

Engendering regulation of artisanal and small-scale mining: Participation, protection and access to justice

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Abstract

This article argues that adopting a gender perspective when regulating artisanal and small-scale mining (ASM) is both necessary and achievable. The authors analyse women's often-ignored needs and experiences as workers, decision-makers and affected community members in the ASM sector. To address these concerns, standards are set out for regulating ASM in relation to guaranteeing women's access to services and information, and women's decision-making and representation; to address the specific risks women face in the sector; and to provide access to effective remedies. The authors use international instruments to identify good practice benchmarks from which legislators and policy makers can draw. The article also notes where global norms fall short of addressing women's rights in ASM. Some of the limitations of this approach are also acknowledged, notably the challenge of establishing gender-responsive laws that can be feasibly and effectively implemented. Nonetheless, the proposed approach should be favoured to better respond to the highly masculinised nature of the sector and the differentiated impacts of ASM on men and women while recognising women's roles as beneficiaries and productive agents of the sector.

Key words: artisanal and small-scale mining (ASM); women miners; women workers; gender-responsive legislation; legislative reform; gender equality

Introduction

Women are both beneficiaries and productive agents of artisanal and small-scale mining (ASM). At the same time, women face the adverse impacts of the sector in distinct ways from men. There has been increasing scholarship dedicated to gender and ASM.¹ There have also been important steps taken by international entities – including the International Labour Organisation (ILO), the United Nations Economic Commission for Africa, the Organisation for Economic Cooperation and Development (OECD), the African Commission on Human and Peoples’ Rights and the Inter-American Commission on Human Rights – to acknowledge, even if only in a limited manner, some of the gendered aspects of how ASM functions.² Yet, despite growing attention to women’s direct and indirect experiences of ASM, across the globe, our review of domestic and international efforts to formalise ASM illustrates that minimum standards to engender national regulation of the sector are found wanting.

The purpose of this article is to offer guidance, based on existing international instruments, on how to best engender legal frameworks regulating ASM, in the context of increasing pressure from international donors and States for formalisation of the sector.³ In order to ensure a gender perspective to national-level regulation, we offer benchmarks for gender-responsive legislation. Our reliance on international law and policy stems from its global applicability, its often binding nature when it comes to the obligations of States and its ability to provide solutions to many of the States in which ASM takes place. Our goal is for these benchmarks to inform the practices of both global and domestic law and policy makers. While acknowledging that several of the recommendations may face challenges when it comes to implementation, our ultimate goal is the enactment of gender-responsive legislation as a first step in a longer process of change in favour of women. The relative absence of international guiding instruments to undertake this exercise reflects our contribution to existing debates on gender and ASM.

This article sits within a larger project that makes a call for the law to play a greater role in addressing gender inequalities rather than maintaining the status quo.⁴ This broader project attempts to define and set out gender-responsive benchmarks in areas of the law often seen as not requiring a gender perspective.⁵ As elaborated further below, gender-responsive standards respond to the different needs and perspectives of both men and women on pivotal economic, social and political issues. As with finance, tax and trade, the mining industry is too often considered the domain of men, making legislation regulating this sector largely oblivious to gender disparities. This is sustained by discourses that naturalise the idea of men as workers in the industry.⁶

In the first part of this article, we offer some context on women's experiences of ASM. In the second, we explore limited success to date in engendering laws and standards in this sector both in domestic jurisdictions across the globe and in international law and policy. In the third and most significant section, we set out benchmarks, drawing from both binding international law and good practice (soft law) guidelines developed by global and regional bodies. We also identify issues that the academy has evidenced as relevant to women's experiences of ASM but that have been mostly absent from national-level regulatory efforts to date, and offer concrete ways in which future legislation can best address these concerns.

Women's experiences of artisanal and small-scale mining

ASM is a growing sector in many parts of the global South.⁷ In 2013, the International Institute for Environment and Development estimated that there are around 20 to 30 million artisanal and small-scale miners worldwide,⁸ with at least 100 million people – workers and their families – depending on ASM for their livelihood.⁹ At the same time, ASM is a complex industry and its nature varies globally. This in part explains the difficulty in determining accurate figures, but also why definitions of ASM differ from country to country.¹⁰ Common

characteristics include ‘low-tech, labour intensive mineral extraction and processing found across the developing world’¹¹ that encompasses ‘varying degrees of formality and legality’.¹²

It is generally accepted that women compose a significant part of the ASM sector.¹³ In some cases, like Guinea, women dominate the industry while in others they are likely to represent half of the ASM workforce (Madagascar, Mali and Zimbabwe).¹⁴ Even if women’s involvement and roles in ASM vary between locations and depend on the minerals being extracted,¹⁵ they tend to dominate panning, transportation and processing of minerals.¹⁶ Women also contribute indirectly to mining activities by providing an array of services on mine sites, consisting, for instance, of cooking, cleaning, and providing food and accommodation.¹⁷ Some women own mines and mining equipment or act as mineral dealers, but such roles are less documented.¹⁸

