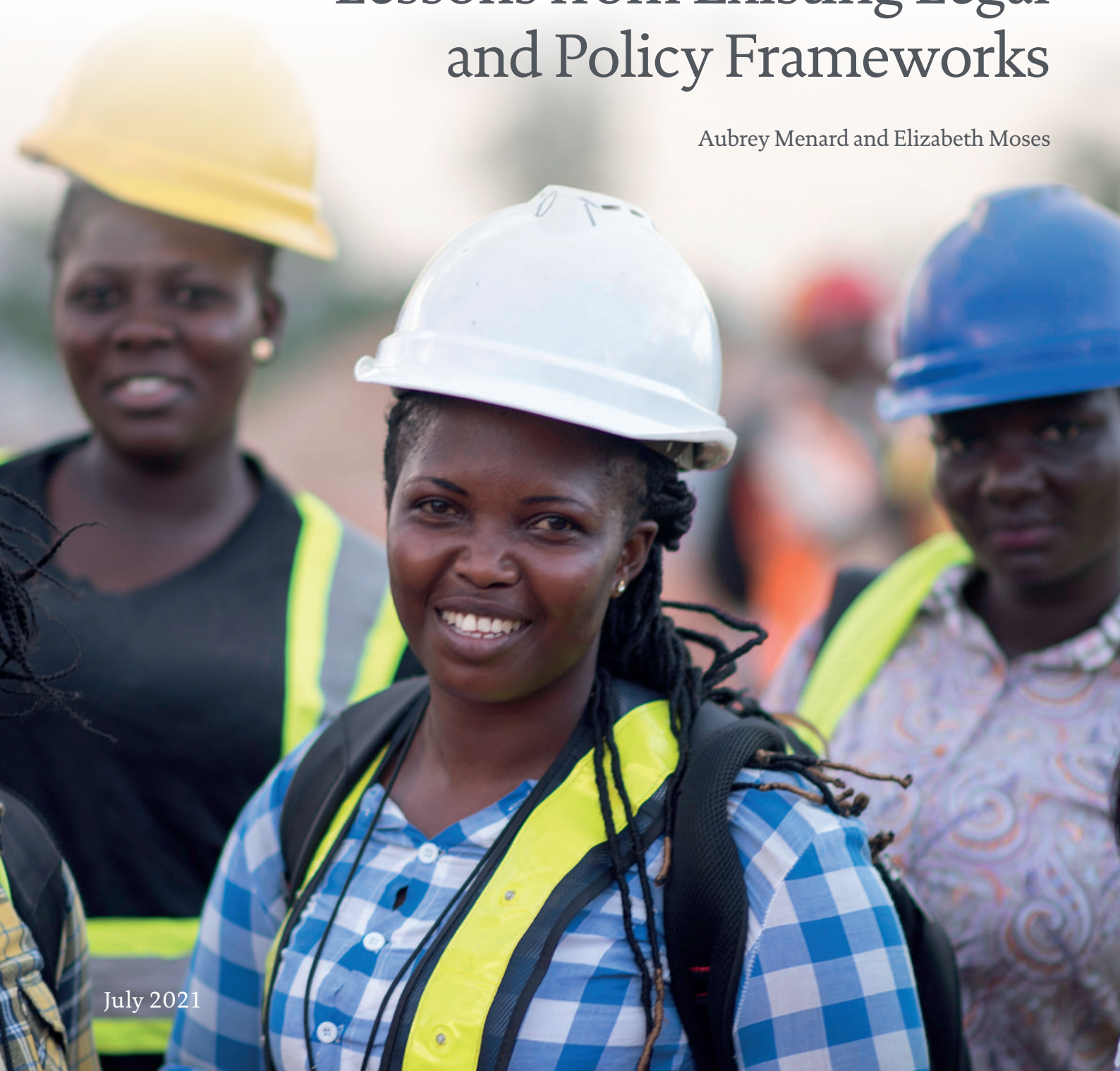


Gender and Extractive Governance: Lessons from Existing Legal and Policy Frameworks

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Key messages

- Women and gender minorities often face disproportionate harms from oil, gas and mineral extraction and may be less likely to access economic benefits or opportunities for political engagement.
- To evaluate how well gender-transformative change has been codified in official documents, this report examines how women and gender equality are referenced in the laws, regulations, policies and guidelines governing the extractive sector in 12 resource-rich countries.
- We found that some provisions in the reviewed documents could address the different needs of women, men and gender minorities if well implemented, but few documents specifically address the root causes of inequality.
- In some countries, archaic provisions prohibit or limit women's participation in the sector, preventing them from working in more lucrative roles.
- Women were primarily characterized based on their perceived role as workers, as a vulnerable or marginalized group or as uniquely-impacted stakeholders. Some documents included quotas for women's participation or benefit-sharing provisions, while others aimed to create broad changes to the culture around women's participation.
- Few documents required the collection of gender-disaggregated data and most did not explicitly require transparency in gender-specific provisions or have verifiable plans or enforcement mechanisms.
- To strengthen the potential of extractive governance legal frameworks to address gender equality, governments should:
 - remove any provisions restricting women's equal participation in the sector
 - be ambitious about gender-transformative change
 - explicitly require and enable the participation of women and gender minorities through verifiable goals and processes
 - require data disaggregation and transparency
 - complement ongoing broader national and international gender initiatives.



Gold mining, Burkina Faso.

Photo by Ollivier Girard/CIFOR, available under CC BY-NC-ND 2.0

Executive summary

Greater gender equality accompanies economic advancement. However, in countries rich in oil, gas and minerals, economic advancement has not served women and gender minorities as well as men. On the contrary, gender inequality is more pronounced in countries significantly reliant on the extractive sector. The negative impacts of overreliance on the extractive sector appear at both the national level and the sites of major extraction projects. While the gendered issues related to the extractive sector have been broadly acknowledged, efforts to address them are not well developed.

This research focuses on gender and governance of the extractive industries. The paper is part of the larger Gender and Extractives project, funded by the Open Government Partnership (OGP) and the World Bank Multi-Donor Trust Fund, and executed by the Natural Resource Governance Institute (NRGI) in partnership with the World Resources Institute (WRI). This larger project aims to promote gender equality within extractive governance. In 2019, OGP launched the Break the Roles campaign to encourage countries to be more intentional, strategic and ambitious in bringing women's and gender-diverse perspectives into open government. While OGP member countries have made open government commitments in relation to the extractive and natural resources sectors, the majority of these commitments are gender-blind. The Gender and Extractives project, of which this paper is the first major research output, aims to inform a new generation of gendered OGP commitments in relation to the extractive sector, building on the momentum created by the Break the Roles campaign and the growth in attention now paid to advancing gender equality in the extractive sector. While NRGI and WRI do not endorse reliance on resource extraction, we believe that women and gender minorities should be involved in the whole extraction process, from influencing whether and when extraction occurs, to addressing the effects on their communities.

Laws and policies are the mechanisms through which governments transform political priorities, principles and commitments into actions and requirements. In this first phase of the project, we set out to discover whether and how countries rich in oil, gas and minerals currently reflect gender equality and the rights of women in legal and policy frameworks that govern the extractive sector. We examine how laws and frameworks characterize women and gender, and consider their potential to bring about transformative change to achieve gender equality.

Understanding the mechanisms through which countries are currently attempting to address the gender-differentiated impacts of the extractive sector is critical to drafting OGP commitments that are more likely to create change that is “gender-transformative.” By this, we mean changes that address the root causes of gender inequality or that lead to women's economic empowerment. In analyzing the trends within these documents and comparing the mechanisms through which each addresses gender, we are able to see the strengths, weaknesses and gaps in their approaches. These findings can help open government advocates to understand and critique their own countries' documents and to develop stronger OGP commitments around extractives and gender.

Our research examined the legal and policy frameworks in 12 OGP countries: Argentina, Canada, Colombia, Ghana, Indonesia, Kenya, Morocco, Mongolia, Nigeria, Peru, Sierra Leone and Tunisia. We identified 62 laws, policies, regulations, guidelines and other official documents that referenced the extractive sector and gender or women. Of these, 30 documents were directly related to extraction, in that they specifically govern the sector (for example, national oil, gas or mining laws) or include provisions that specifically mention women's participation in the extractive industries (such as labor codes that specifically regulate women's participation in mining). The other 32 documents were defined as "indirectly related," in that while they referenced extractives or natural resources as well as gender, women or sex, they are not sector-specific and tend to apply to multiple economic sectors (for example, water codes).

Many other documents, such as employment laws and regulations, property ownership laws and even healthcare regulations, have a significant effect on different demographics' abilities to participate in and benefit from the extractive sector. For example, unequal property laws can hinder women's access to finance, creating an obstacle to their accessing loans for equipment to allow them to participate in artisanal mining. However, to make our research feasible, we limited the scope of our analysis to just those documents that explicitly reference extractives and natural resources, as well as gender, women or sex.

In this report, we focus primarily on the 30 documents that are directly related to the sector (with Section 7 dedicated to the 32 indirectly-related documents). In our analysis, we considered the use of the terms "women" and "gender," efforts to promote participation, and how verifiable the documents' provisions were, and found the following:

- **Discursive use of "women" and "gender."** We generally found that references to women reflected stereotypical views of their role and status. The use of "women" was more common in documents from the 1990s and 2000s, whereas more recent documents refer to "gender." The term "gender" was often used as a proxy for people with biological attributes ascribed as female, rather than its more recent usage to denote a broader set of socially or psychologically constructed roles, behaviors, expressions and identities of girls, women, boys, men and gender-diverse people. While a few documents made evident commitments to gender equality, explicit provisions that addressed the equality, participation or measurement of gender and sexual minorities were wholly absent across our sample.
- **Participation.** We examined how the documents reflected women and gender minorities' participation. Most notable were the use of quotas for women's representation on extractive sector governing bodies established by law. For example, Ghana's 1993 Minerals Commission Act establishes the commission and requires that at least two of its seven members are women—its sole reflection of women and gender. Other approaches to women's participation included requirements for governments and companies to include women in consultations on local development initiatives related to extraction. However, these requirements were general, and how they could be implemented or verified was unclear.

