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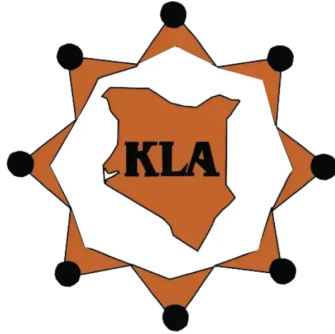
# **WOMEN IN ARTISANAL MINING IN KENYA:**

# **ECONOMIC CHALLENGES AND OPPORTUNITIES**

**Kakamega, Kwale, Migori, Turkana and  
West Pokot Counties**



# A publication of



## KENYA LAND ALLIANCE

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# Executive Summary

Kenya is endowed with a variety of minerals that include Gold, Copper, soda ash, fluorspar, titanium, manganese, iron ore, gypsum, diatomite, chromite, limestone, and silica sand among others. Though mining has been practiced in the country for over 50 years, productivity has remained low. The mining sector contributes only about 0.4% of the country's GDP. The types of mining operations include large-scale, small-scale and Artisanal Mining (ASM). The ASM sector is estimated to directly employ approximately 140,000 people (Ollett, 2013) and is undertaken in Migori, Narok, Siaya, Vihiga, Kakamega, West Pokot, Elgeyo Marakwet, Turkana, Laikipia, Tharaka Nithi, Kitui, Machakos, Taita Taveta and Kwale.

As in the rest of the world, the ASM sector in Kenya will continue to grow. The Extractives Hub (2020) attributes this trend to poverty, with ASM being widely recognized as a poverty-driven activity, capable of alleviating economic hardship and promoting wealth creation in largely rural communities. However, while ASM provides an income and potential route out of poverty, it can also keep women miners and their families trapped in poverty due to various challenges.

Some of the challenges include: -

## 1) Economic challenges

- a) Women artisanal miners lack capital to start their own businesses. Majority of women engaged in ASM businesses in Migori, Turkana and West Pokot, work with their husbands, brothers, cousins, parents, and children. They need financing to buy or lease sites, buy processing equipment, add value, market, and sell their products.
- b) Access to capital to grow their business remains the greatest challenge experienced by women artisanal miners in all the counties. Over 80% of women interviewed go the mining sites just to earn enough to feed themselves and their children for the day. They aren't mining for economic empowerment.
- c) Banks's view artisanal mining as an illegal activity therefore do not finance the ASM sector.
- d) Consequently, artisanal women miners cannot purchase equipment necessary for successful artisanal mining.

## 2) Systemic challenges

- i. Though geological surveys demonstrate a sizeable mineral potential in the Country, mineral development has remained minimal. This denies the country including its women, the economic benefits associated with mining. Some of these benefits for women would include hard-currency earnings, increased government revenues, jobs, improved education and skills development, and the development of infrastructure such as roads, electricity, and telecommunications.
- ii. Lack of ownership or control over mining sites hampers women economic empowerment in the sector.
- iii. There is also little recognition of women in almost all spheres of the ASM value chain. This includes in the artisanal mining committees under the Mining Act.
- iv. Women representation in artisanal mining decision making remains a major challenge. There is no data on women representation at grass roots ASM decision making. However, their representation in the already established artisanal mining committees is minimal as compared to men.

## 3) Knowledge/ information challenges

- i. There is no data or even mere estimates of the proportion of women in the ASM sector.
- ii. There is no data and information concerning the current and potential economic development opportunities that the ASM sector presents for women.
- iii. Access to information that can be critical in enabling informed decision making by women artisanal miners is limited. Because of limited internet penetration and low technological knowhow, the Mining Cadastral Portal is not of much utility to artisanal miners.
- iv. Women artisanal miners lack the skills to add value to the minerals they get

- v. While women artisanal miners are extremely skilled in the initial processing of minerals, they lack adequate skills to successfully run ASM enterprises. Essential business skills include financial management including record keeping, sales and marketing, communication and negotiation, leadership, planning and management, problem solving and networking

#### **4) Legal challenges**

- i. Absence of a standalone artisanal mining policy to effectively guide operations of the sector
- ii. Licensing issues present a major systemic challenge. The Mining Act prohibits artisanal mining operations without an artisanal mining permit. It prescribes heavy penalties for anyone, including women artisanal miners, who engages in activities and operations for, or connected with, the dealing, disposition search for, prospecting, or mining, processing, refining export or import of a mineral or mineral deposit whether they are processed or unprocessed in Kenya without a valid license. ASM is therefore deemed an illegal activity by institutions like banks. This denies artisanal miners much needed support.
- iii. Little incentives for County governments to effectively support the ASM sector. Classification of minerals as public under the national government robs county governments of the opportunity to generate revenue from artisanal mining. They therefore rarely support the sector.

#### **5) Social challenges**

- i. Traditional norms have for a long-time prohibited women from mining. The stereotype has been that women are physically weak and unable to use and manage resources properly.
- ii. The image of a miner is a masculine, conducting dangerous and risky operations.
- iii. Women participating in mining are seen as dirty and loose. Some taboos hold that when women come into direct contact with minerals during their menstrual periods, the minerals will vanish. However, these stereotypes are changing in all the counties visited.



## 6) Environmental/adversity/natural challenge

- i. Water plays a critical role in the artisanal mining sector. Besides consumption, water is also essential in mineral processing. In mining sites that are far from rivers, drinking water becomes almost as expensive as the minerals being mined.
- ii. Extraction of minerals from the earth usually has a negative impact on the environment. Displacement of soil, use of hazardous chemicals in mining process, deforestation and destruction of the ecosystem are just a few of the effects mining has on the environment.
- iii. Safety and security are a key challenge. ASM operations take place in distant or difficult-to-access locations, and in regions where the institutional presence of the government is weak. Artisanal mining areas lack basic infrastructure like roads and women work or walk for long hours in the wilderness.

The study recommends several opportunities for follow up in the pursuit of women economic empowerment in the ASM sector. This includes: -

- 1) **Development of Artisanal mining policy** to guide the sector
- 2) **Decentralizing the ASM sector** - Though the Act, attempts to decentralize the ASM permitting through ASM committees that includes a representative of the County Government, women artisanal miners could benefit more if the sector is fully devolved to the Counties. As mining is under the national government, county governments aren't benefitting from the minerals in their territories and therefore rarely invest in the sector. Investments in roads, water and health facilities in artisanal mining areas could be instrumental in economically empowering women artisanal miners. Strengthening government departments and institutions and encouraging collaboration of different ministries and departments at both the national and county level to develop more effective, joined-up approaches and remove overlapping functions.

- 3) **Streamlining and supporting the licensing process** by making it easier to complete the required documentation, reducing processing time, fees and costs associated with obtaining a license. is critical. Artisanal miners should be aware of the variety of rights provided for under the Act other than just artisanal miner's permits under Section 93 of the Act. This includes mineral rights reconnaissance, prospecting, retention, and mining licenses. It will also be critical to create awareness of benefits (if any) of artisanal mining permits and to create audio-visual materials or pamphlets that describes briefly and concisely the permitting process.
- 4) **Developing an inventory of minerals on unregistered community land** and provide reports on any mineral rights reconnaissance, prospecting, retention, and mining licenses in such lands. It will also be important to map any such arrangements in community lands prior to coming into force of the Community Land Act, 2016 and Mining Act, to understand their impacts on women.
- 5) **Development of regulations** by the Cabinet secretary for the grant of prospecting and mining rights over community land as this will impact women in community lands.
- 6) **Amend the Mining Act** to ensure more women are included in artisanal mining committees. Fully operationalize artisanal mining committees through training and budgetary support.
- 7) **Investing in disaggregated data to determine the number of women artisanal miners per county**, quantities of minerals they won and markets among others. This could be done in partnership with the Kenya National Bureau of Standards.
- 8) **Addressing Women Land rights in the ASM sector** by strengthening their ownership and control of land where artisanal mining is undertaken will be critical in empowering them economically.

9) **Access to financing** will be key to women economic empowerment in the ASM sector. Some strategies can be pursued through: -

- i. *Establishment a national government artisanal mining support fund with 50% of the funds reserved for women artisanal miners.*
- ii. *Supporting the sector through targeted programming by state parastatals for example, Kerio Valley Development Authority<sup>1</sup> and the Coast Development Authority*
- iii. *The UWEZO fund offers loan products and an enterprise development package for small group business enterprises. A package targeting women artisanal miners could be developed within the fund<sup>2</sup>.*
- iv. *There are also several initiatives by international financial institutions and UN agencies that could be explored. These include the World Bank<sup>3</sup> African Development Bank, UNDP<sup>4</sup> UNEP, among others. Partnerships with local banks could also be explored to develop a package to support women artisanal miners. The extractives hub also provides useful links to several global and regional support initiatives that can be explored.*
- v. *Mobilizing donor support.*
- vi. *But most importantly, a booklet on financing options will be necessary. This can be done by the Ministry in partnership with NGOs.*

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<sup>1</sup> Under Section 10 of the Kerio Valley Development Authority Act, 2012, the functions of the Authority include initiating such studies, and to carry out such surveys, of the Area as may be considered necessary by the Government or by the Authority and to assess alternative demands within the Area on the resources thereof, including .....mining ... and to recommend economic priorities; [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/KerioValleyDevelopmentAuthorityAct\\_Cap441\\_.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/KerioValleyDevelopmentAuthorityAct_Cap441_.pdf)

<sup>2</sup> For more on UWEZO Fund see <https://www.uwezo.go.ke/#>

<sup>3</sup> World Bank, Artisanal and Small-Scale Mining at <https://www.worldbank.org/en/topic/extractiveindustries/brief/artisanal-and-small-scale-mining>

<sup>4</sup> UNDP at <https://www.ke.undp.org/content/kenya/en/home/presscenter/pressreleases/2017/Greener-Gold-Support-to-Small-scale-Gold-miners-eliminate-mercury.html>

<sup>5</sup> UNEP Artisanal and Small-scale mining at <https://www.unep.org/resources/report/introduction-artisanal-and-small-scale-gold-mining>

<sup>6</sup> See Extractives Hubs at <https://www.extractiveshub.org/topic/view/id/1/chapterId/421>