In most contexts, women do not work underground, some argue as a result of ‘myths around the entry of women in mines that are propagated to prove the unfitness of women.’¹⁹ Substantive laws too limit the possibility of women’s underground work,²⁰ including the ILO’s 1935 Underground Work (Women) Convention (C045),²¹ while some contemporary instances challenge these norms.²² The ILO Convention C045 is therefore one pertinent example that reflects the limits of international law in staying current and responsive to new trends and the ways in which global standards may play a role in regressing women’s status.²³ Making women’s work in the sector illegal, the authors propose, would constitute a gender-regressive approach to regulation of ASM.

The crucial roles of women in ASM make them major economic actors in the industry. ASM also represents an important source of livelihood and opportunities for women.²⁴ Yet, it also brings health and non-health related consequences, often gender-specific, for women. Substantial environmental and health-related threats are borne by women both because of the

particularly precarious tasks women perform (for instance panning mud and grinding rocks, which can lead to back injuries), and women's roles as primary carers (with household responsibilities exposing them to water polluted with toxic substances).²⁵ Women are also faced with overt discrimination attached to their outputs, which attract the lowest economic returns,²⁶ often as a result of the perceived 'unskilled' nature of women's work.²⁷ In some cases, female workers may not receive any wage at all.²⁸ A third impact of ASM is violence. The influx of predominantly male migrant workers in local communities that the industry brings²⁹ has been found to exacerbate violence against women – including sexual violence.³⁰ This phenomenon is also often accompanied by increased rates of women engaging in sex work that, if performed without adequate access to information and reproductive health services, can increase the spread of sexually transmitted infections (STIs).³¹

Efforts to regulate ASM from a gender perspective

The increasingly visible environmental, social and human rights adverse impacts of ASM, along with the recognition of the growing economic importance of the sector in the global South,³² have encouraged domestic and international rule-makers to undertake policy and legislative reforms in order to 'formalise' ASM.³³ ASM is regulated through complex networks based on personal relations between small-scale miners, traders, cooperatives, government officials and local leaders,³⁴ outside of the State's regulatory framework. Yet most governments and international institutions understand formalisation of ASM as its embodiment in a 'standardized legal framework that is registered in and governed by a central state system.'³⁵ There is a broad consensus among policy-makers and governments regarding the need for legal and transferable property rights for artisanal and small-scale miners as the basic condition for formalisation and, consequently, for economic growth.³⁶ This focus on formalisation as *legalisation* of ASM has been criticised as disconnected from local realities

and miners' interests,³⁷ and as largely fostering large-scale mining and therefore unlikely to be implemented.³⁸ While we recognise the inadequacy of purely top-down strategies to address the challenges and opportunities of ASM for numerous communities, in a context where States across the global South are increasingly implementing laws to formalise ASM, strong and consistent laws that directly respond to women's experiences are essential.

Nevertheless, state regulatory responses to formalise ASM and improve conditions in the sector have so far given inconsistent attention to women and to the gendered division of labour. In several ways, States are increasingly aware of and proactive in addressing the gender dynamics of ASM. The African Union's Africa Mining Vision, for instance, explicitly identifies the need to integrate gender equity in mining policies and legislation.³⁹ Similarly, the Minamata Convention on Mercury requires that State Parties include in their national action plans (NAPs) '[s]trategies to prevent the exposure of vulnerable populations, particularly children and women of child-bearing age, especially pregnant women, to mercury used in artisanal and small-scale gold mining'.⁴⁰

Despite some efforts at the international level, women still tend to be largely absent from ASM legislation around the globe. Laws on ASM in countries including Ghana,⁴¹ the Philippines⁴² and Peru⁴³ for instance make no mention of women's specific roles and experiences of ASM. Few African countries have been successful in addressing the contribution of and risks faced by women in their mining legislation, with women often featuring in the definitions only – if at all – without further elaboration in the law.⁴⁴ In fact, until recently, States have focussed on encouraging women to leave ASM and develop alternative livelihoods.⁴⁵ Yet, such approaches are likely to be economically non-viable for many women,⁴⁶ are inconsiderate of women miners' choices, and contribute to the 'historical and ongoing invisibility of women in ASM'⁴⁷ and their marginalisation from decision-making.