- **Verifiability or enforceability of commitments.** We looked across the directly-related documents for ways to verify whether their provisions were implemented in practice, or for measures that enable enforcement. The simpler provisions, such as requirements for a quota of women, are easily verifiable. However, there was most often no obvious means of checking implementation or enforcement of provisions with greater potential to be gender transformative.

Our review of the documents was limited to textual analysis, which offers valuable insight into countries' values and how they set national priorities and seek to create change. Our document review revealed observations and questions that will inform subsequent research planned under the project:

- **Use of the term “gender” does not necessarily equate with a commitment to the goal of gender equality.** Legislators and framework authors use the term in various governance documents rhetorically, but often without a clear definition of institutional mechanisms and processes integral to establishing gender equality. To ensure that stated policy aspirations translate into practical and enforceable gender-transformative policy commitments, drafters must be explicit about the goal of gender equality and the status of different groups.
- **Laws may not be the best means of catalyzing gender-transformative change.** We initially hypothesized that laws were the most powerful documents, and guidelines the least useful, because in many cases their provisions are not mandatory. However, it was notable that the country in our sample with the worst score on the UN Gender Inequality Index (Sierra Leone) had the most laws referring to women and gender in the extractive sector, while the country with the best score on the Index (Canada) has no laws at the national level.^{1,2,3} In addition, at least half the laws in the sample contained only basic provisions to promote gender equality, such as a requirement for quotas on governing bodies. These observations raised questions about the extent to which a country's wider legal, policy and social context is important. Can gender commitments within extractives be effective if isolated? Are laws, which often require precision in their clauses, the best means of catalyzing gender-transformative change? Some of the more discursive documents, such as policies and guidelines, reflect a more nuanced and multi-faceted approach to gender.

1 The UN's Gender Inequality Index measures gender inequalities in three important aspects of human development—reproductive health, measured by maternal mortality ratio and adolescent birth rates; empowerment, measured by proportion of parliamentary seats occupied by females and proportion of adult females and males aged 25 years and older with at least some secondary education; and economic status, expressed as labor market participation and measured by labor force participation rate of female and male populations aged 15 years and older. United Nations Development Program, *Gender Inequality Index* (2020), hdr.undp.org/en/content/gender-inequality-index-gii

2 The World Bank's 2020 *Women, Business and the Law* study, which evaluates the laws and regulations affecting women's economic opportunity, gives Canada a perfect score of 100 points for having gender-equal laws. Sierra Leone scores only 63.1 points, making it one of the 50 worst-performing countries in the index. However, the majority of Canada's extractive governance is carried out at a subnational level, and so these documents were excluded from our sample, which only examines national-level legislation. World Bank, *Women, Business and the Law 2020*, openknowledge.worldbank.org/bitstream/handle/10986/32639/9781464815324.pdf

3 Our country sample is not large enough to assess whether there is a correlation between UN Gender Inequality Index score and the document provisions. We present the cases of Sierra Leone and Canada as an observation that could be worth further inquiry.

- **Drafters should consider implementation and enforcement mechanisms early in the development of laws, policies, regulations and guidelines.**

Gender-related provisions have the potential to bring about meaningful change only if implemented effectively in practice, but does focusing on the measurability of outcomes lead to simplistic approaches at the expense of more complex approaches with greater gender-transformative potential? Conversely, if the impact cannot be measured and verified, how can stakeholders—including communities, civil society, companies, regulators and governments—assess the value of legal and policy frameworks?

These observations and questions will shape upcoming case study research into how extractive governance mechanisms are developing in Mongolia and Sierra Leone, as well as the online discussions that are an integral element of the project.



Women's participation in Mongolia.

Photo by Munkhgerel Batardene.

While we have not yet explored the implementation or the efficacy of these documents, we can draw some recommendations about the nature of gender provisions in them. As they draft gender-relevant OGP commitments in connection with the extractive sector, governments should:

- **Be ambitious.** When drawing up gender provisions in OGP commitments, drafters should not merely aim to include a set proportion of women or other groups in the industry, but should seek to create gender-transformative change.
- **Require and enable the participation of women and gender minorities.** Designers of commitments should aim to remove structural barriers to participation, create compatible workplaces, and enable women and gender minorities' input in sectoral governance. Governments should repeal provisions that restrict women's participation in the sector.
- **Enable verification.** Framers should build measurable goals and impacts into commitments so that governments, companies, civil society and the public can track progress.
- **Require data disaggregation.** Commitments should require that governments, companies and other extractive sector actors disaggregate data by gender throughout the extractive sector supply chain, so that the sector's gendered impact is quantifiable.
- **Require transparency.** Documents relating to the sector should, wherever possible, require transparency, to allow for greater accountability and access to information.
- **Connect to ongoing national and international efforts.** Commitments should work in a complementary way with other national and international efforts to promote gender-transformative governance.



Photo by Munkhgerel Batardene

Introduction

Globally, many countries rich in natural resources struggle to achieve significant economic development and often suffer from growing inequality and poor governance.^{4,5} This phenomenon is known as the “resource curse,” which signifies “the failure of many resource-rich countries to benefit fully from their natural resource wealth, and of governments in these countries to respond effectively to public welfare needs.”⁶ Countries that are unconsolidated democracies at the onset of resource extraction, with economies below world median gross domestic product (GDP), are more likely to suffer from corruption, wealth inequality, weak development and consolidation of political power than those not dependent on resource wealth.⁷

Box 1. Gender equality

The term “gender equality” has been defined in a variety of ways in the context of development. It typically means equal rights and opportunities for women, men and gender minorities under the law, equality of opportunity (including equal rewards for work and equal access to human, capital and other productive resources) and equality of voice (the ability to participate in decision making). Gender equality requires that women, men and gender minorities receive adequate and equitable protection of their human rights, including the right to live free from violence in a safe, supportive home and community.

Resource extraction does not affect all people equally. Many of its impacts disproportionately affect women.⁸ Generally, greater gender equality in a country accompanies its economic advancement.⁹ However, in countries rich in natural resources, this is often not the case. For example, autocratic countries that receive more than USD1,000 per capita in income from oil and natural gas have greater levels of gender inequality (as measured on the United Nations (UN) Gender Inequality Index) at nearly every level of income than autocratic countries that do not have resource-based economies.¹⁰ Political scientist Michael Ross finds that in Middle Eastern economies that rely heavily on their natural resource sectors, there are fewer job opportunities and less of a need for women to work, which deprives them of opportunities for political engagement and to build their economic power.¹¹ In these countries, women are less able and likely to challenge patriarchal norms or to push for political rights and representation. In a 2016 critique of Ross’ work,

4 The introduction that we provide on the resource curse here is necessarily brief and simplistic in that it does not delve into different schools of thought about whether the resource curse exists and whether it is exogenous or endogenous, and extensive literature on resource colonialism and asymmetries of power.

5 Jeffrey Sachs and Andrew Warner, “The Curse of Natural Resources,” *European Economic Review* 45, (2001): 827-838. Earth Columbia.

6 *The Resource Curse: The Political and Economic Challenges of Natural Resource Wealth* (Natural Resource Governance Institute, 2015).

7 Michael Ross, *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations* (Princeton: Princeton University Press, 2013), 11.

8 See: Michael L. Ross. “Oil, Islam, and Women,” *The American Political Science Review* 102, no. 1 (2008): 107-23, and Joel Simmons. “Does Oil Substitute for Patriarchy?” *Economics & Politics* 31, Issue 3 (2019): 293-322.

9 Yu-Ming Liou and Paul Musgrave, “The Gendered Resource Curse,” Paul Musgrave, 13 January 2017, paulmusgrave.info/the-gendered-resource-curse/

10 *Ibid.*

11 See: Ross, “Oil, Islam, and Women,” 107-23 and Ross, *The Oil Curse*.

Yu-Ming Liou and Paul Musgrave argue that resource wealth enables governments to purposefully design policies to either increase or decrease gender equality. In such cases, consolidated political power, protected through a well-financed coercive apparatus, is less susceptible to marginalized groups' appeals for equitable treatment.¹² A recent study found that women and Indigenous people in Latin America suffered higher levels of poverty, despite mining royalty allocation to their areas.¹³ Research indicates that the ownership structure for extracted resources in sub-Saharan Africa impacts the gendered effects of the sector.¹⁴ In the United States, research on resource wealth found that women's economic and political influence is weaker in states that have more mineral wealth.¹⁵

International organizations such as Oxfam and Publish What You Pay have identified several ways in which the impacts of oil, gas and mining projects are not gender neutral.¹⁶

- Companies that use land—which is most often legally controlled by men—for extractive projects often negotiate access rights, compensation or benefit-sharing agreements with male stakeholders, which can perpetuate or undermine existing power dynamics and disadvantage women.
- In compensation or benefit-sharing arrangements, the payment often goes to male heads of households, denying women access to and control over the financial benefits of mining. This exacerbates existing inequalities and women's dependence on men.
- If an extractive industry project forces people off their land, this can lead to the loss of women's land-based livelihoods. Pollution caused by these projects can also deplete food and water resources, leading to an increased workload for women responsible for providing these resources for the family or community. The undermining of women's livelihoods can result in their becoming more economically dependent on men.
- Pollution from oil, gas and mining projects can lead to chronic illness in the surrounding community, increasing women's unpaid care work.
- Extractive projects often bring a transient male workforce. Research in numerous countries shows that this can lead to sexual exploitation of women, violence against women and an increase in sexually-transmitted diseases.

