use of and the dangers of mercury and its prohibition in the county ASGM operation areas. There is also a clear conflict and overlap between the Mining Act 2016 and the County Government Act 2012 on addressing the ASGM sector at the county level. The County Governments are not supported by the national government to address the matters of ASGM sector since that remains the onus of the national government under the umbrella of the ministry of mining and petroleum.</td>
</tr>
</tbody>
</table>
## TABLE 9: SOME OF THE RECOMMENDATIONS WHICH ASGM STAKEHOLDERS HAVE SUGGESTED TO ADDRESS THE IDENTIFIED GAPS IN THE EXISTING ASGM POLICY AND REGULATORY FRAMEWORK

<table>
<thead>
<tr>
<th>POLICIES &amp; REGULATIONS</th>
<th>POLICY &amp; REGULATORY DIMENSIONS IN ASGM</th>
<th>RECOMMENDATIONS DO ASGM STAKEHOLDERS HAVE TO ADDRESS IDENTIFIED GAPS IN THE EXISTING ASGM POLICY AND REGULATORY FRAMEWORK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mining Act No. 12 of 2016</td>
<td>The Acts’ definition of artisanal mining is in conflict with the actual definition of the artisanal miners on the ground in terms of tools and the prospecting/mining processes applied. The established mining Act 2016 is not clear on gender equality and equity provisions in the ASGM sector. The mining act is not explicit on creating awareness on the standards in gold processing practices where majority of women are involved.</td>
<td>● The Mining Act 2016 should be reviewed to bring a clear definition of Artisanal Mining in accordance to the site interpretation and the mining practices carried out. ● On the dangers of land degradation and use of mercury without personal protective gears, the Mining Act should create awareness and address on the dangers posed by sub-standard mining practices used which endanger both the health and safety of men and women in the ASGM Sector. ● The Act should promote gender equality and equity provisions by outlining roles to be played along the value chain of the ASGM sector with reference to the relevant trainings offered to the miners. ● Permitting requirements to women in ASGM should be lenient.</td>
</tr>
<tr>
<td></td>
<td>Most women in the ASGM sector are directly involved in gold processing including amalgamation process where mercury is used. The Act lacks specific provisions for the implementation of the Minamata Convention on Mercury.</td>
<td>● The government should speed up approval of the Minamata Convention on mercury through the Kenyan National Assembly so that it can be in line with the Act. ● The Act to address the correct measures of disposing the tailing in an environmentally friendly way. This will reduce cases of reported miscarriages when contaminated water is consumed by women in the ASGM sector.</td>
</tr>
</tbody>
</table>
### Policies & Regulations

| National Policy on Gender and Development, (Sessional Paper No. 2 of 2019) | As observed on site, the majority of women working in mining sites do not get an equal share of the obtained benefits. The policy does not enhance awareness on equitable provision of the benefits in the ASGM sector. There are also inadequate law enforcement on the sites at the local, county and at the national government. The policy gives county governments the roles to collect, collate and disseminate county gender data including in the ASGM sector. This becomes difficult to implement since the issues of ASGM sector operations falls under the roles of the national government under the ministry of mining and petroleum. | - The Government should create awareness on narrowing the gender gap education, training and employment opportunities in the ASGM sector.  
- Laws should be established and implemented by the government officials with direct contact with the miners in the ASGM sector. The roles of the County government officials in an ASGM sector should be clarified.  
- The government should roll out campaigns and awareness promoting gender equity and equality in the sector. |
| Occupational Health and Safety Act No. 15 of 2007 [Rev.2010] |  
- Inadequate provisions to address safety and health concerns in the context of the informal nature of the ASGM activities. | - The Act should be reviewed to correctly convey safety and health concerns with reference to the real informal nature of ASGM practices. |
| County Governments Act No.17 of 2012 |  
- Inadequate provisions that specifically addresses the use of and dangers of mercury and its prohibition in the county ASGM operation areas. There is also clear conflict and overlap between the Mining Act 2016 and the County Government Act 2012 on addressing ASGM sector at the county level. The County governments are not supported by the national government to address matters of ASGM sector since that remains the onus of the national government under the umbrella of the ministry of mining and petroleum. | - The Act should exclusively address the illegal use of mercury and thorough establishment of regulatory measures by creating awareness on the dangers of mercury on human health.  
- Both the Mining Act 2016 and the County Government Act No.17 of 2012 should be reviewed with reference to the conflicting factors on the roles of both the county and the national government in the ASGM sector. |
8.5 Discussions

8.5.1 Gender Mainstreaming in ASGM

Gender equality and the empowering women in by Gender mainstreaming in the ASGM sector has an important gender impact. Both women and men including young people are working in ASGM sector, however women rarely see the positive impacts of the sector on their communities. Gender inequalities occurred by negative impact of ASGM with regard to poor democratic participation, financial inclusion, economic empowerment and health. Double work burden, gender-based violence (GBV) and prostitution are common in ASGM communities. Nevertheless, ASGM provide thousands of women with opportunities to contribute to the economies and the development of their local communities.

The concept of gender mainstreaming has been accepted and implemented in development projects and programs by many governments, non-governmental organizations and international organizations. However, in a mining related sector, gender and gender mainstreaming can be challenging to grasp. This is partially because gender norms and prejudices have long established the idea of mining sector as a male-dominated sector.