- 10) **Capacity building through** training of women artisanal miners to think entrepreneurially and view ASM as a business. Specifically, it will be necessary to develop and disseminate small booklets
- i. Basic business skills*
  - ii. Value addition techniques*
  - iii. Marketing/markets for minerals*
  - iv. Effective mining techniques to reduce the negative social and environmental impacts of operations and improve working conditions, efficiency, yields and incomes*
  - v. Access to financing*
  - vi. Understanding of the laws, policies, and opportunities they provide.*
  - vii. Further, developing accessible technical and vocational education and training (TVET) courses*
  - viii. Complete and operationalize the Centre of Mining at Taita University. The Centre was a partnership between the Ministry and the University, but it has not been completed.*
  - ix. Absorbing Mining engineering graduates into ASM through a variety of measures that include organizing and financing them.*
  - x. Exchange visits with women artisanal miners in the respective counties and outside the country could further build the capacities of women artisanal miners. Tanzania and Zimbabwe could be easily accessible experiences.*
  - xi. Improve the capacity, strength, and collaboration of government ministries*
  - xii. In respect to mineral rights in private and community land under Section 37 (1) and 38 (1) of the Mining Act 2016, capacity building of such landowners, but most importantly women, is critical to ensure that any legally binding mining agreements empowers women economically. Women private landowners or in community land should be giving legal support*

- 11) **Access to information** - The ministry has developed several documents that could be critical to artisanal miners. However, the documents are in English therefore inaccessible to most artisanal miners. A partnership with NGOs to make information accessible would play a big in economically empowering women artisanal miners. NGOs would assist in translating information in local languages and through recording that can played on phone, radios including local radio stations.
- 12) **Value addition** - Besides merely supplying raw minerals, women ASM should be supported to add value to the minerals. Of immediate need is the full operationalization of Voi Gemstones *Value Addition Centre*<sup>7</sup> and developing other such centers in other parts of Country for example, in Kisumu to serve Narok, Migori, Siaya, Vihiga and Kakamega in Kapenguria to serve West Pokot, Turkana and Elgeyo Marakwet among others. A partnership between the Ministry of Petroleum and Mining and the Ministry of Ministry of Industry, Trade & Co-operatives, and the private sector to spur growth of the women enterprises in the ASM sector.
- 13) **Provision of equipment** - Due to the high cost of equipment, women are restricted from fully benefitting from artisanal mining. It will be necessary to purchase equipment to women artisanal mining associations. Processing centers where women could take their stones for processing could also help women reduced costs of paying for processing equipment. It is important that the needs of miners and the community are properly assessed first to ensure support facilities meet their requirements and local contexts.
- 14) **Addressing water issues** - Partnerships with UN agencies, NGOs and donors will be necessary to drill boreholes or to avail water to artisanal mining sites.

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<sup>7</sup> YouTube <https://www.youtube.com/watch?v=e77ScQKy9u8>

## Introduction

Kenya is endowed with a variety of minerals that include Gold, Copper, soda ash, fluorspar, titanium, manganese, iron ore, gypsum, diatomite, chromite, limestone, and silica sand among others<sup>8</sup>. There is a fair documentation of Kenya's commercial mining and mineral processing operations. Mining is the industry and activities connected with getting valuable or useful minerals from the ground<sup>9</sup>. The mining sector in Kenya contributes about 0.4% of the country's GDP.

A white circle containing the text 'GDP' in bold black letters, set against a green arrow-shaped background pointing right.

**GDP**

The Kenyan GDP is approximately KSH1.03 trillion.

A white circle containing the text '0.4%' in bold black letters, set against a purple arrow-shaped background pointing right.

**0.4%**

Mining contributes 0.4% of the country's GDP.

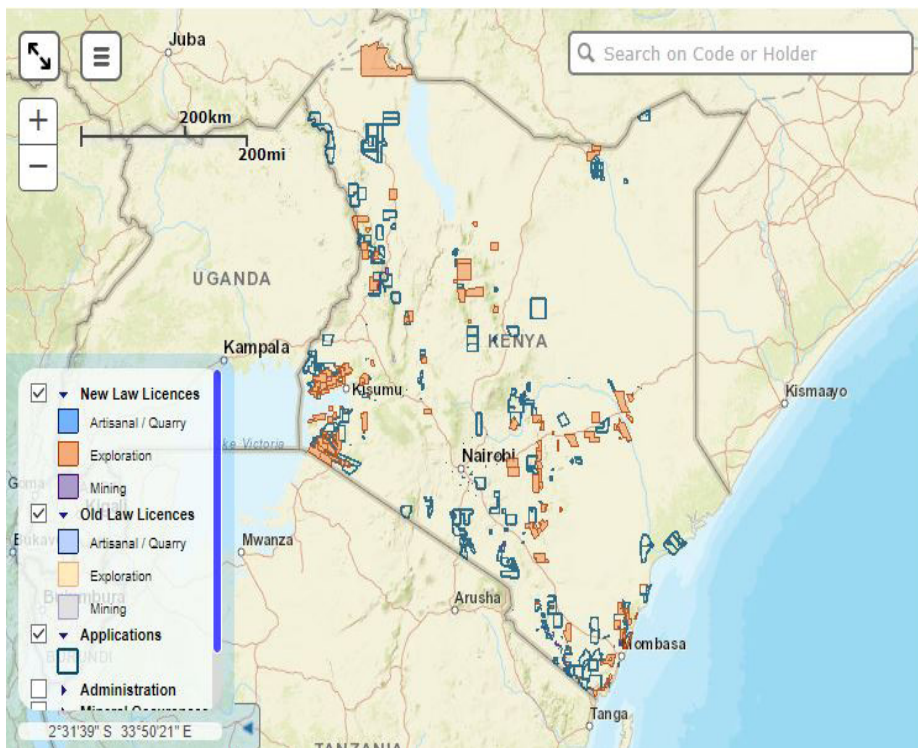


Minerals found in Kenya include: Gold, Copper, soda ash, fluorspar, titanium, manganese, iron ore, gypsum, diatomite, chromite, limestone, and silica sand.

<sup>8</sup> Government of Kenya, Mining and Minerals Policy 2016 at <https://www.idlo.int/sites/default/files/pdfs/highlights/Kenya%20Mining%20Policy%20Popular%20Version-LowRes.pdf>

<sup>9</sup> Collins Dictionary at <https://www.collinsdictionary.com/dictionary/english/mining>

Though mining activity has been present in the country for over 50 years, productivity has remained low. The scale of operations has been limited with only two projects - soda ash and mineral sands - comprising a large part of productive output by revenue. Exploration activity has also been limited even though geological surveys demonstrate a sizeable mineral potential<sup>10</sup>. For example, three of the four priciest gems in the world have been found in Kenya. This includes emeralds, sapphire, and ruby in Baringo and West Pokot among others<sup>11</sup>.



*Source Ministry of Petroleum and Mining, Mining cadastral Map*

<sup>11</sup> Moses Michira, Ruby: Precious gem of Baringo, Taita Taveta, the Standard Newspaper, February 2016 at <https://www.standardmedia.co.ke/business/article/2000190815/ruby-precious-gem-of-baringo-taita-taveta>

<sup>12</sup> Section 4, Mining Act 2016 at [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/MiningAct\\_No12of2016.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/MiningAct_No12of2016.pdf)



The Artisanal and Small-Scale Mining (ASM) sector in the Country is estimated to directly employ approximately 140,000 people (Ollett, 2013). ASM refers to the informal mining activities carried out using low technology or with minimal machinery (United Nations , 2021 ). To the World Gold Council, ASM is a collective term embracing both small scale and artisanal mining. It covers formal or informal mining which is characterized




by low capital intensity and high labour intensity and relatively simple methods for exploration, extraction, and processing. Section 4 of Kenya’s Mining Act, 2016 defines artisanal mining as “traditional and customary mining operations using traditional or customary ways and means<sup>12</sup>.” Artisanal mining in Kenya is undertaken in Migori, Narok, Siaya, Vihiga, Kakamega, West Pokot, Elgeyo Marakwet, Turkana, Laikipia, Tharaka Nithi, Kitui, Machakos, Taita Taveta and Kwale.

As in the rest of the world, the ASM sector in Kenya will continue to grow. The Extractives Hub (2020) attributes this trend to poverty, with ASM being widely recognized as a poverty-driven activity, capable of alleviating economic hardship and promoting wealth creation in largely rural communities. However, while ASM provides an income and potential route out of poverty, it can also keep miners and their families trapped in poverty. There is particularly limited data and information concerning the current and potential economic development opportunities that the ASM sector represents for women. Although there is critical lack of data, women are believed to account for up to 30 per cent of the global ASM workforce (Hinton, Veiga, & Beinhoff, 2003), and up to 50 per cent in Africa (UNECA, 2002).





In Kenya, there is no data or even mere estimates of the proportion of women in the ASM workforce. However, Kenya women are increasingly taking on the male-dominated sector<sup>13</sup>, with women now accounting for approximately 40 – 45 % of the ASM workforce in the Country<sup>14</sup>. To Sitole (2021) poverty, unemployment and a lack of opportunity are the main contributing factors driving more women into the traditionally male-dominated world of artisanal mining in Kenya.

## Women in ASM workforce



- **Women account for an estimated 30% of global ASM workforce.**
- **In Kenya, women form approximately 40-45% of ASM workforce**





There are several stages in the ASM value chain. This broadly includes extraction, processing, and sale of finished products. There is little involvement and recognition of women in almost all spheres of the ASM value chain. The invisibility problem results from a variety of factors including the dominant reflection of men’s roles in discussions of mining, thus erasing the participation of women (Jenkins, 2014). Consequently, women benefit less economically because of the invisibility. COVID 19 is compounding women invisibility and losses in the ASM sector. Hopefully, there is growing consensus amongst policymakers that a focus on women should be mainstreamed across ASM-related sustainable development interventions (Lyster, 2020).

To address economic challenges faced by women in the ASM sector, the Kenya Land Alliance (KLA) commissioned a “Study on Economic Challenges and Opportunities for Women in the Artisanal Mining Sector in Taita Taveta, Kwale, Migori, West Pokot, Kakamega and Turkana counties” in March 2021. This report provides findings of the study undertaken between March and May 2021.

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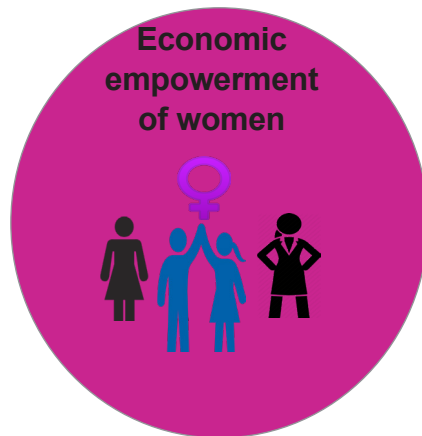
<sup>13</sup> Daniel Sitole, Kenyan women take on male-dominated artisanal mining, 11th February 2021 at <https://www.businesslive.co.za/fm/features/africa/2021-02-11-kenyan-women-take-on-male-dominated-artisanal-mining/>

<sup>14</sup> Purely based on the observations of the author of this study from his visits to ASM sites in Migori, Kakamega, West Pokot and Turkana

## Context framing

Women's empowerment is a process of personal and social change, taking place over interlinked and mutually reinforcing psychological, political, social, and economic domains, and through which women individually and collectively gain power, meaningful choices, and control over their lives (O'Neil, 2014). Women Economic empowerment, is the capacity of women and men to participate in, contribute to and benefit from growth processes in ways that recognize the value of their contributions, respect their dignity, and make it possible to negotiate a fairer distribution of the benefits of growth (OECD, 2011).