Unfortunately, little research has been done on the impact of the extractive industries on gender minorities and there is not comparable information on how the extractive industries affect them.

12 Yu-Ming Liou and Paul Musgrave, "Oil, Autocratic Survival, and the Gendered Resource Curse: When Inefficient Policy Is Politically Expedient," *International Studies Quarterly*, Volume 60, Issue 3 (2016): 440-456.

13 Carlos Monge Salgado and Claudia Viale Leyva, *Los Efectos del Boom de las Industrias Extractivas en los Indicadores Sociales* (Natural Resources Governance Institute, 2016).

14 Mario Krauser, et al. "A gendered resource curse? Mineral ownership, female unemployment and domestic violence in Sub-Saharan Africa," *Aufsatz* 8, (2019).

15 Joel Simmons, "Resource Wealth and Women's Economic and Political Power in the U.S. States," *Comparative Political Studies* 49, Issue 1 (2015): 1-38.

16 See: Christina Hill, Chris Madden and Nina Collins, *A guide to gender impact assessment for the extractive industries* (Women and Mining, 2019), and Charlotte Ørnemark, *In It Together: Advancing Women's Rights through the Extractive Industries Transparency Movement* (Publish What You Pay, 2019).

TOWARDS A GENDER-TRANSFORMATIVE APPROACH

Box 2. Gender mainstreaming

The UN Economic and Social Council understands gender mainstreaming as the process of assessing the implications for women and men of any planned action, including legislation, policies or programs, in all areas and at all levels. It is a strategy for making women's concerns and experiences, as well as those of men, an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres. It aims to ensure that women and men benefit equally and inequality is not perpetuated. The ultimate goal is gender equality.

The Open Government Partnership (OGP) promotes commitments that are “transformative,” meaning that the reforms to which a government commits have the potential to transform “business as usual” in the relevant policy area.¹⁷ The Feminist Open Government Initiative has stated that a gender-transformative approach would involve gender mainstreaming that would offer “equitable and equal access to transparency, participation and accountability from government, ensuring that governments are responsive to the diverse and gendered needs of all citizens, and that implementation of such initiatives is gender sensitive.”¹⁸ (See Box 2 for a definition of gender mainstreaming.) In the context of extractives, this means that OGP member country governments should:

- Ensure meaningful participation of women and gender minorities during the process of developing national action plans and commitments.
- Encourage greater participation of women and gender minorities in determining the use of extractive resource revenue.
- Capture and disaggregate data by gender and ensure that data is accessible and relevant to a diverse set of stakeholders, including women and gender minorities in extractive communities.
- Ensure that information reaches women and gender minorities, particularly through proactive publication and creative methods of distributing information.
- Facilitate women and gender minorities' access to one-stop service centers that provide government information and services and improve their digital literacy.
- Make gender-sensitive commitments that ensure that women and gender minorities are able to benefit from the advances sought by more open, transparent and inclusive governments.
- Promote resource allocation approaches that include and would benefit women and gender minorities.
- Address the negative impact of the extractive sector on women and gender minorities, through responsive local decision making.¹⁹

17 Lara Vossler and Joseph Foti, *When More is More: Toward Higher Impact OGP Commitments* (Open Government Partnership, 2018).

18 Silvena Fumega et al., *Feminist Open Government Initiative: addressing gender equity challenges in Open Government co-creation processes* (Open Government Partnership, 2019), 27.

19 *Ibid.*

OUR PROJECT

Our research examines gender and the extractive industries, specifically how gender and women are referenced in the legal and policy tools that govern the sector in 12 resource-rich countries: Argentina, Canada, Colombia, Ghana, Indonesia, Kenya, Morocco, Mongolia, Nigeria, Peru, Sierra Leone and Tunisia. It is part of a larger Gender and Extractives project funded by the Open Government Partnership (OGP) and the World Bank Multi-Donor Trust Fund, and executed by the Natural Resource Governance Institute (NRGI) in partnership with the World Resources Institute (WRI), aiming to promote gender equality within natural resource governance.

OGP champions more accessible, responsive and accountable government, with 78 countries and a growing number of local governments—representing more than two billion people—as members. All OGP member states sign the Open Government Declaration and are required to work with civil society organizations to co-create action plans that contain concrete steps—known as “commitments”—across a broad range of policy areas.

In 2019, OGP launched the Break the Roles campaign to encourage member countries to be more intentional, strategic and ambitious in bringing women and gender-diverse perspectives into open government.²⁰ To date, more than 30 OGP members have committed to a gender action. These range from interventions to reduce gender-based violence, to specific initiatives to increase access by women-owned businesses to public procurement bids. However, while OGP countries have made open commitments in relation to the extractive and natural resources sectors, the vast majority of these are gender-blind and there are no explicit gender-focused commitments dealing with the extractive industries.²¹

The overall project aims to provide insights and tools to help governments of resource-rich countries develop and mainstream robust gender-transformative policy commitments in the extractive sector. Laws and policies are the mechanisms through which governments translate political priorities and commitments into action. In this first phase of the project, we set out to discover whether and how countries rich in oil, gas and minerals currently reflect issues of women’s participation and gender equality in legal and policy frameworks that govern the extractive sector.²²

20 “Break the Roles”, Open Government Partnership, accessed 3 September 2020, opengovpartnership.org/campaigns/break-the-roles/.

21 Renzo Falla, Joseph Foti and Jessica Hickle, *Seeking Synergy: The Open Government Partnership and the Extractive Industries Transparency Initiative* (Open Government Partnership, 2019).

22 Many other documents, such as employment laws and regulations, property ownership laws and healthcare regulations, have a significant effect on different demographics’ abilities to participate in and benefit from the extractive sector. For example, unequal property laws can hinder women’s access to finance, creating an obstacle to accessing loans they may need for equipment to allow them to participate in artisanal mining. However, to make our research feasible, it was necessary to limit the scope of our analysis to just those documents that explicitly reference extractives and natural resources, as well as gender, women or sex.

As the first major research output of the project, this paper examines how women and gender are characterized and in which type of document. Drawing on the United Nations Development Programme (UNDP) Gender Results Effectiveness Scale (see Box 3), we assessed whether the potential impacts of the documents' provisions in the documents could be gender-negative, blind, targeted, responsive or transformative. The UNDP uses this scale to conduct impact assessments of its own gender-based interventions. However, in this report, we limit our assessment to the potential of these documents, rather than their actual impacts. We recognize that these documents may suffer from implementation gaps and challenges and that their potential may not be realized in practice. However, the second phase of our research will include case studies of two countries to examine how the laws and policies were developed, their actual impact and lessons that can help other resource-rich countries to meaningfully advance gender equality within and through the extractive sector.

Box 3. Adapted UNDP Gender Results Effectiveness Scale

In assessing the gender impact of interventions, we classified them as:

- Gender-negative: The results had a negative outcome that aggravated or reinforced gender inequalities and norms. This includes gender-exploitative approaches that take advantage of existing gender inequalities, behaviors and stereotypes in pursuit of project objectives.
- Gender-blind: The results showed no attention to gender and failed to acknowledge the different needs of men, women, girls, boys or gender minorities.
- Gender-targeted: The results focused on the numbers or equality levels (50/50) of women, men or marginalized people.
- Gender-responsive: The results addressed the different needs of men, women and gender minorities, and the equitable distribution of benefits, resources, status and rights, but did not address the root causes of inequalities in people's lives.
- Gender-transformative: The results contributed to changes in norms, cultural values, power structures and the root causes of gender inequalities and discrimination.

The project hopes to inform a new generation of gender-transformative OGP commitments in relation to the extractive sector, building on the momentum created by Breaking the Roles and the growing attention now being paid to advancing gender equality in the extractive sector. In 2019, the Extractive Industries Transparency Initiative (EITI), a global initiative for good governance of oil, gas and mineral extraction, adopted new disclosure requirements that prompt gender-sensitive data disclosures and women's participation in the multi-stakeholder groups that oversee a country's EITI implementation.²³ These initiatives are opening up space for new action on gender. This project will provide governments with the tools and insights that ensure commitments and action are well-informed and build on lessons learned globally.

23 *The EITI Standard 2019: The Global Standard for the Good Governance of Oil, Gas and Mineral Resources* (Extractive Industries Transparency Initiative, 2019).



Peruvian woman working at the Maras salt mines, Peru.

Photo by The World Traveller

Research methodology

Our research aims to provide an overview of how 12 resource-rich countries have reflected issues of women’s participation and gender equality in the legal and policy tools that govern their extractive sectors. We gathered and analyzed current national-level laws, policies, regulations, guidelines and other government documents relevant to the domestic extractive sector and with reference to gender, women or sex, in Argentina, Canada, Colombia, Ghana, Indonesia, Kenya, Morocco, Mongolia, Nigeria, Peru, Sierra Leone and Tunisia. We chose these countries based predominantly on the need for the country sample to be comprised of national OGP members in which NRGI and WRI had either country staff or considerable networks that would allow the research to feed into peer-to-peer learning workshops that would help to share gender-transformative commitments. In focusing on a limited number of countries, in line with the scope and resources of the project, we also considered regional diversity, inclusion of oil and gas producers and mineral producers, and the level of economic contribution by the extractive sector to the country’s overall economy and government revenues. (See Table 2 in Section 2 for a breakdown of research countries by variable.)