Second, even where some legislators have made an effort to make women's work in ASM more visible, the approach has remained discriminatory. Kuntala Lahiri-Dutt notably points out that laws that are designed to 'protect' women working in the mining industry tend to restrict their workforce participation and push them into more marginal and less secure forms of work in informal mining.⁴⁸ Examples are numerous, such as regulations preventing pregnant women from working in mine sites or commercialising minerals in the Democratic Republic of the Congo.⁴⁹ These provisions are justifiable given the health risks associated with certain mining activities but they act to exclude *all* pregnant women from ASM *irrespective* of the activities they carry out.

Given this context, in the following section, we turn to international law to identify the extent to which global standards can help to make domestic legislation on ASM gender-responsive. Indeed, international and regional lawmakers have developed a set of mostly non-binding instruments aimed at guiding States to regulate business activities and limit their adverse human rights impacts. A limited number of these instruments specifically address the mining industry, with some standards applying to ASM.

Unsurprisingly, these instruments are generally silent on the situation of women in ASM and contain very limited provisions that address the specific circumstances of women or recognise their productive roles in ASM.⁵⁰ In the following section, we identify these provisions and analyse their potential and limitations.

Turning to international law: Setting gender-responsive standards for good practice legislation

Here we seek to set out benchmarks for how domestic legislation can better achieve gender-responsive outcomes for women as workers, contributors, beneficiaries and affected

community members of ASM. We do so by offering good practice standards against seven criteria. These criteria are drawn from a larger project involving the development of a Gender Legislative Index,⁵¹ a tool that facilitates the evaluation of legislation by placing laws on a scale from gender-regressive to gender-responsive when set against global benchmarks.⁵²

The Gender Legislative Index, which provides the organisational framework for this article, uses standards derived from international law, with a particular focus on the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the only international human rights treaty dedicated to women's rights.⁵³ Importantly, it seeks to capture areas of law rarely considered when it comes to gender. The tool therefore addresses a wider and intersecting set of women's rights issues, for instance, laws on labour and reproductive health. The seven criteria used in the Gender Legislative Index and applied below are derived from CEDAW and from an analysis of all 37 of CEDAW Committee's General Recommendations, which are authoritative statements interpreting the treaty and supporting States Parties to understand their responsibilities.⁵⁴

The Gender Legislative Index aims at promoting gender-responsive legislation, defined as laws that facilitate accountability – in legislative and policy implementation – to the specific needs and interests of different sexes and to different gender perspectives of men and women on social, economic and political issues.⁵⁵ The enactment of such gender-responsive laws are the first step in the longer path towards change that indeed depends on effective implementation of such laws. While these proposals fall on the technocratic side, the authors also acknowledge the broader societal change needed to deliver systematic change, as there are limits to what the formal law alone can achieve.

As a multi-pronged issue, we also acknowledge that a range of non-ASM specific international laws is relevant, including standards governing labour and health. We have

therefore included below examples that go beyond the issue of ASM. Given the relatively limited attention to ASM in international law, we also draw upon a wider range of reports, documents, guidelines and principles from international and regional organisations that are relevant to ASM, including instruments from the ILO and the OECD, among others. Some of these instruments and the standards we have derived from them were not specifically designed to regulate ASM – but instead large-scale mining or general business operations. Yet they act as potential good guidance for drafting legislation in the context of ASM.

Benchmarks for the extractives industry: From services for women to gender-disaggregated data

Criterion 1: Non-Discriminatory and accessible, affordable and acceptable services

International law calls for the existence of and access to services for women, both in general and in specific situations such as for survivors of violence.⁵⁶ The Committee on Economic, Social and Cultural Rights (CESCR) has defined ‘access’ in the context of health as services that are available, non-discriminatory, physically accessible, affordable, provide adequate information, are acceptable (respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and lifestyle requirements, as well as respecting confidentiality), and of high quality.⁵⁷ In the context of ASM, the ILO has established one international standard, in relation to the availability of services in mines:

- The law should guarantee that women have access to sufficient and suitable facilities (toilets, showers, wash-basins and changing facilities) that are gender-specific.⁵⁸

Some countries, such as Nigeria, have included this international requirement in their domestic laws, although only applicable to ASM to a limited extent.⁵⁹ However, a number of other service-related standards should be considered to achieve gender-responsive legislation. They

include for example training in relation to the type of work specifically performed by women – such as on the health and safety risks associated with processing tasks or on the use of machinery and technology.⁶⁰ Reproductive health services are particularly pertinent. Heightened rates of STIs in areas where ASM takes place⁶¹ also mean that the standards set out in the International Covenant on Economic, Social and Cultural Rights on access to health care services are equally relevant in ASM and should be guaranteed in gender-responsive regulation of ASM. In addition, the ban of child labour in certain ASM certification schemes⁶² in practice prevents women from bringing their children to the mining areas, while implicitly vilifying women as causing child labour. To preclude such standards from restricting women’s participation in the workforce, they should be accompanied by legislation ensuring appropriate on-site childcare services, as well as schooling and transportation options for children. A broader set of standards related to labour would also include vocational training for women to increase their presence in this sector at all levels of leadership.