Investing in women's economic empowerment sets a direct path towards gender equality, poverty eradication and inclusive economic growth (UN Women, 2021). Women make enormous contributions to economies, but remain disproportionately affected by poverty, discrimination, and exploitation.



The UN Sustainable Development Goals 1 aims at eradicating poverty in all its forms by 2030. Under Goal 1.1 people in extreme poverty are those living on less than \$1.25 (KES 135) a day. Is the ASM sector in Kenya contributing to the attainment of SDGs goal 1 by eradicating poverty among women artisanal miners in the target counties? If not, what are the challenges and opportunities available in the sector for eradicating poverty among women in the target counties? Similarly, Goal 1.4 aims at all men and women, particularly the poor and the vulnerable, having equal rights to economic resources, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance.

<sup>15</sup> <https://www.unwomen.org/en/what-we-do/economic-empowerment>

<sup>16</sup> United Nations, Sustainable Development Goals at <https://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals/>

How are the various aspects of Goal 1.4 being actualized in the ASM sector in target counties in Kenya? What challenges hinder the realization of Goal 1.4 for women ASM sector? What opportunities can the ASM sector provide for the realization of the various aspects of Goal 1.4 for women in the target counties?

Further, as the UN Women (2021) rightfully argues, investing in women's economic empowerment sets a direct path towards gender equality. Under SDG Goal 5.1, gender equality entails ending all forms of discrimination against all women and girls everywhere<sup>17</sup> including in the ASM sector. What forms of discrimination are women and girls experiencing in the ASM sector and how can this be addressed? Are women fully and effectively participating at all levels of decision-making in the ASM sector? What are the challenges and opportunities for enhancing women leadership in the ASM sector?



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<sup>17</sup> Ibid fn 7

# 3

## Methodology

To undertake the two research methods were utilized. This included desktop reviews of available data and observation through visits to artisanal mining sites. Sites visited included Masara and Makalda in Migori, Ikolomani in Kakamega, Ortum, Seker and Turkwell in West Pokot, Naduat in Turkana, Kasigau and Kuranze in Taita Taveta. Heavy rains limited access to mining site in Kwale. Face to face interviews were undertaken with both men and women in migori, Kakamega, West Pokot, Turkana and Taita. Government officials in West Pokot, Turkana, Taita Taveta and Kwale were also interviewed. Members of staff of the National Government's Voi Gemstone Centre were also interviewed. Similarly, bank officials from Equity Bank and Kenya Women Finance Trust in Migori were interviewed. Several NGOs were also interviewed.



## Analysis of the legal and policy framework

Since the first Mining Act in Kenya in 1940, there has been over 20 other laws related to mining in the Country<sup>18</sup>. These laws tendered to centralize mining and give sweeping powers to the Minister in charge of mining activities and were silent on artisanal miners<sup>19</sup> and gender. But after a new constitutional dispensation in 2010, mining policy, law and practice has increasingly shifted towards recognition of ASM and the inclusion of women in the sector. It important therefore to critically analyze the provisions of the Constitution of 2010, the Mining Policy 2016, the Mining Act, and related regulations to examine their ability to strengthen women economic empowerment in the ASM sector.



<sup>18</sup> Act No. 29 of 1940, Cap. 168 of 1948. Act No. 22 of 1954, L.N. 342/1956, L.N. 343/1956, Act No. 27 of 1959, L.N. 172/1960, L.N. 173/1960, Act No. 15 of 1961, Act No. 27 of 1961, Act No. 28 of 1961, Act No. 25 of 1963, L.N. 142/1963, L.N. 56/1965, Act No. 21 of 1966, Act No. 39 of 1968, Act No. 12 of 1970, Act No. 3 of 1980, Act No. 18 of 1986, Act No. 13 of 1988, Act No. 6 of 1989, Act No. 6 of 2006, Act No. 17 of 2006

<sup>19</sup> The Malindi Public Inquiry Audit Report: An Audit of 2006 KNCHR Public Inquiry on Salt Harvesting in Magarini Malindi pp50

## 4.1 Constitution of Kenya 2010 and women empowerment

On 27th August 2010, Kenya promulgated a new constitutional dispensation. This was hailed as the 'second republic'. Among other things, it brought in recognition of women's rights as human rights. The Constitution 2010 recognizes dignity, economic, social, and cultural rights including the right to education, housing and right to health including reproductive health care. The principle of equality and non-discrimination is established as a core value of leadership. The national values and principles of governance include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination, and protection of marginalized groups among others.

Article 27 of the Constitution provides a basic framework for analyzing any present or perceived discrimination against women in the ASM sector. Under it, every person, including women artisanal miners, is equal before the law and has the right to equal protection and benefit of the law. Article 27 (3) takes this further and provides for the right to equal treatment, including the right to equal opportunities in political, economic, cultural, and social spheres for both women and men. In the ASM sector, political powerplays driven by economic muscle coupled with strong cultural and social influences often disfavors women. Discrimination, either by law or practice, is strictly forbidden



*Pokot women selling granite by the roadside, Ortum*



Further, under Article 35 on access to information, every citizen, including a women artisanal miner, has the right of access to, information held by the State; and information held by another person and required for the exercise or protection of any right or fundamental freedom<sup>20</sup>. Access to information is not only about enhancing accountability and transparency on the part of the government, but to enable women artisanal miners make informed choices about decisions that affect their lives. To enable, such informed decisions, the Ministry of Petroleum and Mining is therefore expected to develop a geospatial map(s) of all the mineral resources in the Country, avail information about value addition and markets, package and distribute such information in a language that can be received and understood by a women artisanal gold miner along river Muruny, Seker and parts of Alale in West Pokot for example.

Under Article 36, every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind. An association is a group of people who come together around a common cause or purpose. Over the last few years, the government has been strongly encouraging artisanal miners to form associations from the grassroots to the County level. Are women artisanal miners' part of this associations? Do they participate in the activities of the associations once they join them? What roles do they play in the associations?



In artisanal miners' associations, elections are held for artisanal mining committee's membership. Has the government taken legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender as provided for under Article 27 (8)? Similarly, do women artisanal miners have the right to move freely from one artisanal mining site to another within the Country or even outside the County as envisioned under Article 39?

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<sup>20</sup> Article 35 (1)

According to the World Bank, women's property rights are the key to economic development<sup>21</sup>. Article 40 provides that every person has the right, either individually or in association with others, to acquire and own property (a) of any description; and (b) in any part of Kenya. What property rights do women artisanal miners enjoy in Kenya and in the target counties in particular? Are the mining sites public, private or community lands and what is the place of women in the sites?

To therefore understand the opportunities and challenges for women in the artisanal mining sector, we need to look at the legislative and other measures, including affirmative action programmes and policies that have been designed by the State to redress any disadvantages suffered by individual women or groups because of past discrimination in the ASM sector. While there are other laws and policies that are relevant to the sector, this analysis will focus only on Kenya's Mining and Minerals Policy 2016 and Mining Act, 2016 in the context of women economic empowerment



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<sup>21</sup> World Bank blogs, Women's property rights are the key to economic development, February 2020 at <https://blogs.worldbank.org/developmenttalk/womens-property-rights-are-key-economic-development>



## 4.2 Mining and Minerals Policy, 2016 and the Mining Act 2016

According to KPMG, after over 50 years of largely ignoring the mining sector, the Government of Kenya has recognized the potential that exists and has directed efforts to improve mineral exploitation by establishing a ministry<sup>22</sup> dedicated to the development of the mining sector. The mandate of the Ministry of Mining (MoM) is centred on developing and implementing policies that will allow the country to benefit from its mineral wealth.<sup>23</sup> Key among this is the development of the Mining Policy and Mining Act both in 2016.

Both the Policy and Act introduce a raft of positive measures that include breaking the concentration of decision making in the office of the Minister, the establishment of a State Mining Corporation to undertake mining activities, the Directorate of Mines to regulate the sector and the Directorate of Geological Survey to develop the national geological database and promote interest in the mining sector. The Mining Act also provides for the Ministry of Mining to establish a commodities exchange and for the first time, introduces a grid system to limit mineral rights disputes due to overlaps in licensed areas. There is additional clarity on the license and permit classes, procedures, as well as conditions that would lead to revocations and suspensions. The new law also provides structures for negotiating mineral agreements and stipulates those mineral agreements will include terms and conditions for minimum activity and spend for work programs, structure for payments (i.e., royalties, fees, etc.), and other provisions.<sup>24</sup>



<sup>22</sup> The Ministry of Petroleum and Mining at <https://www.petroleumandmining.go.ke>

<sup>23</sup> Ibid KPMG, fn 3

<sup>24</sup> Ibid KPMG fn 3

The policy refers to gender mainstreaming. Strategy 12 of the policy specifically makes a commitment that the government will enact frameworks, structures and mechanisms that will uphold international best practices in ensuring inclusiveness in decision making of women, youth, and persons with disability. Despite the Mining and Minerals Policy encompassing these provisions on gender, they do not seem to reflect in the Act. This is because there are no specific provisions on ensuring inclusion and protection of women in granting licenses and permits.

However, in a move that will enable economic empowerment for women ASM miners, the Mining Act, for the first time recognizes artisanal miners, a clear departure from previous legislation. Under Section 92 of the Act, the Cabinet Secretary of Petroleum and Mining may establish a county office of the Ministry and shall designate a representative of the Director of Mines who shall be the head of the county office and who shall report to the Director of Mines. The functions of the officer shall be to: -

- (a) grant, renew and revoke artisanal mining permits.*
- (b) compile a register of the artisanal miners and specifying particulars that may be determined by the Cabinet Secretary.*
- (c) supervise and monitor the operation and activities of artisanal miners.*
- (d) advise and provide training facilities and assistance necessary for effective and efficient artisanal mining operations.*
- (e) submit to the Director of Mines, reports or other documents and information on artisanal mining activities within the county as prescribed in regulation.*
- (f) facilitate the formation of artisanal association groups or cooperatives; and*
- (g) promote fair trade of artisanal miners.*

Evidently, the Act does not obligate the Cabinet secretary to establish a county office of the ministry even when ASM activities are being undertaken in the county. This discretion also lacks time restrictions. This not only negatively impacts on access to government services, but also contributes to poor services and continued challenges afflicting the sector including slow development. It also contributes to denial of revenue to the Government through non-taxation of the ASM sector and missed opportunities for economic growth.