In the mining sector, gender perspective had now been incorporated through the Minamata Convention on Mercury preamble notes awareness of, “health concerns, especially in developing countries, resulting from exposure to mercury of vulnerable populations, especially women, children and through them future generations.” Furthermore, National Action Plans to address artisanal and small-scale gold mining are to include, “Strategies to prevent the exposure of vulnerable populations, particularly children and women of childbearing age, especially pregnant women, to mercury used in artisanal and small-scale gold mining”.

Implementing the gender approach and gender mainstreaming in the ASGM programme which focus on the challenging social norms in the complex geographical, social and cultural context of Kenya requires a robust knowledge and data as well as sound mechanisms to provide feedback on effectiveness of interventions.

The vastly changed communication landscape offers unprecedented opportunities to transform attitudes and behavior in support of greater gender equality in the ASGM sector. Therefore, a mapping of the options for optimal use of social media and communication technologies for advocacy in behavior change will be commissioned and used to inform the programme interventions.

8.5.2 Project Gender Action Plan

The Integrated Sound Management of Mercury in Kenya’s Artisanal and Small-Scale Gold Mining project is anchored in four (4) main project components. Gender mainstreaming aspects can be deduced in each component as with specific action plans as highlighted in the table below:
Component 1: Strengthening institutions and the policy/regulatory framework for mercury-free ASGM

<table>
<thead>
<tr>
<th>PROJECT COMPONENT</th>
<th>GENDER ACTION PLAN AS PER COMPONENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Physical Planning Act has provisions to control development and use of land in particular areas especially where a project may involve subdivisions or amalgamation of land parcels or located in an area otherwise reserved for other uses. It aims at guiding development in the whole country irrespective of the land tenure limitations. Section 30 (1) of the Act stipulates that no person shall carry out development within an area of a local authority without a development permission granted by the local authority under section 33.</td>
<td></td>
</tr>
</tbody>
</table>

**OUTCOME 1.1: GENDER SENSITIZATION TRAININGS AND WORKSHOPS AND INSTITUTIONS AS PART OF CAPACITY BUILDING EFFORTS.**

The aim of the act is to provide lawful, necessary and reasonably practicable measures to prevent all injurious conditions in premises, construction condition or any manner of use of any trade premises. Nuisances under this Act include any noxious matter or wastewater, flowing or discharged from any premises wherever situated into any public street or into the gutter or side channel of any street or watercourse, or any accumulation or deposit of refuse or other offensive matter. Every county government and every urban area may make by-laws as to buildings and sanitation.

**OUTCOME 1.2: ASSESSMENT OF GENDER DIMENSIONS IN EXISTING ASGM POLICY AND REGULATORY FRAMEWORKS:**

Policies, regulations and standards revised and/or developed while mainstreaming gender dimensions; Gender dimensions mainstreamed in the participatory local government regulations on ASGM and mercury use that will be developed with project support; and finally, technical guidance on mercury-free methods of gold extraction and tailing management contain gender dimensions.

Component 2: Establishing financing lending arrangements to provide loans for mercury free processing equipment

<table>
<thead>
<tr>
<th>PROJECT COMPONENT</th>
<th>GENDER ACTION PLAN AS PER COMPONENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff of the financial entities trained in the (re)design of these financial products so they suit women and men mining groups’ needs; New financial products launched that meet the need of women mining groups, while the awareness of women miners increased on the availability of various incentives and loan facilities that meet their needs (through awareness raising events).</td>
<td></td>
</tr>
</tbody>
</table>

**OUTCOME 2.1: ASSESSMENT IN TERMS OF ACCESSIBILITY AND SUITABILITY FOR WOMEN MINING GROUPS TO EXISTING FINANCIAL PRODUCTS OF PROJECT PARTNERS:**

Staff of the financial entities trained in the (re)design of these financial products so they suit women and men mining groups’ needs; New financial products launched that meet the need of women mining groups, while the awareness of women miners increased on the availability of various incentives and loan facilities that meet their needs (through awareness raising events).
### Gender Action Plan as per Component

#### Outcome 2.2: Women Mining Groups and Mining Groups Containing Women

Trained in Developing Loan/Investment Applications (including undertaking Technical and Financial Feasibility Studies and Record Keeping and Reporting).

#### Outcome 3.1: Collection of Sex-Disaggregated Data:

Of the Mining Groups selected for project participation, at least 20% will contain women miners or be women mining groups that will be supported in formalization efforts and in improving ASGM practices during socioeconomic baseline surveys and mercury/gold mass balance inventories conducted for each of the seven (7) priority project sites; The comprehensive ASGM training curriculum developed with project support and shall be used to train miners (men and women), contain gender aspects and contain a module on gender in ASGM to encourage a culture change in how women are being viewed in the mining sector; Women mining groups and women miners to receive separate leadership training.

#### Outcome 3.2: At Least 20% of the Project Groups Will Contain Women Miners or Be Women Mining Groups:

The project to support women groups interested in mining in the establishment of ASGM associations/cooperatives. The project mining groups are supported in their formalization efforts (e.g. gaining access to legal subsurface rights, obtaining a permit to establish/operate a processing plant; designing processing and waste management plan).

#### Outcome 4.1: Important Elements Related to Gender Awareness Raising Plans Developed and Implemented as Part of the Project

The project’s gender expert to ensure that the developed awareness raising plan and its activities meet the needs of female and male miners.

#### Outcome 4.2: Gender Assessment of the Project’s Impact.

The project might further improve its gender related interventions based on the results of the Gender Assessment and other recommendations coming out of the review.

#### Outcome 4.3: Identification of Gender Specific Results and How to Present These in Reports and Publications That Summarize Results, Lessons-Learned, Best Practices and Experiences by Project’s Gender Expert.