Criterion 2: Access to information and education

International law calls for women to have access to information about their rights for them to make informed choices. This is often framed around providing public information campaigns to raise awareness among both women and men.⁶³ With men in artisanal mining communities having greater access to technologies (radio, television, etc.),⁶⁴ women’s access to information concerning health and safety or training opportunities, and their public participation, are further limited.⁶⁵ Barriers to information and education undermine women’s economic opportunities where they may not be aware of ways to obtain capital or mining licenses, or lack the necessary skills to market products and manage business ventures.⁶⁶

The United Nations Economic Commission for Africa and Southern Africa Office have set out relevant standards:

- The law should provide for education programs that encourage the participation of women in technical and key disciplines of minerals development.⁶⁷
- The law should specifically provide for education programs and equal opportunities for women for training, as a way to ensure women's integration and the retention of women in the mining sector.⁶⁸

In addition to being critical in transforming gender stereotypes, increasing women's access to information and training leads to an increase in women's entrepreneurship⁶⁹ and participation in decision-making regarding ASM and their communities, addressing to a degree the invisibility women face. Adequate training and educational campaigns have also been associated with better understanding of small-scale mining techniques – and subsequent reduction of health and safety risks⁷⁰ – and better access to services for women including, for instance, programs on land management and business development.⁷¹

Criterion 3: Non-coerced and informed decision-making and protection of women's confidentiality

International law requires respect for women's decision-making in a manner that is informed, non-coerced and respectful of the right to confidentiality. In ASM, women are often left out of community consultation and decision-making,⁷² particularly in negotiations over land access and mineral rights.⁷³ This is despite women's input being critical for mining communities to make decisions for the benefit of all.⁷⁴ In addition, women's role as primary carers often inhibits their participation in community meetings and consultations when they are occupied with other household and subsistence responsibilities.⁷⁵ Consultations also tend to be held with heads of household – which, in some countries, is understood as being men⁷⁶ – and property or mine owners, where women are particularly underrepresented.⁷⁷ This situation results in women losing livelihood and economic opportunities, being excluded from resource management and being disproportionately affected by the environmental impacts of ASM.⁷⁸

At the same time, although not very visible in the literature, women's organisations in mining communities have been increasingly active in undertaking advocacy, lobbying, training, or support in times of crisis,⁷⁹ heightening the need for policies and laws to protect women's collective right to participate and be heard.

The OECD, the World Bank Group's International Finance Corporation and the Inter-American Commission on Human Rights have gone some way in setting out good practice standards that can be extended to ASM:

- The law should guarantee appropriate and effective consultation with relevant women community stakeholders, including establishing processes for engaging with women.⁸⁰ This may include via associations and networks of women in mining and other extractive industries,⁸¹ processes that specifically adopt a gender perspective,⁸² that take into account cultural and social norms⁸³ and that identify properly women impacted and their interlocutors.⁸⁴
- The law should guarantee the participation of indigenous women in decision-making processes related to extractive industries.⁸⁵

Again, reproductive health and labour standards for both paid and unpaid work prove relevant. CEDAW calls for recognition of the common responsibility of men and women in the upbringing and development of their children.⁸⁶ Yet, in reality, women still bear an unequal share of the care of children, as well as of unpaid domestic work and care of the sick and elderly. Legislation on ASM should require consultation processes to be timed flexibly to accommodate women's and men's other demands, including the care of children, sick and elderly. The outcomes of such consultation processes must also be disseminated to both women and men.

Some States have made progress on this front in their legislation on ASM. Examples include the Tanzanian Mining Act, which requires women to compose at least one third of the national Mining Advisory Board.⁸⁷ Although such measures apply to decision-making at a State level rather than at a community level, State's engagement and women's participation in national boards may advance the agenda for better inclusion of women in ASM.