While there is no data on the number of county offices that have been established under the Mining Act 2016 so far, the Act gives the representative of the Director of Mines at County overall powers of granting, renewing, and revoking artisanal mining permits. The County officer also supervises and monitors the operation and activities of artisanal miners, advises, and provide training facilities and assistance necessary for effective and efficient artisanal mining operations. The official also facilitates the formation of artisanal association groups or cooperatives; and promote fair trade of artisanal miners. This clearly puts immense responsible on the part of the officer to ensure the thriving of the ASM sector in his/her county.

The table below shows the number of ASM mining committees established since the adoption of the Act in 2016 and the Mining (License and Permit) Regulations of May 2017.

*Table 1. Constituted ASM Committees as of May 2021*

<b>Gazetted</b>	<b>Date</b>	<b>Waiting</b>	<b>Date of application</b>
Taita Taveta <sup>25</sup>		Kwale	Not available
Migori	28.01.2020 <sup>26</sup>	Turkana	Not available
Siaya	28.01.2020		
Kakamega	20.03.2020 <sup>27</sup>		
Vihiga	20.03.2020		

<sup>25</sup> Though the Ministry has appointed an artisanal mining officer, the Governor is yet to appoint a representative to represent the County government in the artisanal mining committee. This has delayed the gazettelement of the committee.

<sup>26</sup> Migori and Siaya ASM committees were constituted vide Kenya gazette notice Vol. CXXIII—No. 30 Dated 28th February 2021.

<sup>27</sup> Kakamega and Vihiga ASM Committees were constituted vide Kenya gazette notice Vol.CXXII-No.54, NAIROBI, 27 March, 2020 accessible at [http://kenyalaw.org/kenya\\_gazette/gazette/volume/MjExMg--/Vol.CXXII-No.54/#GAZETTE%20NOTICE%20NO.%202698](http://kenyalaw.org/kenya_gazette/gazette/volume/MjExMg--/Vol.CXXII-No.54/#GAZETTE%20NOTICE%20NO.%202698)

## Overview of artisanal mining in target counties

### 5.1 ASM in Kwale County

Kwale County is in south coast of Kenya. It borders the Republic of Tanzania to the Southwest, Taita Taveta to the West, Kilifi to the North, Mombasa to the Northeast and Indian ocean to the east. Kwale County plays a strategic role in the extractive sector in Kenya. It is endowed with various minerals such as Titanium, Silica Sand, Uranium Ore, Gemstone, Niobium, Jurassic Limestone, Pleistocene Coral Limestone, Zinc, lead, Copper, Baryte and Coal<sup>28</sup>. These minerals have the potential to shape not only the economy and the lives of the people of Kwale County but also that of the country. For example, Base Titanium, a mining company based in Kwale is the leading exporter of heavy minerals in Kenya making the Kwale Project one of the flagship projects of the vision 2030. This is a huge contribution to the country's GDP<sup>29</sup>.

Apart from the large-scale mining projects, a large part of the extractive industries in Kwale is driven by Artisan and Small-Scale Mining (ASM). This is mostly evident in the mining of Silica sand, limestone, gemstones, and copper which requires only very basic tools to extract<sup>30</sup>. Development of ASM has been attributed to the needs of the people to generate an alternative income due to the high level of unemployment. In doing so, they not only create employment but also generate wealth for Kwale County and the National government

#### Mining in Kwale County

- **Kwale is endowed with Titanium, Silica sand Uranium, Copper and Coal.**
- **Both large scale and small scale mining take place in Kwale county**

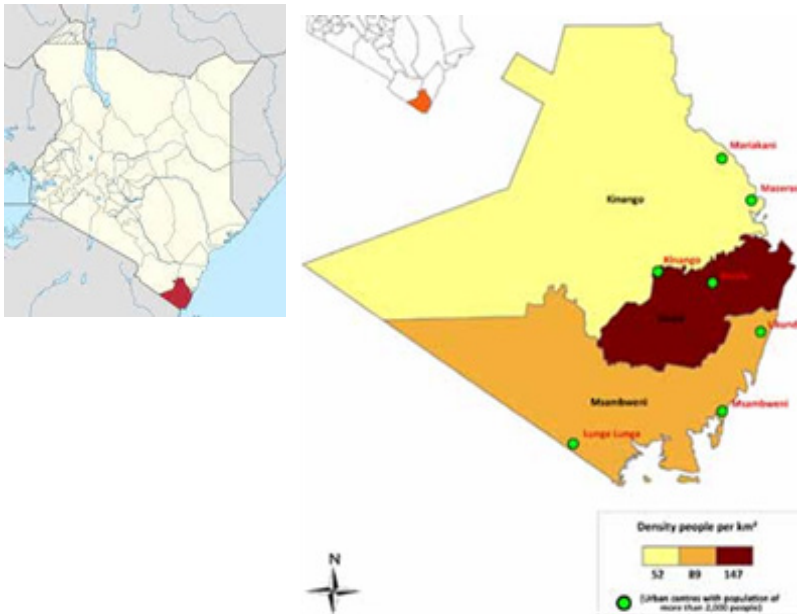


<sup>28</sup> John Kabaa, 'Impact Assessment Report; KMC: Mining and Regulatory Authority' 2019.

<sup>29</sup> Base Titanium, 'Kwale Operation; Kenya's largest mining operation is a Kenya Vision 2030 flagship project' <https://basetitanium.com/kwale-operation/> accessed May 19, 2021.

<sup>30</sup> International Journal of Management and Social Sciences.

The minerals in the county of Kwale are distributed throughout the county. Silica sand which is mostly used in construction and glass making is mainly found at Msambweni, Waa and Ramisi. The sand is simply scooped by simple shovels or machines then transported to Nairobi or Mombasa for processing. Titanium on the other hand, is found at Maumba and Nguluku. Further, Mrima Hills and Samburu have been found to contain Niobium, Thorium, and phosphate deposits. As a matter of fact, Mrima Hills have been found to contain one of the largest, rare earth mineral deposit in the world with an estimate worth of \$62.4 Billion. Limestone is found at Waa and Shimoni, Gemstones at Kuranze, Byrate at Lunga-Lunga, Coal at Maji ya Chumvi, Sandstone at Mariakani, Lead and Copper at Mkang’ombe, Mwache, Dumbule and Dziteng, and Coral at the coastal line.



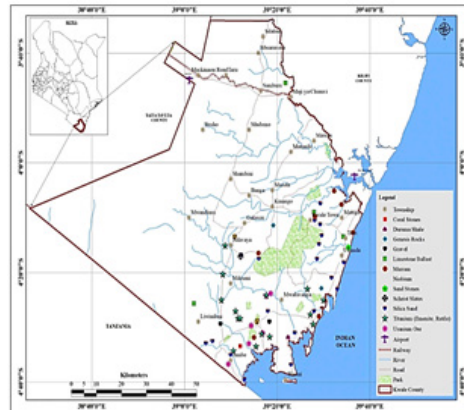
Map of Kwale County Kenya

<sup>31</sup> Obare Nyaega, 'A Value Chain Analysis of the Extractive Industry in Kwale County, With Special Focuses on Silica Sands and The Duruma (Mazeras) Slates, November 2014.

<sup>32</sup> Maarifa Ali Mwakumanya, 'Digital mapping as a tool for environmental and social corporate accountability in the extractive sector in Kwale County, Kenya' 17 (2018) 97-104 Journal of Sustainable Mining.



There is also a prospect of mining gas and oil offshore and onshore<sup>33</sup>. The adjacent map indicates the different areas where different minerals are found in Kwale<sup>34</sup>.



<sup>33</sup> County Government of Kwale, 'Mining Sector' [https://kwalecountygov.com/kwale/index.php?option=com\\_content&view=featured&intemid824](https://kwalecountygov.com/kwale/index.php?option=com_content&view=featured&intemid824) accessed May 19, 2021.

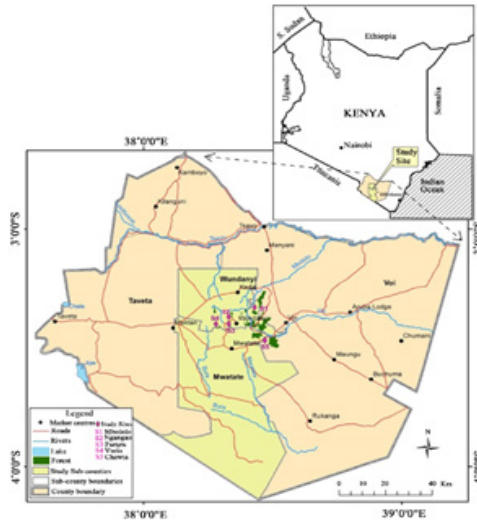
<sup>34</sup> Maarifa Ali Mwakumanya n. 5. p 99.



## 5.2 Artisanal Mining in Taita Taveta

Taita–Taveta County lies approximately 140 km northwest of Mombasa and 380 km southeast of Nairobi. The County headquarters is Mwatate. According to the 2019 population census, the county had a population of 340,671 persons, with population densities ranging from 14 persons per km<sup>2</sup> to more than 117 persons per km<sup>2</sup>.<sup>35</sup> This is due to the varied rainfall and terrain with the lower zones receiving an average 440 mm of rain per annum and the highland areas receiving up to 1,900 mm of rain. The county ranges in altitude from 500 m above sea level to 2,228 m at Vuria Peak, which is the county's highest point<sup>36</sup>.

Taita Taveta County is rich in industrial minerals and gemstones that include tsavorite, red garnets, green garnets, yellow garnets, ruby, green tourmalines, yellow tourmalines, change colour blue sapphire, pink sapphire, amethyst, peridot, iolite, spinel, rhodolites, and kyanites. Other minerals that exist in the Taita Taveta mineral ore belt are titanium, barites, coral rock, salt, iron ore, and gypsum.



<sup>35</sup><https://www.knbs.or.ke/?wpdmpo=2019-kenya-population-and-housing-census-volume-i-population-by-county-and-sub-county>

<sup>36</sup> Taita Hills and Kenya, 2004: seminars, reports and journal of a field expedition to Kenya. Pellikka, Petri., Ylhäisi, Jussi., Clark, Barnaby., Helsingin yliopisto. Maantieteen laitos. Helsinki: University of Helsinki, Department of Geography. 2004. ISBN 9521020776. OCLC 76844200.