Component 3: Increasing capacity for mercury-free ASGM through provision of technical assistance and technology transfer

Component 4: Monitoring and evaluation, awareness raising, capturing and disseminating experiences, lessons-learned and best practices
8.5.3 Gender Analysis Dimensions

Through the gender analysis in each project site, there are different roles of women and men in ASGM value chain and different access and control over productive resources that contribute to gender inequality.

This study reveals that women are less recognized for their existence in ASGM. Undertaking a gender-sensitive situation analysis, including a barrier analysis, is a useful way to strengthen understanding of the context of the marginalized actors in the ASGM sector. Barriers are include:

1. Family/community/social factors such as prejudice, discrimination and stigma: These are likely to be gendered and to vary across cultures.
2. Mining area such as physical infrastructure, equipment and tools: These are likely to have gender implications.
3. Institutional factors such as laws, policies, and capacities in institutions. In the ASGM sector, which has so far been regarded as a masculine area: Discussions that are focused on women in this case do not mean to obscure the notion of gender that is women bias but, considering the imbalance that occurs shows that women are still left behind as a marginal group. Therefore, to obtain an equal result, it is necessary to make efforts to equalize the differences in conditions that surround men and women through responses in the form of actions, policies or special treatment aimed at accelerating the process of eliminating inequalities.

<table>
<thead>
<tr>
<th>DIMENSIONS</th>
<th>FINDINGS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Controls</td>
<td>Women miners do not have power over resources (capital, land, and means of production).</td>
</tr>
<tr>
<td>Participation</td>
<td>Women miners face institutional and social obstacles in participating quantitatively and qualitatively in public policy making processes and are not being involved significantly.</td>
</tr>
<tr>
<td>Critical Awareness</td>
<td>Only a few female miners have attempted to challenge the gender-biased norms and practices in ASGM sector in the early days proving that they were able to become pit diggers, breaking down feminine-masculine constructions.</td>
</tr>
<tr>
<td>Access</td>
<td>It is difficult to gain access to training / capacity building, information, economic empowerment, new technological skills, quality health services, formal financial institution services, social protection and village forums.</td>
</tr>
<tr>
<td>Welfare</td>
<td>Income obtained from gold mining (money) does not have a positive correlation with the welfare of women miners and their families. Women carry multiple burdens, health risks, do not have alternative livelihoods, live with poor sanitation, have low education and are vulnerable to gender-based violence.</td>
</tr>
</tbody>
</table>
8.5.4 Different Roles of Women and Men in ASGM Value

The result of the study showed that women and men have distinct but complementary roles and tasks in both gold production and in the marketing phase men have more control and benefits from them. Women in the ASGM sector communities are responsible for all domestic duties which curbs their capabilities to improve their socio-economic status. Domestic work includes preparing meals, laundry, cleaning, household maintenance and personal care. It is regularly noticed that women’s domestic work is disregarded and is categorized as an unpaid job. The massive time invested by women in household work appears to have a far greater value than the quantity of time spent by them in earning income through mining work. The unsanitary gold processing conditions, that were located at around the people’s houses and a lack of knowledge on chemical exposure while pouring the mercury into the ball-mills or mixing the mercury in panning and burning the amalgam exacerbates the probability of health and safety problems. Amidst this difficult situation, women tend to be more vulnerable to mercury and hazardous chemical exposure.

Women perform the foremost toxic jobs since they think it does not require strength. However, in some area’s, women are also carrying the rocks from the mining sites to the processing plants. They are not only exposed to the misuse of mercury but also to injuries as the result of being hit or struck by an object during the manual crushing using hammer to reduce the size of the ore rocks. Stress due to dust and noise pollution worsens their health conditions. Often, they also work with their children or babies nearby.

8.5.5 Different Access and Control over Productive Resources that Contribute to Gender Inequality

The challenge in comparing men’s and women’s productivity in ASGM lies in the measurement of gold processing and marketing activities. A related conceptual issue is how to measure the separate productivity of men and women especially when they are typically working alongside one another as part of complex family or group enterprises. As a practical matter, it is becoming more challenging when we try to disentangle the productivity of individuals within the domestic work of the miners family, especially when gender roles and norms assign women and men to different tasks. Even though in reality they make an economic contribution to the family, women are not identified as “miners” and therefore, in many cases women were not involved in new technology training and other capacity building activities.

The role of male miners dominates the existence of women as miners, and as a villager, most of them positioned at the lowest level and are considered not to have legality and capacity to attend village forums. As the majority of the miners group have a migrant status (no formal identity card) and work in illegal sectors, access to various economic strengthening programs are limited. Financial services become even further out of reach. All women in miner groups at the seven (7) project sites which are the main subjects of this study, perform work ranging from hauling stones, crushing stones manually, panning, mixing mercury, washing sacks and cooking for male miners. They do not operate heavy equipment and hardware. Incorporation of local knowledge and skills for women that is oriented towards technology will provide opportunities to explore the application of innovative technologies that are developed locally and are gender friendly.
8.5.6 Facing the Problems