Criterion 4: Promoting equal relations between men and women

CEDAW condemns discrimination between men and women and calls for appropriate legislation in response.⁸⁸ The CEDAW Committee demands that State Parties take active steps to promote equality of opportunities and experiences between men and women,⁸⁹ including through temporary special measures.⁹⁰ Several existing standards help inform the promotion of equality between men and women. Some of these are regional in nature (e.g. the United Nations Economic Commission for Africa, and Southern Africa Office), others emerge from global efforts to advance the respect for human rights by businesses (e.g. United Nations Global Compact Office and UN Women) while others specifically address ASM (e.g. Yaoundé Vision on Artisanal and Small-Scale Mining):

- The law should promote gender awareness and empowerment programs for men and women aimed at removing gender stereotypes and cultural barriers preventing women's participation in mining,⁹¹ and at improving women's conditions in ASM.⁹²
- The law should encourage the identification of women leaders in ASM communities, for instance, to stimulate alternative income generating activities.⁹³
- The law may include affirmative action policies to foster the inclusion of women in technical and other key disciplines.⁹⁴
- The law should recognise associations of women in mining.⁹⁵

- The law should guarantee equal opportunities for women with respect to employment.⁹⁶

Criterion 5: Protection from vulnerability linked to gender

The CEDAW Committee has called on States to protect women against the risks of exploitation that arise due to their gender.⁹⁷ Women's experiences of ASM illustrate their position as productive agents (as workers and decision-makers) but also their specific exposure to risks in this industry. To a degree, existing regional and global standards address some of these risks:

- The law should incorporate international human rights and safety and environmental standards that are particularly relevant for women and address the specific risks they face in the context of ASM.⁹⁸

As argued earlier, ASM is often associated with increased rates of violence against women, justifying specific regulatory measures protecting women against all forms of violence. Two general standards are relevant in that regard:⁹⁹

- The law should identify the different risks that may be faced by women and men in extractive industries. This includes recognising the particular experiences of indigenous women,¹⁰⁰ including the specific health risks¹⁰¹ and risks of sexual violence they face.¹⁰²
- The law should contain provisions on gender-based violence, including conflict-related sexual violence.¹⁰³ Such provisions should include a duty from States to address women's rights in conflict-affected areas.¹⁰⁴

The narrative linking conflict mineral and sexual violence is largely used by international policy-makers but has been known to have negative consequences in some ASM communities.¹⁰⁵ These include discrimination against populations other than women and, at times, the use of sexual violence by armed groups as a bargaining tool.¹⁰⁶ The drafting of laws addressing the risks of gender-based violence in ASM needs to respond to this reality and

provide for extensive human rights assessments. For instance, recognition of the increased rates of transactional sex/sex work in and around ASM sites should be linked to guarantees of access to sexual and reproductive health services and information in these areas.

Criterion 6: Access to justice

CEDAW demands women's access to adequate remedies. This includes effective complaint procedures and remedies such as compensation.¹⁰⁷ In instances where women's participation in ASM is considered 'illegal', the avenues to access justice are severely reduced.¹⁰⁸ In response, ASM regulations could incorporate the following standards, learning from broader regulation of the extractive industry:

- The law should provide for punitive measures aimed at discouraging discrimination against women in the extractive sector.¹⁰⁹
- The law should ensure that women have access to affordable, accessible and timely remedies – with legal aid and assistance as necessary – in front of competent and independent national tribunals or other public institutions in their discrimination complaints against private enterprises.¹¹⁰
- The law should provide for the creation of effective independent mechanisms with the power to investigate alleged violations of the rights of women by national enterprises.¹¹¹
- The law should provide for ways to address imbalances between parties to business-related claims and additional barriers faced by women before State-based judicial and non-judicial grievance mechanisms.¹¹²
- The law should provide for mechanisms to enforce sanctions and guarantee remedies when women are discriminated against by private enterprises.¹¹³

- The law should require extractive companies to facilitate remedies, such as compensation for assets, that both men and women can access and benefit from.¹¹⁴

Effective training for judicial and non-judicial stakeholders on the roles and experiences of women in ASM, as well as education on the gender biases that characterise the sector and related institutions, is also important. In light of the tendency for ASM to take place in remote areas situated out of the reach of urban centres,¹¹⁵ gender-responsive legislation should provide for justice mechanisms in geographical proximity with ASM communities and ensure that information on actions available is broadly disseminated.

Criterion 7: Comprehensive monitoring of the situation of women

Globally, the need to collect data to understand better the needs and experiences of women and girls has long been acknowledged, with a preference for sex- and age-disaggregated data.¹¹⁶ For instance, in the context of work, CEDAW has called for studies and job evaluation systems based on gender-neutral criteria that facilitate the comparison of the value of those jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate.¹¹⁷ The CEDAW Committee has also called for statistical data on the incidence of violence of all kinds and on women who are the subjects of such violence.¹¹⁸ Accurate data on the needs and experiences of women in ASM is extremely scarce. This has been called for, to a degree, in the context of large-scale mining:

- The law should provide for the monitoring and evaluation of activities that incorporate gender-specific indicators.¹¹⁹
- The law should provide for specific targets and their annual monitoring on the number of women recruited in senior positions at ministries of mines, schools of mines and mining companies.¹²⁰

- The law should require business enterprises to assess and track the human rights impacts of their corporate activities and progress using gender-disaggregated data.¹²¹

Concluding remarks

Globally, we are increasingly seeing the enactment of laws to regulate and legalise ASM. This is an opportune moment to ensure that such domestic legislation and related policies are engendered at the outset, meaning that they acknowledge and respond to the depth of structural inequality that is experienced in ASM by women as workers and affected community members. In this article, we have identified how some of the existing international and regional standards that address mining and business activities can help inform the domestic regulation of ASM, as has been demonstrated with the above seven criteria.