*Table 2 Mineral sites in Taita Taveta: Source Mwandawiro Mgagha*

1	Iron-ore (and iron-ore magnetic)	Kishushe, Mwandongo, Shelemba, Mwambirwa, Kasighau, Kamtonga, Daku, Oza.
2	Limestone	Rong'e Nyika, Wundanyi, Mugeno, Mgama, Lwaklenyi
3	Graphite	Nyache, Wanganga, Choke, Mgeno, Lwalenyi, Mgama, Mindi Hill
4	Kyante	Mogho, Nyache, Mwatate, Mgeno
5	Type of soil imported from Moshi the manufacture of cement	Mogho and Rong'e
6	Asbestos	Sangenyi
7	Chrome	Kamtonga, Chungaunga
8	Potassium feldspar	Kamtonga
9	Hornblende	Kamtonga
10	Diopside	Kamtonga
11	Apatite	Kamtonga
12	Magnetite	Kamtonga
13	Vanadium grossularite	Mwatate area
14	Marble	Mwatate area
15	Quartz-feldspar	Mgeno, Mwatate area, Mgama



The mining sector in Taita Taveta is dominated by artisanal and small-scale mining with over 45% of women employed by the sector.<sup>37</sup> However, mining is often carried with little government regulation or control.<sup>38</sup> The extraction freedom has attracted people from all over Kenya and East Africa to Taita, but only a few locals participate. ASM therefore largely benefits only brokers, middlemen, and Zurura's<sup>39</sup> along the supply chain. There are several initiatives to support the mining sector in Taita. These includes the Voi Gemstone Centre, a Department of Mining at the University of Taita and several initiatives by the County Government.



*River Ortum, West Pokot. Extensive mining happens along its banks.*

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<sup>37</sup> Zurura's are migratory Artisanal miners who roam Taita and neighbouring counties.

<sup>38</sup> Mohamed B, Ndinya A, Ogada M (2019) Influence of cost leadership strategy on performance of medium-scale miners in Taita Taveta County, Kenya. *Int J Dev Managt Rev* 14: 151–163

<sup>39</sup>

## 5.3 Artisanal Mining in Migori County

Migori County is situated in the Southwestern part of Kenya. It borders Kisii, Homabay and Narok County. The county also borders Lake Victoria, Uganda via Migingo Island and Tanzania. It comprises of ten sub counties namely, Rongo, Awendo, Suna East, Suna west, Ntimaru, Uriri, Kuria East, Kuria West, Maberu and Nyatike.<sup>40</sup>

The area is inhabited by different communities from around Kenya like the Luo, Abasuba, Kuria, Kisii, Luhya, Somalis, and a few Indians. The main economic activity is farming which is followed closely by fishing, manufacturing, and mining. All these activities are mainly done on small scale and mining has become the main income generating activity.



Migori County is well endowed with minerals which are distributed in different parts of the County. As a result, artisanal mining is the main source of employment in Migori County. Migori County produces 34 tons of gold per year and provides employment to over 40,000 Kenyans.<sup>41</sup> The predominant mineral in Migori county is gold. Europeans were the first people to mine gold in Migori County between the years 1910 to 1930. Further exploration was undertaken in the early 1930s and by the mid 1930s, copper, gold, zinc, and silver had been discovered in Macalder by Falcon Bridge Africa.<sup>42</sup> Gold mines are distributed along a belt-like region that includes Masara, Macalder, Masaba, Kehancha, Kitere, Kimwango, Carlos mines, Francis mines in Kuria-Transmara border. Silver, Copper and Zarite are the other minerals found in Macalder area.

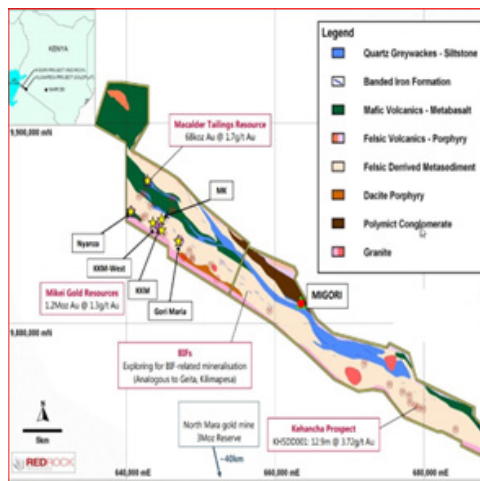
<sup>40</sup> <https://www.cohesion.or.ke>

<sup>41</sup> Canadian International Resources and Development Institute, Artisanal and small-scale Mining in Migori, Kenya <https://cirdi.ca>

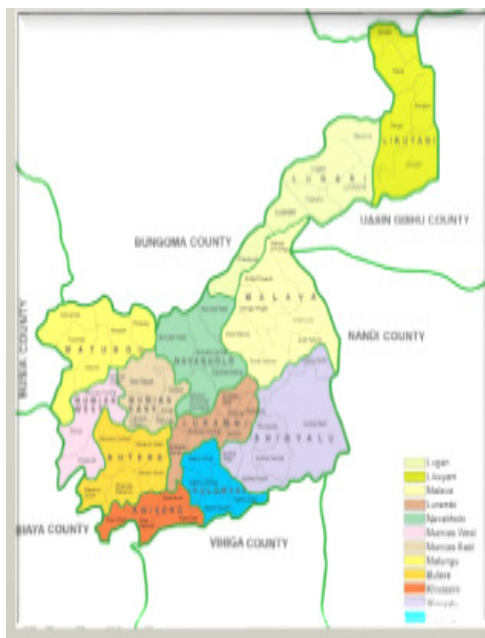
<sup>42</sup> Migori Gold Project in Kenya <https://www.miningreview.com>

High rates of poverty and lack of opportunity has forced the ASM sector in Migori county to shift from being male dominated. Both men and women have fought hard to reframe this norm through division of labor. The ASM value chain comprises of six distinct actors that include mining committees, mine owners, miners, processors, traders, and small-scale cyanidation.

The mining committee of Migori county is made up of six individuals with men dominating these positions. Most of the mines in Migori county are owned by a few foreigners and prominent businessmen in the country while the mining is left to the local men and most of the processing to the women. Approximately 92% of the people involved in extraction are men while women dominate the processing by 62%.<sup>43</sup>



## 5.4 Artisanal Mining in Kakamega County



Kakamega County is on the western region of Kenya and borders Vihiga County to the South, Siaya County to the West, Bungoma and Trans Nzoia Counties to the North and Nandi and Uasin Gishu Counties to the East. Administration wise, the county is divided into twelve sub counties, sixty county assembly wards, eighty-three locations, two hundred and fifty sub-locations, one hundred eighty-seven Village Units and four hundred Community Administrative Areas. Kakamega has played a central role in advancing the mining sector in Kenya.

<sup>43</sup> Martin Namasaka, The Economic Contributions of Artisanal and Small-scale Mining in Kenya: Gold and Gemstones <https://www.pactworld.org>

For example, Kakamega area was the first to be mapped when the Geological Survey of Kenya was created as a section of the Mining and Geological Department in 1933.<sup>44</sup>The first recorded production of gold was in 1931 when some 404 oz. of alluvial gold were won. This figure rose to over 6,000 oz. in 1932 and the extraction of lode gold followed in 1933, when 4,427 oz. were produced.<sup>45</sup> The only minerals of economic importance so far exploited in the Kakamega district are gold and silver, though a small amount of scheelite, occasional diamonds and other possibly valuable minerals have also been found. Gold prospecting and mining is ongoing, with high grade gold discovered in 2017,<sup>46</sup> and an explorer in Lihlanda corridor, finding presence of visible gold at Isulu in Kakamega in March 2021.<sup>47</sup> The explorer also established a very wide and high-grade zone of over 23 metres at Bushangala within the same locality. Gold mining activities mainly takes place in the areas of Rosterman in Ikolomani, an area named after the English gold mining company that operated there from 1930s until the 1950s and other areas such as Kwisero, Shinyalu and Lurambi sub-counties although they produce very little as compared to Ikolomani.

Artisanal and Small-scale gold mining has been in place for decades. This is undertaken mainly by local artisanal miners and a few non-locals and foreign nationals. They use simple tools for the work. Ownership of goldmines is both communal and private but mainly private as mostly gold is discovered on private land hence the owner of the land becomes the owner regardless of their gender.

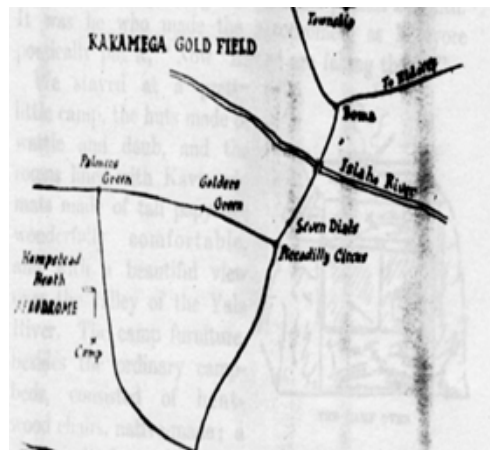


Image: an old map of Kakamega Gold Field

<sup>44</sup> A. Huddleston, M.Sc., F.G.S., A.M.I.M.M. Geology of the Kakamega District, 1959, reprinted 2007 at <https://s3-eu-west-1.amazonaws.com/samsamwater1/maps/kenya/geology/Geology+of+the+Kakamega+District.pdf>

<sup>45</sup> Ibid fn 56

<sup>46</sup> Citizen news, High-grade gold discovered in Kakamega County, March 2017 at <https://www.youtube.com/watch?v=DgjjdIMfns4>

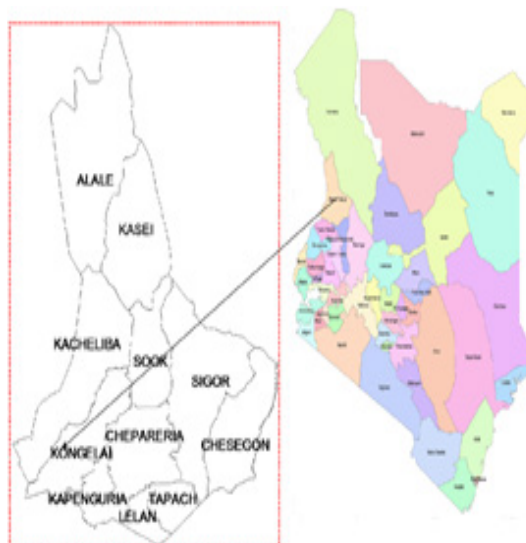
<sup>47</sup> Derick Luvega, Excitement rises in Kakamega over gold mining viability, Business Daily, March 2021 at <https://www.businessdailyafrica.com/bd/news/excitement-kakamega-over-gold-mining-viability-3327580>



## 5.5 Artisanal Mining in West Pokot

West Pokot County is situated in the north rift along Kenya's Western boundary with Uganda.