The PlanetGOLD project will support the development and strengthening of gender sensitive policies for ASGM. The project places gender equality as one of the important elements to ensure the intervention will equally benefit men and women through gender mapping, recognition of the capacity and vulnerability of men and women’s roles at project sites. On the ground, the project need to work with multiple stakeholders to empower women. The project should develop a guidance on gender mainstreaming in ASGM project sites which aims to create practical guidance on how to address gender inequalities related to the ASGM management in Kenya. The project team should work with relevant authorities to develop financial mechanism with innovative gender sensitive innovative financing to access mercury-free technologies and to develop equal market routes at the gold supply chain. Also support the establishment of women miners’ cooperative to stimulate their economic and livelihood’s empowerment. Through the project, it should be ensured that all men and women grow together to participate and access all resources equally in the ASGM project sites.
SECTION 9
CONCLUSION AND POLICY RECOMMENDATIONS

9.1 Conclusions

9.1.1 ASGM Related Policy and Legal Framework at National and Project Counties

Cultural aspects have since neglected women’s participation in the mining rhetoric but evidence has shown that women have always been part of the mining workforce. Women have been primarily involved in the crashing, washing, panning, sieving, sorting, mercury-gold amalgamation, amalgam decomposition and in some instances actual mining. Women are also very active in the provision of other goods and services centered around mining communities such as vending, transporting dirt and ore, cooking etc. just to mention a few.

The exclusion of women from the mining sector has also been influenced by the traditionally infused social constraints which have seen women banned from main mining activities due to myths that the minerals will disappear when a woman is in her menses or the discriminatory customary practices that hinder or limit women from owning or inheriting land. This further increase their vulnerability in the industry. There is also a prevailing patriarchal ideology that mining is a man’s job thereby obstructing crucial information from trickling down to the women miners.

Women are also engaged in labor-intensive unpaid domestic care work that takes up time that could have otherwise been utilized in productive ASGM activities. Being predominantly engaged in gold ore processing activities, more women than men come into contact with the highly hazardous chemicals such as mercury which is in the amalgamation of gold. Moreover, unproportionate access and ownership of assets compared to their male counterparts precludes or limits women’s access to capital and financing from mainstream financial institutions. Besides, investors and creditors prefer to enter into contracts with the landowners who are mostly men.

9.1.2 Gaps, Clarities and Overlaps in the ASGM-Related Policy and Legal Framework

The Mining regulations are informed by provisions on gender equity set out in the 2010 Constitution which espouses equity, social justice, equality, non-discrimination and protection of marginalized groups as key national values and principles of governance. It also places an obligation on the State to enact and implement legislation that protects the fundamental rights and freedoms of citizens in accordance with international obligations and also ensure that State organs and public officers address the needs of vulnerable groups within society including women. All public bodies and mechanisms established under the Mining Act for the effective and efficient utilization of mineral resources are obligated, in carrying out their respective mandates, to fulfil these constitutional gender equity obligations.
Apart from the Constitution which is gender transformative, the mining laws and regulations in Kenya have largely been gender neutral, that is, without express affirmative provisions to encourage and foster women engagement in ASGM. This include permits and fees charged that are gender blind. Mining Act 2016 and its enabling regulations are all gender blind.

However, gender-sensitive or progressive provisions are in: Community Development Agreement Committee Guidelines, 2021; Mining (National Mining Corporation) Regulations, 2017; and, Mining (Use of Local Goods and Services) Regulations, 2017. Community Development Agreement Committee Guidelines, 2021 requires mining licensee and the community to establish a community agreement through a Committee that is composed of women, youth and persons with disability. The agreement is also to address special programmes that benefit women, youth and persons with disabilities. However, this applies only to LSM.

The Mining (National Mining Corporation) Regulations, 2017 requires that employment of the employees of NMC takes into consideration ethnic, regional balance and gender parity. The Mining (Use of Local Goods and Services) Regulations, 2017 requires gendered procurement plan for a mining licensee which should prioritize purchase of goods and services from Kenya. However, this applies only to LSM.

Though the Mining Act 2016 is not expressly clear on the gender composition of the Artisanal Mining Committee members, it was established that the three elected officials by the association of artisanal miners in a county must observe the two-third gender rule.

The guiding principles of the Mining Policy include a goal of ensuring access to justice, gender equity and inclusiveness with an objective to provide a framework for gender mainstreaming. The Mining Policy recognizes that women are disadvantaged in access to and control over resources, productive assets, participation in decision-making processes and access to information technology and limited knowledge of enterprise development in relation to mining activities. The Mining Policy also acknowledges that women are often overlooked by initiatives and development programs directed at transforming the mining sector and commits the Government to further the issues of women in mining by developing and implementing frameworks, structures and mechanisms that ensure equitable participation, ownership and decision-making mining value chains by women.

Strategy 12 of the Mining and Mineral Policy addresses the development and implementation of frameworks, structures and mechanisms that ensure equitable participation, ownership and decision-making mining value chains by women, youth, and disadvantaged groups. Various initiatives have been introduced in line with these provisions of the Mining Policy to enhance the experience of women in the mining sector. These initiatives include the setting up of the offices of gender officers in the Ministry of Mining to ensure gender is mainstreamed in all aspects of the Ministry of Mining’s operations. In addition to this, women in mining also stand to benefit from other Government policies such as the 30% procurement rule and financing initiatives such as the WEF, through which they can access business opportunities and address financing challenges respectively. This assignment shall conducted a comprehensive primary and secondary study of the gender dimensions of the Mining Act, policy and regulations.

Thematic 3.4 of Artisanal Mining Strategy 2021-2025 on gender opines of an engendered artisanal mining sub-sector. It roots for implementation of interventions such as: eliminating barriers and
enhancing opportunities for meaningful participation of women throughout the entire mining cycle in artisanal mining; sensitization on gender mainstreaming and related policies across the entire mining cycle in artisanal mining; provision of organizational and technical support to gender-based groups; and, encouraging gender sensitive micro grant scheme open to mining cooperatives to formalize their activities.