Box 4. “Women,” “gender” and “sex”

In examining documents relating to women and gender, we are applying a wide range of key words and inclusive definitions to avoid limiting our research to a biologically deterministic view of these concepts. We understand the term “woman” to denote a group of people that includes anyone who identifies as such and “gender” as a psychological construct that includes a spectrum of identities that are independent of sex. We understand “sex” to refer to the biological difference between male and female. However, many of the documents that we assess do not define the way that they use these terms or acknowledge a distinction between their uses of “women,” “gender” or “sex.” Most documents conflate the terms “women” and “gender” and do not address the issues or inclusion of gender minorities in any substantive way.

In conducting our research, we did not create a comprehensive repository of all extractive-related laws, policies, regulations and guidelines for each country, and then seek to identify which—if any—contained references to gender, women or sex. Instead, we sought to identify national-level documents that referred to the extractive sector and referenced gender, women or sex. We identified the documents through desktop research using four methods:

KEYWORD SEARCHES

We performed keyword searches on Google and Google Scholar in the relevant language for documents that contained references to both women, gender or sex, and the extractives sector. For each country, we used a combination of terms, based on country name and women, gender, sex, mining, extractives, policy, laws and guidelines. For example, a keyword search for Kenya would have included, “Kenya AND gender AND mining AND policy.”

DATABASE REVIEW

We reviewed key databases including government ministry websites, academic and multilateral institutional resources, the Food and Agriculture Organization's FAOLEX database, the ECOLEX database of environmental law and www.ResourceData.org (the NRGi database of extractive laws and policies), using keywords in the relevant languages.

PARTNER OUTREACH

To fill in gaps and verify that we had a comprehensive collection of the relevant documents, we reached out to government and civil society contacts in the 12 countries. We received little response from government. Our outreach strategy varied by country, based on how easily we were able to access the relevant documents. In countries where most laws and policies are kept online via government portals, it was unnecessary to reach out to extensive contacts. In countries where there was little or no information available via government databases and websites (for example Morocco and Indonesia), we contacted civil society colleagues. In some cases, such as Mongolia, our initial civil society contacts provided us with all the documents. In others, we had to reach out to a more extensive network of contacts.

PEER REVIEW

Our paper was peer reviewed in several stages by 11 reviewers, including specialists in extractives, gender and research methodology, as well as regional experts (see the acknowledgements section). The peer review process revealed that our research methods had overlooked six directly-related documents—a provision in Morocco's Labor Code, a Moroccan decree, a provision in Tunisia's Labor Code, a provision in an Argentinian labor law, a provision in Sierra Leone's labor law and Sierra Leone's artisanal mining policy, as well as one indirectly-related document, Indonesia's Agrarian Law 5/1960. We subsequently added these missing documents to our analysis.

Through this process, we located a total of 62 laws, policies, regulations, guidelines and other documents. While it is possible that this approach may have missed some documents, we are reasonably confident that we have identified the most significant documents that refer to extractives and women, gender or sex in each country.

We organized the 62 documents into a searchable database. (See the appendices for a complete list of documents). Table 1 shows our analytical and data collection framework.

Table 1. Analytical and data collection framework

Field Name	Description
Country	The country from which the document comes
Document date	The year of the document
Document type	Constitution, law, policy, guideline, regulation or other
Formal name of document	
Directly/indirectly related to the extractive sector	Whether the document explicitly regulated only the extractive sector or was indirectly related (for example, a law regulating multiple sectors)
Relevant ministry	Identification of the ministry under which the document fell (e.g., Ministry of Mines, Petroleum, Environment, etc.)
Reference type	<p>Definition of the nature of the references to gender in each document (using a drop-down menu)</p> <p>Does the policy/law refer to gender equality or gender relations (as opposed to women)?</p> <p>Does the policy/law explicitly refer to participation/inclusion of women?</p> <p>Does the policy/law specifically refer to impacts on women?</p> <p>Does the law/policy require data disaggregation by gender?</p> <ul style="list-style-type: none"> • A requirement on consultation with affected communities • A requirement on participation (in decisions, bodies) • A requirement on transparency • The use or management of revenues • Local content • Development projects or companies' corporate social responsibility (CSR) programs • Tax policy or fiscal frameworks
Count of "Women"	Frequency with which the word "women" is used in the extractive-sector relevant part of the document ²⁴
Count of "Gender"	Frequency with which the word "gender" is used in the extractive-sector relevant part of the document
Count of "Sex"	Frequency with which the word "sex" is used in the extractive-sector relevant part of the document
UNDP Gender Results Effectiveness Scale	Our assessment of whether the document has the potential to be gender-negative, blind, targeted, responsive or transformative ²⁵
Notes	<p>A space to type observations including:</p> <p>Reference to relevant article and section numbers or section title and page number of relevant policy or guideline</p> <p>Additional information if participation requirement references a certain percentage of women in any meeting or events (use of quotas)</p> <p>Additional information on specific mentions of impacts</p>
Contact recommendation	Name of contact if used to collect document
Source of document	Contact or online link

24 In documents that focused entirely on the extractives industry, such as Mongolia's Geology, Mining, Petroleum and Heavy Industry Sector Gender-Responsive Policy Action Plan of Implementation, we counted the number of times "women," "gender" or "sex" appeared throughout the document. However, for documents such as Morocco's Labor Code, we only counted the number of times "women," "gender" or "sex" appeared in the section of the code directly related to the extractive sector.

25 While the UNDP scale was created to assess programmatic impact, we use its definitions, rather than the framework as a whole, to categorize documents across a country through a loose indicator of transformative potential. Because so much of whether a document is transformative depends on its implementation, we are only able to assess for potential based on textual analysis. Reasons for our categorization of each document are included in Section 3.

We analyzed these 62 documents to determine which were directly related to the extractive sector (documents that explicitly govern the sector), tagging 30 as directly-related. The remaining 32 were indirectly-related, making mention of extractives or natural resources, without being sector-specific. (See Figure 1.)

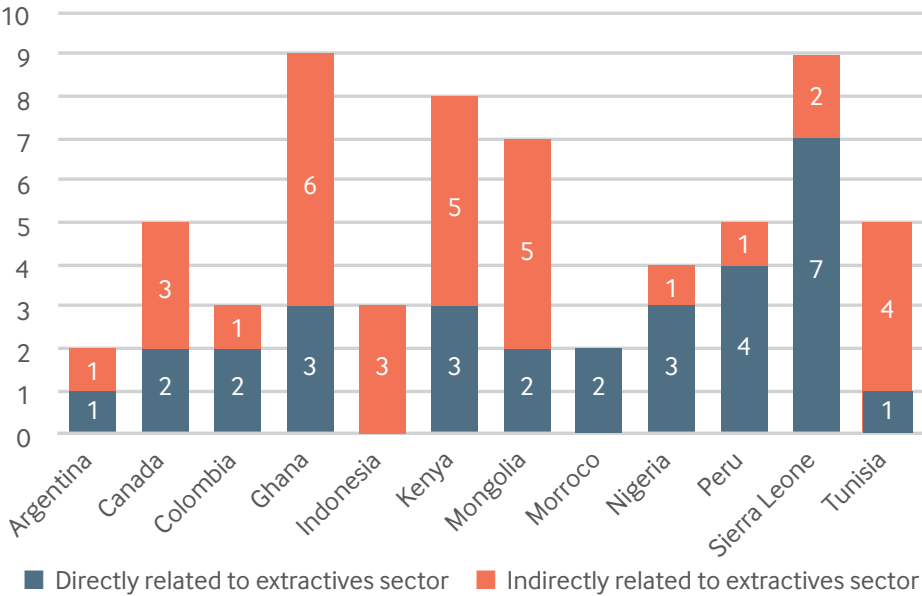


Figure 1. Number of documents by country



Women’s participation in Mongolia.
Photo by Munkhgerel Batardene.

Our research process made all attempts to ensure comprehensiveness, consistency and accuracy. However, there are limitations and caveats:

- This report examines national- or federal-level legislation. Subnational legislation was beyond the scope of our analysis, although our research did reveal that many countries have subnational legislation, either as the prevailing approach for regulating the extractive sector or combined with national laws and policies.
- As noted above, an exhaustive list of laws, policies, regulations, guidance or other documents that indirectly impact the extractives sector was beyond the scope of our research.
- Some countries make collective bargaining agreements with companies that are legally binding and may apply to a large percentage of the sector. However, these are beyond the scope of our analysis.
- We made a good-faith effort to locate laws and regulations through online databases, government websites and contacting government and civil society officials, but in some cases could not confirm the existence of any documents.
- A native Spanish speaker reviewed Spanish language documents. For other non-English language laws, researchers used official English translations as often as possible. Where none were available, we used non-official translations found in gray literature or used Google Translate for our analysis.
- We also reviewed additional government and academic documents to provide insight into the policy context but did not include these in our formal analysis.



Tanzania artisanal and small-scale mining dialogue.

Photo by Steve Aanu for the International Institute for Environment and Development, available under CC BY-NC 2.0

Countries covered by the report

Phase 1 of this research project focused on 12 countries. Table 2 below provides a brief overview of the extractive sector in each country, and its ranking on the UN Gender Inequality Index and the LGBT Global Acceptance Index.^{26,27}

Country	Region	Dominant extractive industry	Gender Inequality Index (2020) rank (out of 189 countries)	LGBT Acceptance Index (2019) rank (out of 174 countries)	Extractives % of GDP (most recent available measure) ²⁸
Argentina	South and Central America	Gas	77	23	4.6
Canada	North America	Oil and gas	18	4	2.5
Colombia	South and Central America	Oil and coal	94	37	5.6
Ghana	Sub-Saharan Africa	Oil and diamonds	133	141	14
Indonesia	Southeast Asia	Oil, coal and copper	103	150	4.8
Kenya	Sub-Saharan Africa	Oil and gas	134	119	1.3
Mongolia	East Asia	Coal and copper	71	142	40
Morocco	Middle East and North Africa	Phosphate	118	118	1.6
Nigeria	Sub-Saharan Africa	Oil	128 ²⁹	146	11.5
Peru	South and Central America	Copper, gold, silver and gas	87	53	8.9
Sierra Leone	Sub-Saharan Africa	Iron ore and diamonds	153	134	7.9
Tunisia	Middle East and North Africa	Phosphate	63	110	3.3

Table 2. Countries covered by the report

²⁶ For further information on the Gender Inequality Index, see footnote 1.