The County borders Turkana County to the North and Northeast, Trans Nzoia County to the South, Elgeyo Marakwet County and Baringo County to the Southeast and east respectively. The County covers an area of approximately 9,169.4 km<sup>2</sup>. West Pokot has limited gold deposits along river Muruny, Seker and parts of Alale, massive limestone and granite deposits in Sebit, Ortum, Muino and parts of Alale, Ruby, iron ore in Mbaru and copper along the Turkwel gorge among others.



Traditionally, the Pokot communities are pastoralists who live a nomadic lifestyle. However, in the recent years, their economic activities have gradually changed to include artisanal mining after the government started an initiative to help the community stop the cattle rustling menace that often leaves many dead and properties destroyed.<sup>48</sup> West Pokot residents are therefore increasingly giving up pastoralism for artisanal gold mining.<sup>49</sup>

<sup>48</sup> The Mining Gallery – Africa, Women in mining: experience of the pokot gold miners at <https://themininggalleryafrica.com/women-in-mining-experience-of-the-pokot-gold-miners/>

<sup>49</sup> Citizen TV, West Pokot residents Give up Pastoralism for Gold, April 2014 at <https://www.youtube.com/watch?v=aizutwqquhq>

## 5.6 ASM in Turkana

Turkana is Kenya's County number 23.<sup>50</sup> It is in the northern part of Kenya and is home to a predominantly pastoralist community. Nevertheless, Turkana is a County endowed with several mineral resources ranging from; gold found around Naduat in northern Turkana, Kalomwai, Lokichar and Nariomoru in Turkana South, to sapphire, garnet, rhodolite found in Lokiriama and Lodwar, natural gas and oil in Lokidongai and jade.<sup>51</sup>

Small-scale and artisanal mining (ASM) have been a main source of livelihood in some villages in the region such as Naduat which was once known as the 'gold village', but its residents now scuffle for the diminishing gold deposits which have been exploited by Asian and European precious stone hunters who have better detecting equipment than the residents.<sup>52</sup>



*Women artisanal miners in Naduat, Turkana*

<sup>50</sup> <https://www.klrc.go.ke/index.php/constitution-ofkenya/165-schedules-schedules/first-schedule-counties/434-1-counties>

<sup>51</sup> <https://nation.africa/Kenya/counties/turkana/turkana-rolls-value-addition-in-gemstone-mining-3269902>

<sup>52</sup> <https://www.businessdailyafrica.com/bd/economy/turkana-village-compete-with-equipped-miners-for-dwindling-gold-deposits-2107270%3fview=htmlamp>

## Participation of women in ASM value chain in the target counties.

The ASM value chain involves several steps for women. It starts with making the decision to participate in the sector, access to or investing in a mining site, actual mining, processing, sales to brokers, value-addition, and sale of jewelry.

There are also peripheral businesses that support the ASM sector. This includes business like leasing of equipment, sale of food to the miners, supply of water, shop keeping and provision of security among others. Participation in all or any of these steps have impacts on the economy and well-being of the women artisanal miners. In the target counties, women participate in all these steps in varying degrees.



### 6.1 Venturing into ASM

In all the Counties except Kakamega, venturing into the mining sector is often a family decision. In Migori, Kwale and Turkana, for example, several generations of a family have been artisanal miners. The children grow with their artisanal miner parents. They help them from as early as 5 years and naturally get into mining first as there is nothing else to do, then to support their parents and finally for themselves. In Pokot, frequent cattle rustling is pushing more Pokot's from traditional livestock keeping to artisanal mining.<sup>53</sup> More parents in West Pokot are giving their children buckets and encouraging them to go look for gold.

<sup>53</sup> YouTube, West Pokot Residents Give Up Pastoralism for Gold, April 2014 <https://www.youtube.com/watch?v=aIZUtWqQuHQ>

## 6.3 Investing in or access to mining sites

Investing in a mining site includes leasing or buying a site, investing in detectors and/or buying leasing detectors to identify potential excavation areas. Access to mining sites involves the freedom to enter a mining area. In all the target counties less than 2 % of women invest in a mining site, with the highest number of women investors found in Makalda in Migori and Nadwat in Turkana.



However, access to mining areas is generally unrestricted for both men and women. In this case, women can freely enter a mining site in all the target counties and participate in the mining activities in a site. There are notable instances of women freely migrating from one site to another even across counties. For example, Mary Atieno, a woman artisanal miner interviewed in Ikolomani in Kakamega is from Migori but has also worked in mining sites in Lolgorian (Narok), Siaya and Vihiga. According to her, they follow good gold prospects. Similar migratory behavior is also prevalent in the coastal areas. Both men and women freely move from a mining site in Taita Taveta to another in Kwale and even Tanzania. In the coastal belt, migratory artisanal miners are known as “Zurura’s” which translated means loaf around or wonder around or roam about. Women also freely access mining along rivers in west pokot.



## 6.3 Extraction

The actual extraction of minerals from mining pits in all target counties is mainly done by men as it involves going down into the deep dark shafts. This is the most dangerous bit hence women in all sites visited rarely engage in the activity. This is however not the case in rivers where women are more involved in the extraction. Mineral extraction along riverbeds is much easier and safer for women and does not require heavy equipment.



## 6.4 Processing (crushing, milling, sluicing, amalgamation)

Manual crashing and grinding of rocks mark the beginning of the processing activity. Sluicing is then done followed by amalgamation and lastly cyanidation to obtain residual gold. This stage is dominated by women<sup>54</sup> in all the target counties. Women work at this stage either for themselves or as part of the family enterprise but majorly as employees of a mine owner. Processing involves long hours of work for women to be able to get enough to feed their families.



*Processing Gold in Naduat, Turkana*

<sup>54</sup> Forthcoming 2020, Canadian Journal of African Studies, "Women and Gender in Artisanal and Small-scale Mining in Migori County, Kenya" <https://carleton.ca>

## 6.5 Trade

Trade of minerals happens onsite and then onwards to wealthy businessmen in towns like Migori, Kakamega, Kisumu or Lodwar who in turn sell to mineral dealers in Nairobi who then process or export them. Artisanal miners often sell their minerals onsite. This enables women artisanal miners to directly access cash without needing to travel long distances to sell their minerals. In Taita, Kwale, West Pokot, Migori and Kakamega, onsite buyers are often women and girls employed by wealthier relatives or friends. Some women engage as mineral dealers with no mining rights or simply as brokers.



*A young lady buying Gold in Ikolomani*

The girls employed to buy the minerals would like to do the trade for themselves, but they lack the capital to start. The start-up capital they need is about KES 50 000 (US \$ 500). In Turkana, women sell directly to mine owners who are mostly men. Most artisanal women miners rarely venture beyond selling their minerals onsite.

However, several initiatives to support artisanal mining traders are at different stages of development by national and county governments and NGOs. For example, the Coast Development Authority launched the first public mineral auction in Taita Taveta in August 2015.<sup>55</sup>

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<sup>55</sup> Benjamin Beja, Coast Development Authority launches first public mineral auction in Taita Taveta, The Standard, 11th August 2015 at <https://www.standardmedia.co.ke/business/article/2000172449/undefined>

## 6.6 ASM support businesses

There are varieties of businesses that support the ASM sector. This includes sale of food for the artisanal miners, provision of water and other small businesses. These are mostly done by women in the target counties and are a cheap but very necessary component of the artisanal mining sector.



## Factors limiting women economic opportunities in ASM

### 7.1 Land issues

Artisanal mining sites are either in private, community or public lands. Land rights plays a critical in empowering women in the artisanal mining sector. Unfortunately, there is no data on women ownership of land where mining activities are undertaken. However, a Socio-economic and environmental impact of mining on women in Kasigau mining zone in Taita Taveta County<sup>56</sup> undertaken in 2017 found that about 73% of women do not own land in Kasigau due to oppressive and parochial cultural practices. Consequently 78% of the households' women in Kasigau do not own mining sites. The 22% of the women own mining sites lease them from either government agencies or cooperative societies. The leases are expensive and barely affordable for female prospectors.<sup>57</sup>

In Kakamega, artisanal mining takes place mostly in private lands. The miners lease the lands from landowners to undertake different mining related operations. Women ownership is limited to only leasing small plots of about 3 by 5 metres for processing the minerals. It is rare to find women owning the mining pits as this require large sums of money to lease and excavate the land.



In Naduat in Turkana, women own some of the plots through allotments by the County government and in some rare cases purchase of the plots.

<sup>56</sup> Maarifa Ali Mwakumanya, Mwikamba Maghenda, Hamida Juma, Socio-economic and environmental impact of mining on women in Kasigau mining zone in Taita Taveta County, Journal of Sustainable Mining, Volume 15, Issue 4, 2016, Pages 197-204,

<sup>57</sup> Ibid

However, the allotments by the County government were not for development of urban centres as provided for under the Land (Allocation of Public Land) Regulations, 2017.<sup>58</sup> The fact that most of the mining areas are owned or controlled by men deprives women of decision-making power and deprives them of economic opportunities.

Introduction of large-scale mining in artisanal mining areas further deteriorates the already dire situation of women as they must now compete for economic opportunities against men and the large-scale miners. Further, the Mining Act forbids issuance of artisanal mining permits where any other mineral right has been granted over a parcel of land. In most cases, large-scale take licenses over large areas, limiting opportunities for artisanal miners generally and women artisanal miners in particular.

## 7.2 Access to capital

Access to capital to grow their business remains the greatest challenge experienced by women artisanal miners in all the counties. Over 80% of women interviewed go the mining sites just to earn enough to feed themselves and their children for the day. They aren't mining for economic empowerment. Majority of women engaged in ASM businesses in Migori, Turkana and West Pokot, work with their husbands, brothers, cousins and parents and children. They lack capital to start their own businesses. They need financing to buy or lease sites, buy processing equipment, add value, and market and sell their products.