ASGM women have benefited from gender-aware policies such as the National Land Policy (2009) which recognizes women’s rights to own property on an equal basis with men. Other enabling legislation on the land question are Matrimonial Property Act, 2013 which safeguards women’s property rights during and upon the dissolution of the marriage; the Marriage Act, 2014 that gives effect to constitutional provisions on equality between parties to a marriage; and the Land Act and Land Registration Act which secure women’s rights to land. Sexual Offences Act, 2006 outlaw specific forms of violence against women in the mining and processing sites.

9.2 Policy Recommendations

Institutionalize a periodic (annual) gender disaggregated data of gold miners from artisanal to large scale which is currently lacking policy planning and budgeting. There should be a more gender-sensitive workplace environments to ensure women achieve their potential at work in the mining sites such as protective clothing and accommodations during pregnancy. Currently, the underground mining pits are unconducive for women for lack of a women washroom etc.

There should be different categories of licenses, fees and permits with differentiated requirements so that it is easy for women to obtain and meet the criteria for a licensing. Encourage female miners to form women-only cooperatives and associations with the potential to aid successful capacity building and ultimately encourage formalization and more responsible mining practices. This is being practiced in Kakamega County which has led to increase in women-owned mining pits.

There is need to identify male gender champions in ASGM communities to raise awareness on gender and change the community attitude towards women working in the mines. There is also need to provide increased technical support to mining institutions and associations such as ASM Cooperatives to do gender mainstreaming of their internal and external operations.

Prioritize women’s participation and training including within formalization efforts, to address gender inequalities at ASM sites. This training could include sensitzation and training programmes and the establishment of basic, simple organizational policies, codes of conduct and rules (environmental, occupational and labour related) with gender mainstreamed throughout. The training could help address a multitude of issues identified herein, including rights issues of workers related to SGBV, gender inequalities and exploitation of vulnerable groups.
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APPENDICES

Appendix I: National and County Regulations
Data Collection Tool

The Ministry of Environment and Forestry seeks to assess the existing policies and regulatory frameworks that impact gender dimensions in the Artisanal Small-Scale Gold Mining (ASGM or ASM) sector. The scope includes: national and relevant county policies, laws and regulations that impact gender dimensions and consultation with key stakeholders at national and county levels in the ASGM sector.

The aim of the exercise is to ensure equal access for both men and women to decent and productive work in conditions of freedom, equity, security and human dignity in the ASGM Sector. You have received this questionnaire, you being one of the key stakeholders in the ASGM.

Kindly fill your responses in the space provided or clicking on the box ☒ as appropriate.

Part 1: General Information

Title of the legislation / policy / regulation / programme: ..........................................................................................................................

Policy area: ..............................................................................................................................................................................................................

Groups / Persons likely to be affected by the legislation / policy regulation / programme

  - Men
  - Women
  - Other (specify)

Person interviewed during assessment

Name .................................................................................................................. Position ..............................................

Name of Institution / Organization ................................................................................................................................................................

Gender: Male .................................................. Female.................................................................
Part 2: Assessment Areas

A. Commitment to gender equality

1. Is the integration of gender equality in programmes/projects mandated in your organization?

   Completely / Sufficiently / Insufficiently / Not at all

   Remarks: ..............................................

2. Prior to designing the policy, was sex-disaggregated data collected and considered regarding those likely to be affected?

   Yes / No / Don’t know

   Remarks: ..............................................

3. Did the data show gender differences or gender interactions with the following socio-economic variables:

   - Age
   - Education
   - Ethnic origin
   - Family status
   - Income group
   - Others (please specify):

4. Does your organization have a written policy that affirms a commitment to gender equality?

   Yes / No / Don’t know

   If Yes, does your organization’s gender policy have an operational plan that includes clear allocation of?

   Responsibilities; Yes / No / Don’t know

   Funds; Yes / No / Don’t know

   Time and resources for monitoring and evaluation; Yes / No / Don’t know
B. Organizational culture

1. Does your organization encourage gender transformative behaviour, for example in terms of language used, jokes and comments made?
   
   Always / Usually / Seldom / Never

2. Are gender issues taken seriously and discussed openly by all people regardless of gender in your organization?
   
   Always / Usually / Seldom / Never

3. Is there a gap between how staff of different genders in your organization view gender issues?
   
   Yes / No / Don’t know

4. Have specific needs of women and gender issues been identified, considered and integrated in the policy?
   
   Yes / No / Don’t know

5. Do you think women participants in the ASGM sites have equal standings with their male counterparts?
   
   Completely / Sufficiently / Insufficiently / Not at all

C. Accountability

6. Does your organization implement focused programmes for the following groups?
   
   Women and girls
   Men and boys
   Transgender individuals
   All the above

7. Does your organization implement programmes on primary prevention of sexual and gender-based violence (SGBV)?
   
   Yes / No / Don’t know

8. Does your organization collect data on specific indicators that include a sex/gender dimension?
   
   Yes / No / Don’t know (If Yes, please give example(s))
9. Over the past two years, has your organization made significant progress in mainstreaming gender into your operations and programmes?

Yes, very much / Yes somewhat / Not enough None / Not sure

10. Over the past two years, has your organization experienced any successes in integrating gender in programming or other aspects of work?