²⁷ The Global LGBT Acceptance Index (GAI) incorporates survey data about public beliefs regarding LGBT people and policies in order to come up with a single country-level score for acceptance. Acceptance, as measured in the GAI, is a country's average societal attitude toward LGBT people, expressed in public attitudes and beliefs about LGBT people and rights. While gender and sexuality are two separate identities that are often mistakenly conflated, the GAI is one of the few resources, if not the only one, that comparatively ranks countries on their acceptance of the LGBT population. This index measures social attitudes, rather than legal rights. While organizations such as Human Rights Watch provide information on the status of LGBT legal rights globally, they do not do so in a comparative index format. Andrew R. Flores, *Social Acceptance of LGBT People in 174 Countries 1981 to 2017* (The Williams Institute, 2019), williamsinstitute.law.ucla.edu/wp-content/uploads/Global-Acceptance-Index-LGBT-Oct-2019.pdf

²⁸ We sourced this data from the World Bank's "Total natural resources rents (% of GDP)" or, when that was not current or available, from EITI country pages. The specific source for each country is cited in the country paragraphs that follow.

²⁹ Nigeria was not ranked on the Gender Inequality Index, so this ranking comes instead from the World Economic Forum's Global Gender Gap Index, which includes ratings for 153 countries.

Argentina

Argentina has the second-largest known shale gas reserves in the world and fourth-largest reserves of unconventional oil resources.³⁰ It also has a nascent mining sector. The country is not economically dependent on its extractives sector. In 2018, the hydrocarbon sector accounted for 3.8 percent of GDP and metal mining for only 0.8 percent.³¹ Argentina ranked 77 out of 189 countries on the UN Gender Inequality Index and 23 out of 174 countries on the LGBT Global Acceptance Index.^{32,33} We found a single document from Argentina that contained reference to women: The 1924 Law No. 11,317, Labor of Women and Children.

Canada

Canada is the world's fourth-largest producer and exporter of oil.³⁴ It is also the fourth-largest natural gas producer.³⁵ The overall energy sector accounts for more than 10 percent of Canada's GDP, with oil, gas and mining rents accounting for 2.5 percent of GDP.^{36,37} Canada ranks 18 out of 189 countries on the Gender Inequality Index, making it the least unequal country in our group of 12.³⁸ It also ranked fourth out of 174 countries on the LGBT Global Acceptance Index (for 2014 to 2017), making it the most accepting country in our sample.³⁹ Two recent documents from Canada directly related to the extractive sector: The Canadian Minerals and Metals Plan (2019) and the Canadian Minerals and Metals Plan: Action Plan 2020, contain references to gender or women. In Canada, mining is largely regulated at subnational level, meaning many directly relevant subnational laws were not included in our analysis.

Colombia

Colombia is the fourth-largest oil producer in Latin America and the Caribbean. In 2019, Colombia's mining and oil sectors represented 5.6 percent of GDP (3.7 percent oil and 1.9 percent mining).⁴⁰ In 2019, oil was the country's main export, accounting for 40.5 percent of all exports, while coal represented 14.4 percent of exports.⁴¹ Colombia ranked 94 out of 189 countries on the Gender Inequality Index and 37 out of 174 countries on the LGBT Global Acceptance Index (for 2014 to 2017).^{42, 43} Two documents directly related to Colombia's extractive sector: The Human Rights Policy for the Energy and Mining Sector (2018) and Gender Guidelines for the Energy and Mining Sector (2020), contain references to gender or women.

30 "Argentina: Overview," EITI, accessed 3 September 2020, eiti.org/argentina

31 Ibid.

32 "Table 5: Gender Inequality Index", UNDP Human Development Reports, accessed 3 September 2020, hdr.undp.org/en/composite/GII

33 Flores, *Social Acceptance of LGBT People in 174 Countries 1981 to 2017*, 30.

34 "Crude Oil Facts," Government of Canada, accessed 3 September 2020, nrcan.gc.ca/science-data/data-analysis/energy-data-analysis/energy-facts/crude-oil-facts/20064

35 "Energy Facts," Government of Canada, accessed 3 September 2020, nrcan.gc.ca/science-data/data-analysis/energy-data-analysis/energy-facts/20061

36 "Energy and Economy," Government of Canada, accessed 3 September 2020, nrcan.gc.ca/science-data/data-analysis/energy-data-analysis/energy-facts/energy-and-economy/20062

37 "Total natural resources rents (% of GDP)," World Bank Data, accessed 3 September 2020, data.worldbank.org/indicator/NY.GDP.TOTL.RT.ZS

38 UNDP Human Development Reports, "Table 5: Gender Inequality Index."

39 Flores, *Social Acceptance of LGBT People in 174 Countries 1981 to 2017*, 30.

40 World Bank, "Total natural resources rents (% of GDP)."

41 Fernando Patzy and Juan Luis Dammert, *Colombia: Initial Assessment of the Impact of the Coronavirus Pandemic on the Extractive Sector and Resource Governance* (Natural Resource Governance Institute, 2020).

42 UNDP Human Development Reports, "Table 5: Gender Inequality Index."

43 Flores, *Social Acceptance of LGBT People in 174 Countries 1981 to 2017*, 31.

Ghana

In 2010, Ghana began producing oil, which has since become a major source of government revenue. The country is also the largest gold producer in Africa and has a substantial diamond sector.⁴⁴ In 2018, extractive revenues accounted for 14 percent of the country's GDP.⁴⁵ Ghana is ranked 133 out of 189 countries on the Gender Inequality Index and 141 out of 174 countries on the LGBT Global Acceptance Index (for 2014 to 2017).^{46,47} We found three documents directly related to the sector that mention gender, women or sex: The 1993 Minerals Commission Act, the 2011 Petroleum Commission Act, and the 2016 Minerals Development Fund Act.

Indonesia

In recent years, Indonesia's oil production has declined substantially, and the country is now a net importer of oil. However, the mining sector has increased rapidly over the past decade, with coal and copper being the largest contributors.⁴⁸ Extractive industry revenue accounted for 4.8 percent of GDP in 2018.⁴⁹ Indonesia ranked 103 out of 189 countries on the Gender Inequality Index and 150 out of 174 countries on the LGBT Global Acceptance Index (for 2014 to 2017).^{50,51} We did not find any documents directly related to the extractive sector that mentioned gender, women or sex.

Kenya

Kenya's oil and gas sector is still in early development, with the first crude oil export taking place in 2019.⁵² In 2018, the sector only accounted for 1.3 percent of GDP.⁵³ The country also has a small mining sector. Kenya ranked 134 out of 189 countries on the Gender Inequality Index and 119 out of 174 countries on the LGBT Global Acceptance Index (for 2014 to 2017).^{54,55} We found three documents directly related to the extractive sector that mention gender, women or sex: The 2016 Mining and Minerals Policy Sessional Paper No. 7, the 2017 Mining Act (Community Development Agreement) Regulations and the 2017 Mining (Employment and Training) Regulations.

44 "Ghana: Overview," EITI, accessed 3 September 2020, eiti.org/ghana

45 World Bank, "Total natural resources rents (% of GDP)."

46 UNDP Human Development Reports, "Table 5: Gender Inequality Index."

47 Flores, *Social Acceptance of LGBT People in 174 Countries 1981 to 2017*, 35.

48 "Indonesia: Overview," EITI, accessed 3 September 2020, eiti.org/indonesia

49 World Bank, "Total natural resources rents (% of GDP)."

50 UNDP Human Development Reports, "Table 5: Gender Inequality Index."

51 Flores, *Social Acceptance of LGBT People in 174 Countries 1981 to 2017*, 36.

52 Joseph Akwiri, "Kenya's first crude oil export sparks demands over revenue sharing," *Reuters*, 26 August 2019, [reuters.com/article/us-kenya-oil/kenyas-first-crude-oil-export-sparks-demands-over-revenue-sharing-idUSKCN1VG1FQ](https://www.reuters.com/article/us-kenya-oil/kenyas-first-crude-oil-export-sparks-demands-over-revenue-sharing-idUSKCN1VG1FQ)

53 World Bank, "Total natural resources rents (% of GDP)."

54 UNDP Human Development Reports, "Table 5: Gender Inequality Index."

55 Flores, *Social Acceptance of LGBT People in 174 Countries 1981 to 2017*, 34.

Mongolia

Mongolia has significant deposits of coal, copper, gold, petroleum, fluorspar and uranium. In 2018, extractive sector revenues accounted for 40 percent of Mongolia's GDP.⁵⁶ Mongolia is ranked 71 out of 189 countries on the Gender Inequality Index and 142 out of 174 countries on the LGBT Global Acceptance Index (for 2014 to 2017).^{57,58} Two documents directly related to Mongolia's extractive sector mention gender, women or sex: The 2019 Geology, Mining, Petroleum and Heavy Industry Sector Gender-Responsive Policy Action Plan of Implementation (2019-2026) and the State Policy on Petroleum Sector Development (2018-2027).