<sup>58</sup> The Land (Allocation Of Public Land) Regulations' 2017 at [http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2017/LN284\\_2017.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2017/LN284_2017.pdf)



Both the national and respective county governments have not allocated any financing to support women ASM businesses. Local banks also do not fund ASM mining activities as they consider them illegal.<sup>59</sup>The only way that women access loans from banks to finance their mining operations is when they borrow for other activities but divert the funds to artisanal mining.<sup>60</sup>

### 7.3 Lack of skills

While women artisanal miners are extremely skilled in the initial processing of minerals, they lack adequate skills to successfully run ASM enterprises. Essential business skills include financial management including record keeping, sales and marketing, communication and negotiation, leadership, planning and management, problem solving and networking.<sup>61</sup>



*Searching for gold in Naduat, Turkana*

In most cases, as soon as a women artisanal miner earns enough for a period, they stop mining activities until they are broke.<sup>62</sup> This promotes a vicious circle of poverty. The women miners and marketers can be conned of the value of their sales because they lack basic information of mineral prices. None of the over 200 women interviewed in the study keeps records largely because of illiteracy, lack of knowledge of bookkeeping or awareness of the need to keep records. Majority of women artisanal miners are not fully committed to artisanal mining. They combine artisanal mining with other economic activities because they are uncertainty about the economic potential of mining. The lack of focus deprives them of the vision and direction to properly grow their artisanal mining businesses.

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<sup>59</sup> Interview with an Equity Bank staff at Migori.

<sup>60</sup> Interview with Credit Manager, Faulu Microfinance Bank, Migori

<sup>61</sup> Small Business Development Corporation, Essential business skills, Government of Australia at <https://www.smallbusiness.wa.gov.au/business-advice/starting-your-business/business-skills>

<sup>62</sup> Interview with Dr. Nelimz Ondiaka, Department of Mining, Taita University.

## 7.4 Lack of equipment

Women lack the equipment necessary for successful artisanal mining. This includes detectors to identify potential mineral sites, digging equipment, generators for oxygen in the shafts, water pumps to remove water from mining pits, stone crushers, among others.

An average crusher costs around KES 350 000 and only sold in Migori or Tanzania. Special stones used in the crusher are sourced from Tanzania while generators to power the crushers costs from KES 50 000 for Chinese models to over KES 100 000 for European models. To operate a successful enterprise a women artisanal miner would therefore need upwards of KES 500 000. This is a colossal sum for 99 % women artisanal miners.



## 7.5 Representation

Women representation representation in artisanal mining decision making remains a major challenge. There is no data on women representation at grass roots ASM decision making. However, their representation in the already established artisanal mining committees as shown in the table below provides a snapshot of the challenges they face.

The below table indicates that there are fewer women than men in artisanal mining decision making. All leadership positions in the committees in all the Counties are also held by men.

County	Men	Women
Migori	7	1
Siaya	6	2
Kakamega	6	2
Vihiga	7	1

The major challenge is composition of the committees as prescribed by the Mining Act. Under the Act, a committee shall comprise of a representative of the Governor who shall be the chairperson of the committee, the representative of the Director of Mines who shall be the secretary; three persons not being public officers and elected by the association of artisanal miners in the county; a representative of the inspectorate division of the Ministry; a representative of the National Environment Management Authority; and a representative of the county land board. The Act does not expressly require inclusion of women. So far, the governors of four counties with ASM committees are all represented by men. Similarly, the representatives of the Director Mines in the four counties are also men.

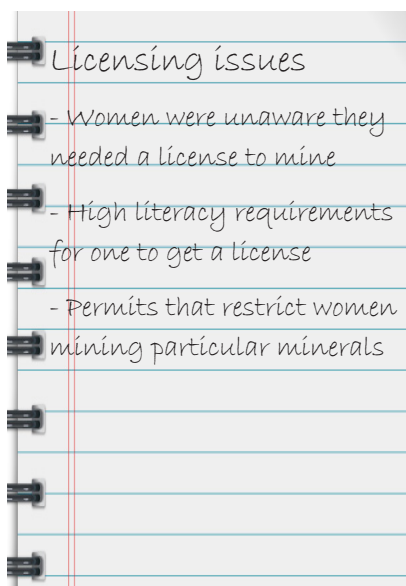
In the mining-related academia, representation of women is also minimal. In the Department of Mining in Taita University for example, out of the 18 faculty, only 2 are women. In the current final year mining engineering class at the department, out of the 25 students, only 3 are women

## 7.6 Licensing Issues

Under section 95 (3) of the Mining Act, a person shall not engage in artisanal mining operations unless the person has been granted an artisanal mining permit. Section 202 prescribes heavy penalties for anyone, including women artisanal miners, who engages in activities and operations for, or connected with, the dealing, disposition search for, prospecting, or mining, processing, refining export or import of a mineral or mineral deposit whether they are processed or unprocessed in Kenya without a valid license. The penalties include imprisonment for a term not exceeding two years; a fine not exceeding ten million shillings or both. With such restrictions and heavy penalties, it is expected that government would simplify, facilitate, and fasten issuance of licenses to women artisanal miners.



However, over 90% of the women artisanal miners interviewed in the study were not aware of the licensing process or the benefits that accrue from licensing.



Though the qualifications for grant of an artisanal mining permit is only an ID Card to prove citizenship and age,<sup>63</sup> the application requirements necessitate a degree of literacy and in some instances the services of a legal practitioner.<sup>64</sup> This is out of reach to majority of women artisanal miners Further, the ASM permit shall be shall for the specified mineral in the application and shall be subject to conditions specified in the permit.<sup>65</sup> This restricts women artisanal miners to a particular mineral and them to always seek a permit whenever they want to venture into mining other minerals

Additionally, the permit is for a period three years from the date of issue and shall be renewable upon application for one more term.<sup>66</sup> This limits the length of time in which women can practice artisanal mining to only six years contrary to the fact that for the majority, that is the main livelihood they pursue for life. The three-year permit renewal circle also amounts to additional burdens to women artisanal miners. ASM permits may also be revoked by the representative of the Director of Mines where the holder of the permit contravenes the terms and conditions of the permit; or is convicted of any offence relating to smuggling or illegal sale or dealing in minerals. Regulations for the sale of minerals won by an artisanal miner are yet to be developed.

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<sup>63</sup> Under Section 95 (1) of the Mining Act, 2016, a permit for an artisanal mining operation shall be granted to a person who –(a) is a citizen of Kenya; (b) has attained the age of majority; and (c) may be a member of an artisanal mining cooperative association or group.

<sup>64</sup> Under Section 95 (5) (e), a landowner’s consent is required where the land has not been designated as an artisanal or small-scale mining area. Under the mining regulations an artisanal miner may require an environmental license and written consent from the landowner.

<sup>65</sup>Section 95 (7)

<sup>66</sup> Section 96 (1)

Finally, the Act requires holders of artisanal permits to mine and produce minerals in an effective and efficient method. They shall also observe good mining practices, health and safety rules and pay due regard to the protection of the environment. Placing the onus exclusively on artisanal mining permits holders including women, subjects them to additional costs that reduces profit margins especially since the pricing framework has not been established.

## 7.7 Safety and security

Whereas ASM is a legal activity, it is linked to the informal economy and is often considered to be an illegal activity. In many cases the operations take place in distant or difficult-to-access locations, and in regions where the institutional presence of the government is weak. Artisanal mining areas lack basic infrastructure like roads and women work or walk for long hours in the wilderness. Security is a major issue especially in the remote parts of Turkana and West Pokot. From extraction of minerals to the entering of companies' value chain, various actors are involved, and they do not always act according to the law.<sup>67</sup> This poses numerous challenges for women to thrive in the sector.



Further, lack of protective gear, lifesavers and safety kits and general, occupational health poses grave harm to women artisanal miners and discourages them from mining (Labonne, 1996)

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<sup>67</sup> <https://www.responsiblemines.org/en/2020/01/small-scale-mining-addressing-challenges-in-global-supply-chain2/>

## 7.8 Access to information

Access to information enhances accountability and transparency and enable women artisanal miners make informed choices about decisions that affect their lives. Women artisanal miners need information on the mineral resources in the areas and information about value addition and markets among others. And this information should be packaged in a language that can be received and understood by a women artisanal gold miner along river Muruny, Seker and parts of Alale in West Pokot for example. Though the Ministry

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## 7.9 Social issues

Women artisanal miners face a variety of social challenges. First, traditional norms have for a long-time prohibited women from mining. The stereotype has been that women are physically weak and unable to use and manage resources properly. The de jure and de facto inequity in access to land and control over resources curtails women's ability to profit from ASM.<sup>68</sup> Even where women own land, they are rarely seen operating mining equipment or digging.

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<sup>68</sup> Fitsum Weldegiorgis, Lynda Lawson and Hannelore Verbrugge: 'Women in Artisanal and Small-Scale Mining: Challenges and opportunities for greater participation' Published by the International Institute for Sustainable Development, IGF (April 2018)

This is influenced by the image of a miner as being masculine and conducting dangerous and risky operations as created in the industrial period,<sup>69</sup> and coupled with cultural predications of women who participate in mining as dirty and loose.<sup>70</sup> Some taboos hold that when women come into direct contact with minerals during their menstrual periods, the minerals will vanish.<sup>71</sup> However, these stereotypes are changing in all the counties visited.

## 7.10 Water

Water plays a critical role in the artisanal mining sector. Besides consumption, water is also essential in mineral processing. In mining sites that are far from rivers, drinking water becomes almost as expensive as the minerals being mined. In such sites in West Pokot and Turkana, water vendors from as Uganda sell water for an average of KES 200 per litre per jerry can. The high price of water promotes abuse and violation of rights especially for women.



## 7.11 Environmental degradation

Extraction of minerals from the earth usually has a negative impact on the environment. Displacement of soil, use of hazardous chemicals in mining process, deforestation and destruction of the ecosystem are just a few of the effects mining has on the environment.

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<sup>69</sup> Kuntala L.D.; 'Digging Women: Towards a new Agenda for Feminist critiques of mining. *Gender Place & culture*, 19(2), pp.193-212 9 (2012)

<sup>70</sup> Verbrugge, H. (2017). *Scratching the surface: Locating women in Tanzania's artisanal and small-scale gold mining sector* (Ph.D. dissertation). Department of Social Sciences, Anthropology, University of Leuven.

<sup>71</sup> Doris Buss, Sarah Katz-Lavigne, Aluoka Otieno, Eileen Alma; "Remember the Women of Osiri: Women and Gender in Artisanal and Small-Scale Mining in Migori County, Kenya" Forthcoming 2020, *Canadian Journal of African Studies*

Environmental degradation in Kwale caused by unchecked mining has subsequently affected other crucial sectors such as agriculture. Women, who are the drivers of agricultural activities in the region are the most affected.