Yes / No / Don’t know If Yes, please explain briefly (write in response)

11. Over the past two years, has your organization experienced any challenges in integrating gender in programming or other aspects of work?

Yes / No / Don’t know If Yes, please explain briefly (write in response)

D. Technical capacity

12. Are there staff responsible for gender awareness/mainstreaming in your organization?

Yes / No / Don’t know

If Yes, how many staff have gender awareness/mainstreaming responsibility?

13. Are all these staff sufficiently capable to carry out their work with gender awareness/ mainstreaming regarding their knowledge, skills and attitudes?

Yes, all of them / Yes, most of them Only a few of them / None of them

14. How often is training undertaken on gender competencies?

Once in two years or less frequently / Yearly Quarterly / Biannually / More frequently

15. In your opinion, what do you think your organization can/should do more of to mainstream gender equality?
(Include any additional workplace gender issues or capacity building issues that you consider important but not yet taken up by your organization.)

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16. How would you classify this policy framework/regulation/legislation?

Gender blind ........................................ Gender neutral ........................................

Gender sensitive ..................................... Gender transformative ............................

Thank You

Appendix II: Mining Community Data Collection Tool

The Ministry of Environment and Forestry seeks to assess the existing policies and regulatory frameworks that impact gender dimensions in the Artisanal Small-Scale Gold Mining (ASGM or ASM) sector. The scope includes: national and relevant county policies, laws and regulations that impact gender dimensions, and consultation with key stakeholders at national and county levels in the ASGM sector.

The aim of the exercise is to ensure equal access for both men and women to decent and productive work in conditions of freedom, equity, security and human dignity in the ASGM Sector.

You have received this questionnaire, you being one of the key stakeholders in the ASGM.

Kindly fill your responses in the space provided or clicking on the box ☒ as appropriate.

Part 1: General Information

1. Mining Site
2. Area
3. Name of miner/mine worker/dealer?
4. Age of respondent?
5. Marital status (tick one):

   Single [ ]  Married [ ]  Divorced/separated Widowed [ ]

6. Level of education (schooling) (tick one)

   None
   Primary
   Secondary
   Tertiary
   (college)/Diploma
   University
7. How much do you earn on average per day?

8. How does this compare to the male of same rank/position?
   - More [ ]
   - Same [ ]
   - Less [ ]

9. Are you the head of the household/breadwinner?
   - Yes [ ]
   - No [ ]

**Part II: Roles and Responsibilities**

10. What is your role in the mining operation (tick one)?
    - Owner [ ]
    - Worker [ ]
    - Buyer [ ]
    - Other (specify) ...........................................................

   a. If owner, do you have a valid mining license/permit?
    - Yes [ ]
    - No, expired [ ]
    - No, never had [ ]
    - Other (specify) .............................................................

11. Nature of work (tick all that apply)
    - Miner (digger) [ ]
    - Processor [ ]
    - Carrier of ore [ ]
    - Carrier of water, firewood [ ]
    - Food distributor/cook [ ]
    - Any other .................................................................

12. Mining method (tick all that apply)
    - Open pit[ ]
    - Underground [ ]
    - Use of explosives [ ]
    - Any other........................................................................

13. Equipment used for mining (tick all that apply)
    - Hand tools (e.g., shovel, pick) [ ]
    - Mechanized (e.g., excavator) [ ]
    - Pumps [ ]
    - Any Other.........................................................................

14. Processing method Crushing [ ]
    - Washing [ ]
    - Panning [ ]
    - Chemical (specify) [ ]
    - Any other ........................................................................
15. Equipment used for processing:

- Own-crafted tools (e.g., shaker box) [ ]
- Bought mechanized tools (e.g., shaking table) [ ]
- Any Other: .................................................................

16. When do you work?

- Which hours in the day ............................................................
- Which days in a week .............................................................

17. How many years have you been in mining? ..........................................................

18. How many on average people work at the mining operation?

<table>
<thead>
<tr>
<th>ROLE</th>
<th>MEN</th>
<th>WOMEN</th>
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</thead>
<tbody>
<tr>
<td>Miner (Digger)</td>
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<tr>
<td>Processor</td>
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<tr>
<td>Buyer</td>
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<tr>
<td>Carrier Of Oreo</td>
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<tr>
<td>Carrier Of Water, Firewood ATER, FI</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food Server/Cook</td>
<td></td>
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</tr>
</tbody>
</table>

Men ..........................................................................................................
Women ..................................................................................................

a. How many men work in the following categories?

19. When do you do domestic work?

- Which hours in the day .........................................................
- Which days in a week .........................................................

20. Where do you sell your products?

- Licensed buyer [ ]
- Unlicensed buyer [ ]
- Other (specify) ..................................................................................
PART III: ASSETS AND RESOURCES

21. What natural capital assets do you have access to (tick all that apply)?

- Mineral deposits [ ]
- Water [ ]
- Forests/firewood used in mining [ ]
- Land [ ]
- Other (specify) ................................................................................................................

22. What financial capital assets do you have access to (tick all that apply)?

- Credit [ ]
- Savings in cash/mpesa [ ]
- Savings in livestock, harvests etc [ ]
- Savings in Bank/SACCO [ ]

23. What constraints do you face in accessing finance? .................................................................................................................................
......................................................................................................................................................
......................................................................................................................................................

24. Do you feel excluded from accessing assets because you are woman:

- Yes [ ]
- No [ ]

25. What constraints do you face in accessing county government services as a stakeholder in mining (tick all that apply)?