A gendered response to ASM could see women having better access to gender-responsive services, and be better protected from the specific vulnerabilities associated with their roles in ASM. Over time, access to increased training and leadership opportunities could facilitate women's access to microcredits, mining licences, business development and their enjoyment of improved health and safety practices. Legislation integrating gender considerations could enhance women's opportunities to actively engage in decision-making on public policy issues facing women at both State and community levels. Simultaneously, gender-disaggregated data collection in ASM will prove essential to better understanding women's experiences of the sector and the effectiveness of legislative responses.

Although this article advocates for gender-responsive initiatives that legalise ASM, a top-down regulatory approach on its own is not enough to ensure the equality of women and men in the sector. Nonetheless, the law can play a pivotal role in ensuring that women's contribution to and experiences of ASM are made visible. The law can therefore amplify

women's voices in this space, and in turn, challenge normative gender roles and enhance women's economic opportunities and livelihoods in mining communities.

In a sector plagued by gender stereotypes – around women and men's spaces, roles and behaviours – legalisation of ASM with a gender perspective creates the prospects to challenge and shift such norms. Extensive work still needs to be done to understand the effects of gender-responsive legislation on ASM. Yet, the development of good practice regulations in ASM may result in more public and private engagement towards addressing gender equality, and may help guide further legislation in the extractive industry more broadly.

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¹ See, eg, Horowitz, "It Shocks Me"; Buss and Rutherford, "Dangerous Desires"; Lahiri-Dutt, "Digging Women."

² International Labour Organisation, Convention on the Employment of Women; Extractives Industries Transparency Initiative, "EITI and Gender Equality"; United Nations Global Compact Office "Explanatory Note"; United Nations Global Compact Office and UN Women, "Women's Empowerment Principles."

³ Hilson and Maconachie, "Formalising Artisanal Mining," 443.

⁴ Vijayarasa, "Making the Law Work for Women."

⁵ Vijayarasa, "What Is Gender-Responsive Legislation?"

⁶ Lahiri-Dutt, "Digging Women."

⁷ ASM operates in over 80 countries, Buxton, "Responding to the Challenge."

⁸ *Ibid.*, 1. The previous official figures, provided by the International Labour Organisation in 1999, estimated at about 10 million the number of artisanal and small-scale miners, including at least 50% women.

⁹ World Bank, "Artisanal and Small-Scale Mining."

¹⁰ Eftimie et al., "Gender Dimensions of Artisanal Mining," 3.

¹¹ Hilson and McQuilken, "Four Decades of Support," 104.

¹² Jenkins, "Women, Mining and Development," 330.

¹³ As much as one third of workers, Hilson, "Small-Scale Mining and Its Impact," 6.

¹⁴ *Ibid.*, 7.

¹⁵ Eftimie et al., "Gender Dimensions of Artisanal Mining," 6.

¹⁶ See, eg, Hinton, Veiga, and Beinhoff, "Women and Artisanal Mining."

¹⁷ Armah et al., "Working Conditions of Goldminers," 464.

¹⁸ Jenkins, "Women, Mining and Development," 331.

¹⁹ Lahiri-Dutt, "Roles and Status of Women," 38.

²⁰ Lahiri-Dutt, "Digging Women".