Waste and other by products from mining sites have poisoned the lands, water and air leading to low yields and massive losses. This has made farming impossible and unsustainable, leaving the women to depend on the men who work at the mines.<sup>72</sup> Large scale mining companies such as Base Titanium have been accused of poisoning the lands around their mining sites. They have embarked on compensation and relocation campaigns to mitigate the effects. However, the company has been accused of discrimination against women by undervaluing their lands.<sup>73</sup>



Pollution and environmental degradation not only affect the environment but also the health of the people. Water and air pollution has increased prevalence of diseases. Unsafe methods of extraction such as the use of mercury pose serious health issues to the to the miners.<sup>74</sup>

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<sup>72</sup> Jenkins H. & Obara L. n. 10.

<sup>73</sup> Sophia Mbugua, 'Women Advancement; Women in Kenya risk their livelihoods to stand up for land rights' The New Humanitarian (2018) <https://deeply.thenewhumanitarian.org/womenadvancement/articles/2018/05/09/women-in-kenya-risk-livelihoods-to-stand-up-for-land-rights> accessed on May 19, 2021.

<sup>74</sup> UN Women Kenya n. 9.



## Opportunities for empowering women artisanal miners

### 8.1 Developing an artisanal mining policy

Though the Mining and Minerals Policy 2016, recognized artisanal mining for the first time, there is an urgent need to develop a standalone artisanal mining policy to guide the sector

### 8.2 Decentralizing the ASM

Though the Act, attempts to decentralize the ASM permitting through ASM committees that includes a representative of the County Government, women artisanal miners could benefit more if the sector is fully devolved to the Counties. As mining is under the national government, county governments aren't benefitting from the minerals in their territories and therefore rarely invest in the sector. Investments in roads, water and health facilities in artisanal mining areas could be instrumental in economically empowering women artisanal miners.



## 8.3 Streamlining and supporting the licensing process

Streamlining the licensing process by making it easier to complete, reducing the time, fees and costs associated with obtaining a license is critical. Artisanal miners should be aware of the variety of rights provided for under the Act other than just artisanal miner's permits under Section 93 of the Act. This includes mineral rights reconnaissance, prospecting, retention, and mining licenses.

In respect to mineral rights in private and community land under Section 37 (1) and 38 (1) of the Mining Act 2016, capacity building of such landowners, but most importantly women, is critical to ensure that any legally binding mining agreements empowers women economically. Women private landowners or in community land should be giving legal support.

The National Land Commission urgently develop an inventory of minerals on unregistered community land and provide reports on any mineral rights reconnaissance, prospecting, retention, and mining licenses in such lands. It will also be important to map any such arrangements in community lands prior to coming into force of the Community Land Act, 2016 and Mining Act, to understand their impacts on women.

Cabinet secretary should as a matter of urgency make regulations for the grant of prospecting and mining rights over community land as this will impact on women in community lands

In the case of artisanal mining under Sec 93, it will be important

- i. to create awareness of benefits (if any) of artisanal mining permits*
- ii. fully operationalize artisanal mining committees through training and budgetary support.*
- iii. Create audio-visual materials or pamphlets that describes briefly and concisely the permitting process.*
- iv. Amend the Act to ensure women are included in artisanal mining committees*



## 8.4 Strengthening government coordination

Strengthening government departments and institutions and encouraging collaboration of different ministries and departments at both the national and local level to develop more effective, joined-up approaches and remove overlapping functions.

## 8.5 Investing in disaggregated data

Currently, there is no data on the quantities and types of minerals won by artisanal miners including women. There is no data on amounts of investments and income that is earned by women in the sector. This information would be useful to guide laws and policies and make other informed decisions. A partnership with the Kenya National Bureau of Statistics would be necessary.

## 8.6 Addressing Women Land rights in the ASM sector

Strengthening women ownership and control of land where artisanal mining is undertaken will be critical in empowering them economically. Over the last few years, there has been a tremendous focus on women land rights in Kenya. This provides an entry point for the discussion of women land rights in the artisanal mining sector. However, a more disaggregated study focused on women and land rights in the artisanal mining sector. This study will explore the extent of control and ownership, identify challenges by county and develop recommendations.

However, it might be necessary to amend the Mining Act to reserve specific areas for women artisanal miners.



This is necessary because with the expanding mining sector, investors are increasingly streaming into the country and are being allocated different types of mineral rights over large areas of land including in areas where artisanal mining takes place. These include reconnaissance, prospecting, retention, and mining licenses and permits. Under section 95 (2) of the Mining Act, where any other mineral right has been granted over a parcel of land an artisanal permit shall not be granted.

## 8.7 Access to financing

Facilitating access to financing will be key to women economic empowerment in the ASM sector. Financing in the form of grants or loans to purchase equipment, develop sites and/or finance business operations is critical. A report by Planet Gold on Access to Finance: Options for Artisanal and Small-Scale Mining<sup>75</sup> offers several recommendations that include pursuit of blended finance and impact fund approaches as vehicles for finance delivery, provision of a range of business services over a sustained period, rather than one-off infusions of capital, sharing risks through group funding models and diversifying risk with large numbers of clients, and/or different types of businesses. Such strategies can be pursued through: -

- i. Establishment a national government artisanal mining support fund with 50% of the funds reserved for women artisanal miners.*
- ii. Supporting the sector through targeted programming by state parastatals for example, Kerio Valley Development Authority<sup>76</sup> and the Coast Development Authority*

<sup>75</sup> Planet Gold, Access to Finance: Options for Artisanal and Small-Scale Mining, May 2020 at [https://www.planetgold.org/sites/default/files/2020-06/Access-to-Finance-Options-for-ASM\\_FV.pdf](https://www.planetgold.org/sites/default/files/2020-06/Access-to-Finance-Options-for-ASM_FV.pdf)

<sup>76</sup> Under Section 10 of the Kerio Valley Development Authority Act, 2012, the functions of the Authority include initiating such studies, and to carry out such surveys, of the Area as may be considered necessary by the Government or by the Authority and to assess alternative demands within the Area on the resources thereof, including .....mining ... and to recommend economic priorities; [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/KerioValleyDevelopmentAuthorityAct\\_Cap441\\_.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/KerioValleyDevelopmentAuthorityAct_Cap441_.pdf)

iii. The UWEZO fund offers loan products and an enterprise development package for small group business enterprises. A package targeting women artisanal miners could be developed within the fund.<sup>77</sup>

iv. There are also several initiatives by international financial institutions and UN agencies that could be explored. These include the World Bank<sup>78</sup> African Development Bank, UNDP<sup>79</sup> UNEP,<sup>80</sup> among others. Partnerships with local banks could also be explored to develop a package to support women artisanal miners. The extractives hub also provides useful links to several global and regional support initiatives<sup>81</sup> that can be explored.

v. Mobilizing donor support.

But most importantly, a booklet on financing options will be necessary. This can be done by the Ministry in partnership with NGOs.

## 8.8 Capacity building

Training of women artisanal miners would be critical to spur economic empowerment. Training would help them think entrepreneurially and view ASM as a business. They will understand business ideas and identify the entrepreneurial capabilities needed to implement them successfully. Training would also help them with awareness of the general business environment, market systems and the simplified ASM value chain. Specifically, it will be necessary to develop and disseminate small booklets

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<sup>77</sup> For more on UWEZO Fund see <https://www.uwezo.go.ke/#>

<sup>78</sup> World Bank, Artisanal and Small-Scale Mining at <https://www.worldbank.org/en/topic/extractiveindustries/brief/artisanal-and-small-scale-mining>

<sup>79</sup> UNDP at <https://www.ke.undp.org/content/kenya/en/home/presscenter/pressreleases/2017/Greener-Gold-Support-to-Small-scale-Gold-miners-eliminate-mercury.html>

<sup>80</sup> UNEP Artisanal and Small-scale mining at <https://www.unep.org/resources/report/introduction-artisanal-and-small-scale-gold-mining>

<sup>81</sup> See Extractives Hubs at <https://www.extractiveshub.org/topic/view/id/1/chapterId/421>

- i. Basic business skills*
- ii. Value addition techniques*
- iii. Marketing/markets for minerals*
- iv. Effective mining techniques to reduce the negative social and environmental impacts of operations and improve working conditions, efficiency, yields and incomes*
- v. Access to financing*
- vi. Understanding of the laws, policies, and opportunities they provide.*
- vii. Further, developing accessible technical and vocational education and training (TVET) courses*
- viii. Complete and operationalize the Centre for Mining at Taita University. The Centre was a partnership between the Ministry and the University, but it has not been completed.*
- ix. Absorbing Mining engineering graduates into ASM through a variety of measures that include organizing and financing them.*
- x. Exchange visits with women artisanal miners in the respective counties and outside the country could further build the capacities of women artisanal miners. Tanzania and Zimbabwe could be easily accessible experiences.*
- xi. Improve the capacity, strength, and collaboration of government ministries.*

## 8.9 Access to information

The ministry has developed several documents that could be critical to artisanal miners. However, the documents are in English therefore inaccessible to most artisanal miners. A partnership with NGOs to make information accessible would play a big in economically empowering women artisanal miners. NGOs would assist in translating information in local languages and through recording that can played on phone, radios including local radio stations.

## 8.10 Value addition

Besides merely supplying raw minerals, women ASM should be supported to add value to the minerals. Of immediate need is the full operationalization of *Voi Gemstones Value Addition Centre*<sup>82</sup> and developing other such centres in other parts of Country for example, in Kisumu to serve Narok, Migori, Siaya, Vihiga and Kakamega in Kapenguria to serve West Pokot, Turkana and Elgeyo Marakwet among others. A partnership between the Ministry of Petroleum and Mining and the Ministry of Industry, Trade & Co-operatives, and the private sector to spur growth of the women enterprises in the ASM sector.

## 8.11 Provision of equipment

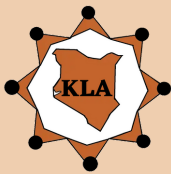
Due to the high cost of equipment, women are restricted from fully benefitting from artisanal mining. It will be necessary to purchase equipment to women artisanal mining associations. Processing centers where women could take their stones for processing could also help women reduced costs of paying for processing equipment. It is important that the needs of miners and the community are properly assessed first to ensure support facilities meet their requirements and local contexts.

## 8.12 Addressing water issues

Partnerships with UN agencies, NGOs and donors will be necessary to drill boreholes or to avail water to artisanal mining sites

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<sup>82</sup> YouTube <https://www.youtube.com/watch?v=e77ScQKy9u8>



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