- Poor infrastructure [ ]
- No extension services [ ]
- Sex/gender [ ]
- Unexplainable/general neglect by the government [ ]
- Other (specify) ............................................................................................................................

26. What information do you lack in accessing assets (tick all that apply)?

- Mineral deposits areas [ ]
- Laws and regulations [ ]
- Markets (illegal trade, poor prices) [ ]
- Other (specify) ............................................................................................................................

PART IV: POWER AND DECISION MAKING

27. What decision making do you participate in at the mining operation (tick all that apply)?

- None [ ]
- Access to mineral deposit [ ]
- Production [ ]
- Selling [ ]
- Sourcing inputs [ ]
- Waste disposal [ ]
- Other (specify) ..........................................................................................................................
28. What decision making do you usually control in the household (tick all that apply)?

 None [ ] Household expenditure [ ]
 Income-generating activities [ ] Family care [ ]
 Sourcing water and energy[ ] Trading-up decision [ ]
 Other (specify) ..........................................................

29. Are you a member of the artisanal mining cooperative?

 Yes [ ] No [ ] Other (specify) ..........................................................

30. What decision making do you usually participate in at the mining community level (tick all that apply)?

 None [ ] Selecting political representation [ ]
 Consultation in review and development of community initiatives [ ]
 Other (specify) ..........................................................

31. What decision making do you participate in at the county government level e.g. setting of mining licensing fee and other laws affecting mining in your area?

 None [ ] Consultation in review and development policy, by-laws, programs [ ]
 Other (specify) ..........................................................

32. What constraints do you face in decision making at the county government level (tick one)?

 None [ ] Exclusion [ ] No consultation [ ] Inadequate consultation [ ]
 Other (specify) ..........................................................

33. Have you been consulted by the National Government in reviewing and developing mining policy, laws, regulations, programs?

 Yes [ ] No [ ]

a. How about on setting the permit and licensing fees?

 Yes [ ] No [ ]

34. What constraints do you face in decision making at the national government level (tick one)?

 None [ ] Exclusion [ ] No consultation [ ] Inadequate consultation
 Other (specify) ..........................................................
PART V: MINERS’ NEEDS, PRIORITIES, AND PERSPECTIVES ON SERVICE DELIVERY

35. What are miners’ practical gender needs (tick all that apply)?

- Training to improve skills [ ]
- Improved income from ASM [ ]
- Equipment and technology for ASM [ ]
- Health and safety in ASM [ ]
- Information and services to optimize benefits from ASM [ ]
- Alternative livelihoods [ ]
- Other (specify) ..................................................................................................................................................

36. What are miners’ strategic gender needs (tick all that apply)?

- Equitable access to assets [ ]
- Dealing with migration due to ASM [ ]
- Equitable access to capacity-building programs [ ]
- Participation in review and development of policies, laws, programs [ ]
- Capacity for collective organization [ ]
- Formalization of ASM [ ]
- Other (specify) ..................................................................................................................................................

37. How can men’s and women’s access to gold mineral deposits and services (production and marketing) be improved (tick all that apply)?

- Decentralization of mining administration offices [ ]
- Adaptation of regulations [ ]
- Provision of information Access to finance [ ]
- Other (specify) ..................................................................................................................................................

38. Are there women only miners’ association in your area?

- Yes [ ]
- No [ ]

PART VI: SOCIAL /CULTURAL CONTEXT

39. Which structures (social, cultural, economic, institutional, and legal) that affect ASM must be transformed to improve the livelihood outcomes of women and men (tick all that apply)?

- Government departments, agencies, and parastatals [ ]
- Law enforcement and judiciary (courts) [ ]
- Traditions and customs, perception about women in mining [ ]
NGOs, civil society, and community organizations [ ]
Miners’ associations [ ]
Research institutions and service providers, including financial institutions [ ]
Other (specify) ..............................................................................................................................................................

How can the structures that affect ASM be transformed (tick all that apply)?
Increase number of women in structures [ ]
Decentralization of the structures [ ]
Improve their accountability [ ]
Other (specify) ..............................................................................................................................................................

40. How can the formal processes (policies, legislation, programs) that affect ASM be transformed (tick all that apply)?
Increase participation in the review of policies, laws, and programs [ ]
Development of new policies, laws, and programs [ ]
Awareness raising [ ]
Other (specify) ..............................................................................................................................................................

41. How can the informal processes (cultures, norms, and values) that affect ASM be transformed (tick all that apply)?
Supporting change in norms, values, and cultures [ ]
Review traditional, indigenous, and community rights [ ]
Awareness of legal and social rights [ ]
Other (specify) ..............................................................................................................................................................

42. Rate your understanding of the laws that affect rights to access gold mineral deposits and mining?
0 [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5 [ ]

43. Should the laws be changed to improve the access of men and women in ASM to mineral deposits?
Yes [ ] No [ ]
a. How? ..............................................................................................................................................................

44. Do environmental and health impacts of ASM affect women more than men?
Yes [ ] No [ ]
45. Are there enough women in the county government structures that influence ASM?

Yes [ ]   No [ ]

46. Are the mining administration offices close enough for you?

Yes [ ]   No [ ]

47. Is it easy for you to comply with the mining law?

Yes [ ]   No [ ]

48. Are you comfortable dealing with law enforcement agents and courts?

Yes [ ]   No [ ]

49. Any other comments to improve women participation in artisanal and small-scale gold mining operations?

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Appendix III: Key Informant Interviews
- Mining Association Leaders

1. Are male and female mine workers trained on gender equality?

2. What is the gendered division of labor: roles, activities, work, and responsibilities of women and men in the mining (ASM)?