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- ²¹ International Labour Organisation, Convention on the Employment of Women.
- ²² See, eg, Jenkins, “Women, Mining and Development,” 330.
- ²³ Good practice in legislation includes South Africa where in 2002, the Mining Charter opened the option for women to work in mines: “Socio-Economic Empowerment Charter” (2002). See also article 114 of the Mining Act of the Republic of Uganda stating that ‘Notwithstanding the provisions of any other law to the contrary, a woman may be employed in any underground work in any mine or in any operation or activity relating to or associated with mining’: The Mining Act, 2003.
- ²⁴ See, eg, Werthmann, “Working in a Boom-Town.”
- ²⁵ See, eg, Jenkins, “Women, Mining and Development”; Hinton, Veiga, and Beinhoff, “Women and Artisanal Mining.”
- ²⁶ Armah et al., “Working Conditions of Goldminers,” 465.
- ²⁷ Yakovleva, “Perspectives on Female Participation,” 30.
- ²⁸ For example, women’s work in ASM may in some instances be unpaid and conducted to enhance the earnings of their husband: Hinton, Veiga, and Beinhoff, “Women and Artisanal Mining,” 19.
- ²⁹ Ibid.; Perks, “Towards a Post-Conflict Transition,” 189.
- ³⁰ Hinton, Veiga, and Beinhoff, “Women and Artisanal Mining,” 20.
- ³¹ Ibid, 13.
- ³² Hilson and Maconachie, “Formalising Artisanal Mining,” 443.
- ³³ There is global interest in greater formal regulation of ASM. See, eg, OECD, “Responsible Supply Chains of Minerals.” To advance this agenda, the ASM Hub was created and gathers OECD and non-OECD governments, the private sector, civil society and other stakeholders to discuss ways to support formalisation efforts: OECD, “Artisanal and Small-Scale Gold Mining.”
- ³⁴ See, eg, Geenen, “Relations and Regulations”; Lund, “Twilight Institutions.”
- ³⁵ Geenen, “A Dangerous Bet,” 322.
- ³⁶ Ibid., 323.
- ³⁷ Ibid.; Hilson and Maconachie, “Formalising Artisanal Mining”; Verbrugge, “The Economic Logic.”
- ³⁸ Huggins, Buss, and Rutherford, “A ‘Cartography of Concern’,” 144.
- ³⁹ African Union, “Africa Mining Vision.”
- ⁴⁰ United Nations Environment Programme, Minamata Convention, annex C 1(i).
- ⁴¹ “Small-Scale Gold Mining Law - 1989 (PNDCL 218).”
- ⁴² An Act Creating a Mining Program.
- ⁴³ Ley de Formalización.
- ⁴⁴ “Report on Artisanal Mining in Africa.”
- ⁴⁵ Bashwira et al., “Not Only a Man’s World,” 113.
- ⁴⁶ Ibid., 114.
- ⁴⁷ Jenkins, “Women, Mining and Development,” 330.
- ⁴⁸ Lahiri-Dutt, *Gendering the Field*, 15.
- ⁴⁹ “Ministerial Decree of 29 February 2012,” art 9.
- ⁵⁰ On feminist approaches to international law, see Charlesworth, Chinkin, and Wright, “Feminist Approaches to International Law.”
- ⁵¹ Vijayarasa, “Gender Legislative Index.”
- ⁵² Vijayarasa, “Making the Law Work for Women,” 277.
- ⁵³ United Nations General Assembly, Convention on the Elimination of Discrimination against Women.
- ⁵⁴ Vijayarasa, “What Is Gender-Responsive Legislation?”
- ⁵⁵ Vijayarasa, “Making the Law Work for Women,” 277.
- ⁵⁶ Vijayarasa, Ramona. “CEDAW’s General Recommendation No. 35.”
- ⁵⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 14, para. 12.
- ⁵⁸ International Labour Organisation, Recommendation on Safety and Health in Mines, para. 25(a).
- ⁵⁹ Minerals and Mining Regulations, 2010.
- ⁶⁰ African Minerals Development Centre, “African Women in Artisanal Mining,” 2.
- ⁶¹ Hinton, Veiga, and Beinhoff, “Women and Artisanal Mining.”
- ⁶² See, eg, “Fairtrade Standard for Gold.”
- ⁶³ CEDAW Committee, General Recommendation No. 14, 14; CEDAW Committee, General Recommendation No. 15, 15.