Morocco

Morocco is home to three quarters of global phosphate reserves, with an estimated 50 billion metric tons. The state-owned mining company, Office Chérifien des Phosphates (OCP), controls all phosphate mining activities in the country.⁵⁹ In 2018, extractive sector revenues accounted for 1.6 percent of Morocco's GDP.⁶⁰ Morocco ranked 118 out of 189 countries on the Gender Inequality Index and 118 out of 174 countries on the LGBT Global Acceptance Index (for 2014 to 2017).^{61,62} We found two extractive governance documents that included a reference to gender, women or sex: The 2003 Labor Code and Decree No. 2-10-183 of November 16, 2010 Fixing the List of Work for Which it is Prohibited to Employ Certain Categories of People.

Nigeria

Nigeria is Africa's largest oil producer and the thirteenth largest producer in the world.⁶³ Extractive revenues accounted for 11.5 percent of Nigeria's GDP in 2018, but in 2020, accounted for 50 percent of government revenues.⁶⁴ The Petroleum Act of 1969, which vests ownership of petroleum resources to the federal government, is the primary piece of legislation governing the sector.⁶⁵ The country has a small mining sector and ambitions to grow its gas sector. Nigeria was not rated on the 2018 Gender Inequality Index,⁶⁶ but ranked 128 out of 153 countries on the World Economic Forum's 2020 Global Gender Gap Index.⁶⁷ It also ranked 146 out of 174 countries on the LGBT Global Acceptance Index (for 2014 to 2017).⁶⁸ We found three documents directly related to the extractive sector that mention gender, women or sex: The 2004 Labour Act, the 2016 Mining and Metal Sector Investment Promotion Brochure and the 2017 National Gas Policy.

56 *Ibid.*

57 UNDP Human Development Reports, "Table 5: Gender Inequality Index."

58 Flores, *Social Acceptance of LGBT People in 174 Countries 1981 to 2017*, 35.

59 "Morocco: Mining", Natural Resource Governance Institute, accessed 3 September 2020, resourcegovernanceindex.org/country-profiles/MAR/mining

60 World Bank, "Total natural resources rents (% of GDP)."

61 UNDP Human Development Reports, "Table 5: Gender Inequality Index."

62 Flores, *Social Acceptance of LGBT People in 174 Countries 1981 to 2017*, 34.

63 "Nigeria: Overview", EITI, accessed 3 September 2020, eiti.org/nigeria

64 The *Global Gender Gap Report 2020* benchmarks 153 countries on their progress towards gender parity in four dimensions: economic participation and opportunity, educational attainment, health and survival, and political empowerment. World Bank, "Total natural resources rents (% of GDP)," <https://resourcegovernance.org/analysis-tools/publications/nigeria-assessment-coronavirus-extractive>

65 EITI, "Nigeria: Overview."

66 UNDP Human Development Reports, "Table 5: Gender Inequality Index."

67 World Economic Forum, *Global Gender Gap Report 2020*, 12, www3.weforum.org/docs/WEF_GGGR_2020.pdf

68 Flores, *Social Acceptance of LGBT People in 174 Countries 1981 to 2017*, 36.

Peru

Peru is the world's second-largest producer of copper and also produces significant amounts of gold, silver and gas. In 2018, extractive revenues accounted for 8.9 percent of its GDP.⁶⁹ Peru ranked 87 out of 189 countries on the Gender Inequality Index, and 53 out of 174 countries on the LGBT Global Acceptance Index (for 2014 to 2017).^{70,71} We found four documents directly related to the extractive sector that mention gender, women or sex: The 2012 Regulation of the Prior Consultation Law, the 2016 Social Management Tools for Environmental Certification guidelines, the 2017 Guidelines to Promote the Participation of Women in the Environmental Certification Process and the 2019 Ministerial Resolution N°091-2019-mem/DM Committee for Gender Equality of the Ministry of Energy and Mines.

Sierra Leone

Sierra Leone has significant mining production of iron ore, diamonds, rutile and bauxite.⁷² In 2018, extractive revenues accounted for 7.9 percent of GDP.⁷³ The mining sector is governed by the 2009 Mines and Minerals Act. The 2011 Oil/Gas-Petroleum Exploration and Production Act governs the petroleum sector, which is still largely in an exploration phase.⁷⁴ Sierra Leone ranked 153 out of 189 countries on the Gender Inequality Index, and 134 out of 174 countries on the LGBT Global Acceptance Index (for 2014 to 2017).^{75,76} We found seven documents directly related to the extractive sector that mention gender, women or sex: The Environmental Protection Agency Law (2008), the Mines and Minerals Act (2009), the Petroleum (Exploration and Production) Act (2011), the Environmental and Social Regulations for the Mineral Sector (2012), The Petroleum Regulatory Act (2014), the Artisanal Mining Policy for Sierra Leone (2018) and the Employers and Employed Law (1960).

Tunisia

Tunisia is one of the world's leading producers of phosphate and has significant reserves of oil and gas, although these are not yet developed.⁷⁷ In 2018, extractive sector revenues made up only 3.3 percent of GDP.⁷⁸ Tunisia ranked 63 out of 189 countries on the Gender Inequality Index and 110 out of 174 countries on the LGBT Global Acceptance Index (for 2014 to 2017).^{79,80} Tunisia's Labor Code (Code du Travail) contains a provision directly related to the extractives sector that mentions women, gender or sex.

69 World Bank, "Total natural resources rents (% of GDP)."

70 Ibid.

71 Flores, *Social Acceptance of LGBT People in 174 Countries 1981 to 2017*, 32.

72 "Sierra Leone: Overview," EITI, accessed 3 September 2020, eiti.org/sierra-leone

73 World Bank, "Total natural resources rents (% of GDP)."

74 EITI, "Sierra Leone: Overview."

75 UNDP Human Development Reports, "Table 5: Gender Inequality Index."

76 Flores, *Social Acceptance of LGBT People in 174 Countries 1981 to 2017*, 35.

77 "Tunisia: Oil & Gas," Natural Resource Governance Institute, accessed 3 September 2020. resourcegovernanceindex.org/country-profiles/TUN/oil-gas

78 World Bank, "Total natural resources rents (% of GDP)."

79 UNDP Human Development Reports, "Table 5: Gender Inequality Index."

80 Flores, *Social Acceptance of LGBT People in 174 Countries 1981 to 2017*, 34.



Photo by Suthep Kritsanavarin for NRGI

Summary analysis of extractive governance documents

KEY FINDINGS

- In the 12 countries studied, a wide range of documents governs the extractive industries in terms of gender, with 30 laws, policies, guidelines and regulations directly related to the sector including references to women, gender or sex.
- Laws are the documents that most commonly refer to women or gender, but they affect these issues in contrasting ways, with some requiring the presence of women on legally-established governing bodies, while others prohibit women from working in mines.
- Implementation is key, yet often overlooked. If well implemented, many of the provisions have the potential to be gender responsive. However, few establish mechanisms to ensure the quality of implementation, undermining their effectiveness.
- Most documents with gender-responsive potential fail to be gender transformative because they ignore the root causes of inequality. Some were transformative in intent, but their provisions were non-specific or unverifiable, risking implementation gaps.
- Some guidelines offer potential for gender-responsive or -transformative impact, but this is weakened by the guidelines' lacking the force of laws, policies or regulations.

Across the 12 countries studied, we identified 30 laws, policies, guidelines and regulations directly related to the extractive sector that included references to women, gender or sex. These “directly-related documents” specifically govern the sector (for example, national oil, gas or mining laws) or include provisions that specifically mention women’s participation in the extractive industries (such as labor codes that specifically regulate women’s participation in mining).

An additional 32 “indirectly-related documents” contained references to women, gender or sex, but their scope extended beyond extraction. For example, water management laws often apply to the extractive sector, but also to many other sectors. As discussed in the methodology, we defined these as “indirectly related” documents, unless they have provisions that specifically regulate participation by women or gender minorities in the extractive sector. Having reviewed the directly-related and indirectly-related documents, we focused our analysis primarily on those directly related to extractives, as the most relevant to our objective of advancing gender equality in the extractive sector. (See Section 7 for analysis of the indirectly-related documents.)

The following overview of the directly-related documents explores whether their provisions have the potential to be gender negative, blind, targeted, responsive or transformative. (See Box 3 for definitions.)

Figure 1 shows how many documents we found per country. Sierra Leone had the most directly-related documents, with seven, while Argentina and Tunisia each had only a single document that governed the extractive sector and mentioned women or gender. We found no directly-related documents for Indonesia.

Although Sierra Leone has the greatest number of directly-related laws, it is also the country ranked lowest among our sample countries on the UN Gender

Inequality Index. This may be due in part to an “implementation gap”—the gap that often exists between laws on the books and how they are carried out in practice. Subsequent phases of this project will explore this gap further.⁸¹

Most of the laws can be described as gender targeted, according to definitions adapted from the UNDP’s Gender Results Effectiveness Scale. (See Figure 3.) However, their gender provisions focused rather narrowly on increasing the number of women or marginalized people participating in some aspect of the extractive sector. Eight documents were gender blind or negative.

Many of the provisions had the potential to be gender responsive. If well implemented, they could address the differential needs of women, men and gender minorities or lead to an equitable distribution of benefits, resources and rights. However, these documents were not gender transformative, because they failed to address the root causes of inequality. Some were gender transformative in intent, although their provisions were often non-specific or unverifiable, which may lead to implementation gaps.