3. Do men or women have restrictions on their mobility (rise in ranks)?

4. What types of leadership roles do men and women play?

5. What are men’s and women’s different experiences with violence — as victims, survivors or perpetrators?

6. What employment opportunities are open to men? What employment opportunities are open to women?

7. How do men’s wages compare to women’s? Do men and women working at the same level and in the same cadres receive equal pay or wage?

8. What are the social beliefs and perceptions that shape the working environment in ASM?

9. How rampant are the cases for sex for work or wages in ASM?
10. Does the Association or organization have a code of conduct and reporting mechanisms that cover sexual harassment in the mines? How about the Association?

11. Are there laws and policies preventing stigma and discrimination based on gender in the ASM?

12. Are there mechanisms in place for registering and addressing practices that are gender discriminatory or inequitable?

13. Are there rules that govern use of child labour in the mines?

14. Apart from the national and county government, what other NGO, CBO do you work with in ASM?

15. Do the women in the organization or association have the power to shape policies?

16. Are messages, illustrations, and other media presentations free of gender stereotypes and biases?

17. Are men and women equitably involved in program planning in the organization?

18. Are men and women represented equally in leadership posts?

19. Do advocacy guidelines incorporate attention to gender equality?

20. Comment on the women in mining association model? Do you think it is good model?
Appendix IV: Key Informant Interviews - County Government

1. What are the county enacted or domesticated policies on, related to or affected mining and ASM?

2. Where are the gold mining sites in the County are [provide a list of the LSM and ASM]?

3. Is there a policy on gender equality and/or non-discrimination based on gender in the mines?

4. Are the county fees and charges affecting ASM cognizant of the gender differences in men and women?

5. What do you think are the main barriers to women’s full participation in ASM?

6. Comment on the women in mining association model? Do you think it is good model?

7. What roles do marginalized groups especially women normally do in ASM? And why those roles?

8. Are there any laws or policies that support marginalized groups especially women’s full participation in mining?

9. Are there any support services and institutional mechanisms promoting women in mining in your county [probe from Government, NGOs, Mining Companies & Other Institutions]?
1. What is the gendered division of labor: roles, activities, work, and responsibilities of women and men in the mining (ASM)?

2. Discuss the level of women participation along the mining value chain [illustrate the value chain stage by stage]? What are the average number?

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<tr>
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<tr>
<td>FOOD SERVER/COOK</td>
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</table>

3. What types of leadership roles do men and women play in the mining site?

4. What are men’s and women’s different experiences with violence— as victims, survivors or perpetrators?

5. What employment opportunities are open to men? What employment opportunities are open to women?

6. How do men’s wages compare to women’s?

7. What are the social beliefs and perceptions that shape the working environment in ASM?

8. How rampant are the cases for sex for work or wages in ASM?

9. Does the mining site have a code of conduct and reporting mechanisms that cover sexual harassment?

10. Are there rules preventing stigma and discrimination based on gender in the ASM?
## APPENDIX VI

### LIST OF INTERVIEWEES AND RESPONDENTS

<table>
<thead>
<tr>
<th>No</th>
<th>Name</th>
<th>Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Timothy Mukoshi</td>
<td>Chairman, Western Kenya ASM Federation; Chairman, Kakamega Mineral Mining Group</td>
</tr>
<tr>
<td>2</td>
<td>Dan Odida</td>
<td>Secretary, Micodepro Sacco Society Ltd</td>
</tr>
<tr>
<td>3</td>
<td>Bismarck Onyando Ndisio</td>
<td>Coordinator, Migori County Miners Association</td>
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<tr>
<td>4</td>
<td>Symon Jaramba</td>
<td>Former Chairman, Lolgorian Farmers of Gold</td>
</tr>
<tr>
<td>5</td>
<td>Justus Olima</td>
<td>Environment Officer, Migori County</td>
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<tr>
<td>6</td>
<td>Everline Onyango</td>
<td>Environment Officer, Policy Coordination, Migori County</td>
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<td>7</td>
<td>Eng. Peter Katiku</td>
<td>Ministry of Petroleum and Mining</td>
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<td>8</td>
<td>Rosemary Mwambui</td>
<td>Youth and Gender Officer</td>
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<tr>
<td>9</td>
<td>Job Onyancha</td>
<td>Inspector of Mines at Ministry Of Mining Kenya</td>
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<td>10</td>
<td>Jeremy Ole Moonka</td>
<td>Secretary, Lolgorian Farmers of Gold</td>
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<td>11</td>
<td>Lynne Bunei</td>
<td>Legal Officer, National Mining Corporation (NMC)</td>
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<td>12</td>
<td>Samwel Too</td>
<td>Inspector of Mines, Kakamega, Ministry of Petroleum and Mining</td>
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<td>13</td>
<td>Kevin Musiega</td>
<td>Director Environment, Vihiga County</td>
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<td>14</td>
<td>Francis Ambale</td>
<td>Environment Officer, Narok County Government</td>
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<td>15</td>
<td>Catherine Mootian</td>
<td>Gender Officer, Narok County Government</td>
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<td>16</td>
<td>Peter Mathea</td>
<td>County Environment Safeguards, Kakamega County</td>
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<td>17</td>
<td>Aquila Lwanga</td>
<td>Officer Natural Resources, Kakamega County Government</td>
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<td>18</td>
<td>Lawrence Ndago</td>
<td>Association official - Migori</td>
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<td>19</td>
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