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- ⁶⁴ Eftimie et al., “Gender Dimensions of Artisanal Mining,” 9.
- ⁶⁵ *Ibid.*
- ⁶⁶ Hinton, Veiga, and Beinhoff, “Women and Artisanal Mining,” 25.
- ⁶⁷ United Nations, Economic Commission for Africa, and Southern Africa Office, “Harmonization of Mining Policies,” 48.
- ⁶⁸ *Ibid.*, 47–48, Recommendation 3.
- ⁶⁹ Jenkins, “Women, Mining and Development,” 332.
- ⁷⁰ Hinton, Veiga, and Beinhoff, “Women and Artisanal Mining,” 10-11.
- ⁷¹ *Ibid.*, 17.
- ⁷² Eftimie et al., “Gender Dimensions of Artisanal Mining,” 9.
- ⁷³ Huggins, Buss, and Rutherford, “A ‘Cartography of Concern’,” 145.
- ⁷⁴ Eftimie et al., “Gender Dimensions of Artisanal Mining.”
- ⁷⁵ Weldegiorgis, Lawson, and Verbrugge, “Women in Artisanal and Mining,” 12.
- ⁷⁶ Lahiri-Dutt, *Gendering the Field*.
- ⁷⁷ Jenkins, “Women, Mining and Development,” 331.
- ⁷⁸ African Minerals Development Centre, “African Women in Artisanal Mining,” 3.
- ⁷⁹ Jenkins, “Women, Mining and Development,” 336.
- ⁸⁰ Kristiansson, “Embedding Gender,” 35.
- ⁸¹ International Finance Corporation, “IFC Performance Standards,” 13, paras. 26-27 and 34, para. 10.
- ⁸² OECD, “Guidance for Meaningful Stakeholder Engagement,” annex C, 100.
- ⁸³ *Ibid.*, 41,42,71.
- ⁸⁴ *Ibid.*, 100.
- ⁸⁵ Inter-American Commission on Human Rights, “Indigenous Peoples and Natural Resources,” paras. 211–212.
- ⁸⁶ United Nations General Assembly, Convention on the Elimination of Discrimination against Women, Art. 5.
- ⁸⁷ An Act on the Law on Prospecting for Minerals.
- ⁸⁸ United Nations General Assembly, Convention on the Elimination of Discrimination against Women, Art. 5.
- ⁸⁹ *Ibid.*, Art. 3.
- ⁹⁰ *Ibid.*, Art. 4.
- ⁹¹ United Nations, Economic Commission for Africa, and Southern Africa Office, “Harmonization of Mining Policies,” 48, Recommendation 4.
- ⁹² OECD, “Guidance for Responsible Supply Chains,” 27.
- ⁹³ Communities and Small-Scale Mining Africa Initiative, “Yaoundé Vision,” 6.
- ⁹⁴ United Nations, Economic Commission for Africa, and Southern Africa Office, “Harmonization of Mining Policies,” 48, Recommendation 5.
- ⁹⁵ *Ibid.*, 48, Recommendation 6.
- ⁹⁶ OECD, “Guidelines for Multinational Enterprises,” 39, para. 54.
- ⁹⁷ CEDAW Committee, General Recommendation No.12, 12; CEDAW Committee, General Recommendation No. 15, 15; CEDAW Committee, General Recommendation No. 19, 19.
- ⁹⁸ African Commission on Human and Peoples’ Rights, Resolution on the Niamey Declaration, para. 1(j).
- ⁹⁹ See also criterion 7 in relation to data collection on violence against women.
- ¹⁰⁰ Inter-American Commission on Human Rights, “Indigenous Peoples and Natural Resources,” paras. 318–321.
- ¹⁰¹ *Ibid.*, para. 277.
- ¹⁰² *Ibid.*, para. 307.
- ¹⁰³ United Nations, Economic Commission for Africa, and Southern Africa Office, “Harmonization of Mining Policies,” 47; OECD, “Guidance for Responsible Supply Chains,” 20.
- ¹⁰⁴ CEDAW Committee, General Recommendation No. 30, para. 17(c).
- ¹⁰⁵ Autesserre, “Dangerous Tales.”
- ¹⁰⁶ *Ibid.*, 216–17.
- ¹⁰⁷ CEDAW Committee, General Recommendation No. 33, 33.
- ¹⁰⁸ Bashwira et al., “Not Only a Man’s World,” 112-3.

¹⁰⁹ United Nations, Economic Commission for Africa, and Southern Africa Office, “Harmonization of Mining Policies,” 48, Recommendation 4.

¹¹⁰ CEDAW Committee, General Recommendation No. 28, para. 36; Awori et al., “A Feminist Approach to the Binding Instrument.”

¹¹¹ CEDAW Committee, General Recommendation No. 28, para. 16(c).

¹¹² Office of the United Nations High Commissioner for Human Rights, “Guiding Principles,” principle 27.

¹¹³ CEDAW Committee, General Recommendation No. 28, para. 17; Meyersfeld, “Business, Human Rights and Gender,” 210.

¹¹⁴ OECD, “Guidance for Meaningful Stakeholder Engagement,” annex C, 82; United Nations Global Compact Office, “Explanatory Note,” 3.

¹¹⁵ Hilson, “Small-Scale Mining and Its Impact in Developing Countries,” 4.

¹¹⁶ CEDAW Committee, General Recommendation No. 9.

¹¹⁷ CEDAW Committee, General Recommendation No.13, para. 2.

¹¹⁸ CEDAW Committee, General Recommendation No.12, para. 4.

¹¹⁹ OECD, “Guidance for Meaningful Stakeholder Engagement,” 102.

¹²⁰ United Nations, Economic Commission for Africa, and Southern Africa Office, “Harmonization of Mining Policies,” 48.

¹²¹ Office of the United Nations High Commissioner for Human Rights, “Guiding Principles,” principle 20.