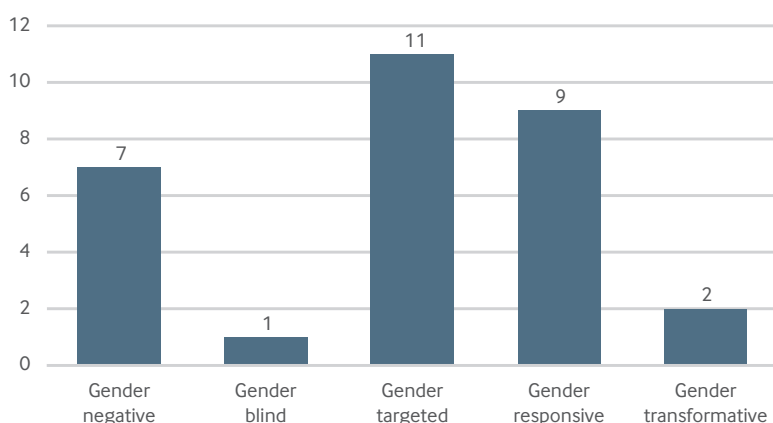


Figure 2. Documents classified by potential impact of the intervention

The documents also varied by type, with laws most commonly containing references to women or gender. Countries used policies, regulations and guidelines with equal frequency. We also found three “other” documents: An action plan, a decree and an investment promotion brochure. (See Figure 3.)

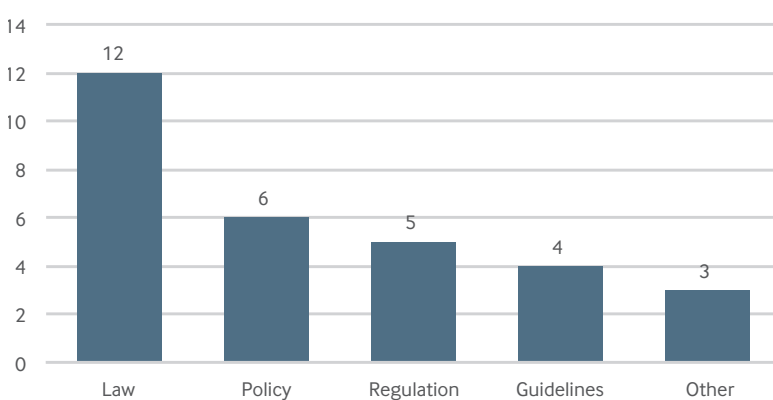


Figure 3. Documents directly related to the extractive sector, by type

⁸¹ This may also be because the UN Gender Inequality Index includes a broader set of indicators around maternal health and education, so other sectors may perform worse than the extractive sector, thus pulling the score down.

LAWS

As enforceable frameworks that can be adjudicated, laws are in theory the most important of the documents studied. Twelve of the 30 directly-related documents were laws, all but one of which came from Africa. Many set quotas requiring the presence of women on governing bodies established by the law. For example, each of the three laws from Ghana—those that establish the Minerals Commission, the Revenue Authority and the Petroleum Commission—create quotas for including women in governance (the only way in which the drafters of these documents attempt to address gender inequality). Yet several laws—from Argentina, Morocco, Nigeria and Tunisia—prohibit women from working in mines. (See Box 6 on page 43 on the history and impact of such prohibitions.)

Argentina

Argentina's 1924 Law No. 11.317, Labor of Women and Children contains numerous provisions intended to protect women and children from harsh labor, such as limited work hours, protection of maternal rights and protection from working with harmful chemicals. In particular, it prohibits women and children from working in quarries or underground, as well as from loading or unloading ships. This law has contributed to wage discrimination, and as with other similar provisions, we evaluate it as gender negative.⁸²

Ghana

Ghana's 1993 Minerals Commission Act establishes the Minerals Commission and defines its functions and powers. It calls for the commission to be governed by a board of seven people, at least two of whom must be women. We assess this document as gender targeted because it focuses on the number of women to be included on the board. The law does not refer to the number of men to be included and, in common with laws establishing quotas for women's representation, the founding assumption is that the board composition would comprise of men.

The country's 2011 Petroleum Commission Act establishes the Petroleum Commission and defines its functions and powers, calling for the governing board of the seven-member commission to include at least one woman. Again, this document takes a gender targeted approach.

A third Ghanaian law is the 2016 Minerals Development Fund Act, which establishes Ghana's Minerals Development Fund and mandates that its 11-member governing board include one woman. Among the board's functions is establishing local management committees for mining-affected communities. It specifies that these committees will include one representative of an identified women's group from the community. This law also reflects a gender targeted approach.

82 Yovanna Pineda, "Gendering Poverty in Labor Legislation in Argentina, 1900-1930," *The Activist History Review* (2017), activisthistory.com/2017/09/15/gendering-poverty-in-labor-legislation-in-argentina-1900-1930/.

Nigeria

Nigeria's 2004 Labour Act is the country's principal legislation governing employment. It contains general provisions for wage protection, employment contracts, and terms and conditions of employment and recruiting, and defines special classes of workers. It also prohibits women from being employed for night work (defined as from 10 p.m. to 5 a.m.) in a public or private industrial undertaking, and stipulates that woman cannot work underground in any mine. The law excludes women from employment opportunities open to men, without providing any legitimate basis for doing so. It is therefore gender negative. Had women's groups been widely consulted and promoted this provision, the assessment of the law might differ. However, the provision resulted from a widespread prohibition of women in mining work that stems from British colonialism. (See Box 6.)

Morocco

Morocco's 2003 Labor Code includes a provision prohibiting women, people under 18 years old and people with disabilities from working in quarries or underground mines. As with the above Nigerian Labour Act, we assess this provision as gender negative.

Tunisia

Tunisia's 1996 Labor Code states that "women, regardless of their age, and children under 18" cannot be employed in underground work in mines or quarries. Like the other such document provisions, we assess this provision as gender negative.



Goldminers of the Kédougou region in Senegal.

Photo by Carsten ten Brink, available under CC BY-NC-ND 2.0

Sierra Leone

Sierra Leone's 2008 Environment Protection Agency Act establishes the Environment Protection Agency and defines its functions and powers. It specifies that the 14-member governing board will include one woman knowledgeable in commerce, finance and law. As with the Ghana examples, this law reflects a gender targeted approach.

A second law from Sierra Leone, the 2009 Mines and Minerals Act, regulates exploration, mining development and marketing of minerals. It states that the Minerals Advisory Board must consist of two people with considerable qualifications and experience in the mining industry, generally one of whom should be a woman.

A third from, Sierra Leone's 2011 Petroleum (Exploration and Production) Act, governs the exploration and exploitation of oil resources in Sierra Leone and establishes the Petroleum Directorate. The section on employment and local content states that a licensee, its contractors and sub-contractors must not engage in discriminatory practices on grounds of race, nationality or gender. We assess this law as gender-responsive, albeit minimally. It addresses, on a very superficial level, the differential experiences of women and men by requiring that entities governed by the law do not discriminate. The legal text does not provide any mechanism to monitor or address discrimination that may occur. (For more detail, see Section 6 on verifiable provisions.)

A fourth law, the 2014 Petroleum Regulatory Act establishes the Sierra Leone Petroleum Regulatory Agency, stating that the agency will be governed by a board of seven directors, at least one of whom should be a woman. The approach taken in this law is gender targeted.

A fifth law from Sierra Leone, the 1960 Employers and Employed Law is no longer in practice, despite still being technically in force. This law states that, "No girl or woman of any age shall be employed in or allowed to be for the purpose of employment in any mine below ground."

POLICIES

Of the 30 documents analyzed, six are policies, from Colombia, Kenya, Mongolia, Nigeria and Sierra Leone. Policies are generally statements of government priorities and intent, and while they can be impactful and effective tools, they generally do not carry the weight of law.

Colombia

Colombia's 2018 Human Rights Policy for the Energy and Mining Sector encourages the design of specific sectoral policies to promote women's participation. It establishes processes to use gender-disaggregated data to evaluate internal policies of the Ministry of Mines and Energy, and promotes transparency as an overall goal. The policy reflects a gender-responsive approach and has the potential to be gender transformative if well implemented, moving beyond addressing gender-differentiated needs to actively promoting equality. In particular, the policy mandates the collection of gender-disaggregated data and its use for the evaluation of internal policy. Although such data can help governments more accurately understand and address gaps in equality, it is often absent across the extractive sector. Through these measures, this policy could contribute to a change in norms, cultural values and power structures. The policy's success will depend significantly on the quality of implementation.

Kenya

Kenya's Mining and Minerals Policy Sessional Paper No. 7 of 2016 establishes guidance for sustainable mineral resources development. A short section on "women and children" acknowledges that women are often overlooked in mining development programs and that other sectoral challenges are exacerbated by existing gender inequality. It also observes that child labor is being used in the mining industry and states that labor laws should be enforced. The policy's objectives include respect of socio-cultural values, access to justice, gender equality and inclusiveness. It proposes a community liaison framework to enable women, youth and people with disabilities to inform government policies and programs in mining.

The policy has the potential to be gender-responsive, with the proposed community liaison framework inviting women and other groups often marginalized in decision-making processes to directly engage with mining frameworks. As with the Colombia example above, this potential is substantially dependent on the quality of implementation, but the policy establishes no effective mechanism to ensure the community liaison frameworks are established and effective.

Mongolia

Mongolia's Geology, Mining, Petroleum and Heavy Industry Sector Gender-Responsive Policy Action Plan of Implementation (2019 to 2026) establishes a plan to mainstream gender considerations into extractive sector policy and regulatory planning, budgeting, implementation, and monitoring and evaluation. The policy also aims to reduce gender-based discrimination, to minimize the sector's adverse effects on mining-affected communities, and to introduce work-life balance measures to promote women's equitable participation in extractive-related companies. The policy indicates a gender-responsive approach, in that it specifically addresses access to economic opportunities for women. It provides for a multiyear plan that includes budgeting and monitoring, and has the potential to be gender transformative in that it could directly change economic power structures and address root causes of inequality.

The second policy we found from Mongolia is the State Policy on Petroleum Sector Development (2018 to 2027) formally enacts the country's Petroleum Law. It references gender equality by setting specific goals around improving human resources management and increasing women's participation by building their skills through training and policies encouraging enrollment in professional degrees. It also establishes environmental protection, rehabilitation and local development support by promoting local employment, procurement and infrastructure policies that include women's economic empowerment. This document also calls for gender-disaggregated data on scholarship recipients, gender-sensitive workplace surveys and plans, and a database to improve human resources management. It also establishes gender auditing and gender-sensitive resettlement planning. This policy reflects a gender-responsive approach.

Nigeria

Nigeria's 2017 National Gas Policy aims to transform the country from a crude oil export-based economy to an attractive oil and gas-based industrial economy. The policy identifies low- and medium-income women who currently use kerosene and firewood for fuel as community influencers who should be engaged to market the transition to liquified petroleum gas. The policy is gender blind, aiming not to improve gender equality, but only to use women for a marketing purpose.

Sierra Leone

The Artisanal Mining Policy for Sierra Leone, 2018 describes artisanal diamond mining as male dominated, while women primarily conduct artisanal gold mining, though gender-based discrimination is still prevalent. It acknowledges how mothers often bring their children to mine sites due to lack of alternative care, meaning children miss formal education, engaging instead in child labor. The policy has the potential to be gender responsive. It aims to shift cultural and traditional practices that negatively impact women's participation in artisanal mining, including providing a safe work environment and support for children's development. While ambitious, this policy does not offer any actual strategies, verifiable provisions or enforcement mechanisms.

REGULATIONS

Five of the 30 documents are regulations. These are rules or directives made by governments, often to give effect to legal provisions by providing detail on how they are to be interpreted. While laws are made in the legislative branch of government, regulations are administrative documents usually formulated by government departments or agencies.

Kenya

In Kenya, the 2017 Mining Act (Community Development Agreement) Regulations requires holders of mining licenses (granted under the Mining Act), mining leases and special mining leases (granted before the implementation of the Mining Act) to enter into community development agreements with one or more communities near their areas of operation. The agreements will be negotiated with committees that must include “one elected representative of women.” They should also consider special programs that benefit women, youth and persons with disabilities. The regulation is gender targeted, with potential for the community development agreements to be gender responsive. There is no specific mechanism to review the agreements to check whether they are gender responsive in practice.

Also corresponding to Kenya’s Mining Act, the 2017 Mining (Employment and Training) Regulations promote job creation through the use of local expertise, and develop local capacities in the mining value chain. The regulations require applications for any license to include a plan for the employment and training of Kenyans, including marginalized groups—specified as encompassing women, people with disability, minorities and members of mining-affected communities. This regulation could be viewed as taking a gender-targeted approach, and could possibly be gender responsive in its impact. Much of its potential would depend on the scrutiny given to the employment and training plans.

Peru

Peru’s 2012 Regulation of Law No. 29785, Law of the Right to Prior Consultation of Indigenous or Native Peoples Recognized in Convention 169 of the International Labor Organization (ILO) implements the ILO mandate for Indigenous people to be consulted in all projects and norms that affect their communal rights. The regulation states that women should be included in prior consultation for mineral resource extraction, respecting cultural differences and contexts. The regulation is minimally gender targeted. It offers no specific aims for participation of women, and no mechanism to ensure that women are included in consultations.

Also from Peru, the 2019 Ministerial Resolution No. 091-2019-mem/dm Committee for Gender Equality of the Ministry of Energy and Mines, regulates the ministry’s composition, creating an internal commission to promote women’s participation and representation. The regulation is gender targeted, aiming at increasing the number of women in the ministry’s workforce. However, it does not consider the root causes limiting women’s participation in the wider extractive sector.

Sierra Leone

Sierra Leone's 2012 Environmental and Social Regulations for the Mineral Sector fall under the Environment Protection Agency Act, 2008 and apply to companies and individuals applying for or issued mineral rights under the Mines and Minerals Act, 2009. The regulations establish the terms for mining license holders to establish community liaison committees, which should include women. They also state that women should be involved in social impact assessments. Additionally, they require that community development agreements contain gender strategies that outline provisions for improving conditions for "women and children" in mining-affected communities. The regulations mainly reflect a gender-targeted approach, although there are no specific requirements for the number of women to be included in the committees or social impact assessments. The requirement that the community development agreements contain gender strategies focused on improving the conditions for women and children may enable some gender-responsive actions. There is no clear way for women to participate in the development of the strategies, and the reference to "women and children" ignores the agency of women, viewing them as minors. Elements of the regulations could therefore be considered gender negative, reinforcing a discriminatory stereotype.



Freetown, Sierra Leone

Photo by Yanna Sun, available under CC BY 2.0

GUIDELINES

Five of the 30 documents are guidelines. These are generally the weakest type of document, lacking the force and effect of laws, policies or regulations. They rarely have enforcement mechanisms, and failure to comply with them may not carry any penalty. However, in some cases, guidelines detail the specific processes and mechanisms for gender integration.

Canada

Canada's 2019 Minerals and Metals Plan outlines Canada's overarching vision and principles for the minerals sector, identifying Indigenous women as a priority for action. It states that the federal, provincial and territorial governments should engage Indigenous women in the mining industry, by eliminating barriers to employment, supporting sensitivity and inclusion training for frontline workers, and increasing the number of women in leadership roles. The guideline includes gender-targeted and gender-responsive elements. Eliminating barriers to employment and sensitivity training both respond to the differential needs of women and men, and could help ensure equitable access to status and rights. While the guidelines also has the potential to be gender transformative by changing power structures and cultural values, its status as a guideline without any mandatory action elements diminishes its potential.

Colombia

Colombia's 2020 Gender Guidelines for the Energy and Mining Sector is a national strategy for creating gender equality in the energy and mining sector. The guidelines focus on creating equal opportunities for women working in the sector and encouraging women's participation in governance of mining-affected communities. As with the Canadian example above, they contain elements that offer the potential for gender-responsive or even gender-transformative impact. This potential is likely to be diminished by the fact that the provisions are merely guidelines.

Peru

Peru's 2016 Social Management Tools for Environmental Certification outline recommendations for studies to be presented by extractive companies to the Ministry of Environment. Environmental, social impact, social baseline and civil society participation studies should consider women's participation and the use of gender-disaggregated data, and should promote transparency and access to information. The document explains gender relations and how to acknowledge them in these studies. The document has the potential to lead to gender-responsive actions, specifically guiding the treatment of gender relations in extractive sector studies. As these studies are presented to the Ministry of Environment, there is potential for government officials to verify companies' actions.

Peru's 2017 Guidelines to Promote the Participation of Women in the Environmental Certification Process require mining and energy companies to produce plans and studies under the environmental certification needed to start operations. The guidelines recommend methodologies that companies can use to ensure women's participation, and are gender targeted to an extent, in that they promote participation of women in environmental studies, and they have the potential to lead to gender-responsive action.

OTHER

Three other documents contained references to women, gender or sex that were directly-related to the extractives sector: an action plan, a decree and an investment brochure.

Canada

Canada's 2020 Canadian Minerals and Metals Plan Action Plan 2020 sets a goal to increase women's participation in the mining labor force to 30 percent by 2030 through human resources and mining literacy campaigns (the figure is currently about 14 percent). The plan also nominally supports increasing the number of women in leadership positions and the inclusion of Indigenous women in the mining labor force. The plan reflects elements of a gender-targeted approach and also has potential to be gender responsive in that it promotes economic opportunity for women in a traditionally male-dominated sector.

Morocco

Morocco's Decree No. 2-10-183 of November 16, 2010 Fixing the List of Work for Which it is Prohibited to Employ Certain Categories of People prohibits women from working in quarries or underground mines. The decree makes an exception for women who hold managerial positions, are employed in health and social services and "are called, occasionally, to descend into the mines for the exercise of non-manual work." As with other documents that limit women's ability to fully participate in the extractive sector, we assess this decree as gender negative.

Nigeria

Despite its name, Nigeria's 2016 Mining and Metal Sector Investment Promotion Brochure is included because it is a strategy document developed by the Federal Ministry of Mines and Steel Development that articulates the country's sectoral strategy. The document states that social equity in the labor force will be ensured by addressing issues of exploitation of women and children. Although the text of the document is very limited, it reinforces a stereotype of women as a vulnerable group, and so we assess it as gender negative.



Gold mining in Paura, Burkina Faso.

Photo by Gilles Paire

The characterization of “women” and “gender”

KEY FINDINGS

- The language used around gender issues in extractive sector governance is evolving over time from “women” to “gender,” yet the assumptions underpinning legal and policy frameworks include stereotypical views of women’s homogenous role in society.
- Several countries prohibit women from working underground, at night or in extraction as a whole. This restricts women to low-paying administrative jobs rather than better-paid technical roles, promotes the wage gap and denies them the experience needed for management or board positions.
- The documents often consider women to be a vulnerable or marginalized group. While it is important to recognize the challenges women and gender minorities face, this characterization fuels stereotypes and discrimination.
- Instead, lawmakers should consider diverse communities of women and gender minorities as stakeholders impacted by extraction in varying, context-specific ways, and should seek to realize their assets. Some documents acknowledge women as stakeholders in the extractive process and that extraction may affect women differently from men.
- The documents barely acknowledge gender as more than a binary biological sex, curtailing their potential to create gender-transformative change. While several of the governance frameworks have gender-transformative potential, realization of this depends on effective implementation and enforcement.

In the 30 directly-related documents, the language countries use when addressing gender issues in the extractive sector changes over time. Documents adopted before 2011 overwhelmingly used the term “women,” whereas those from 2011 to 2020 use the term “gender” at an increasing rate. However, “women” remains more popular and the term “gender” is most often used simply as a substitute for “women” (see Figure 4 below). The use of this terminology is important: “Women” implies a group of people on which documents aim to have an impact, whereas “gender” is a psychological identification. Use of the term “gender” (when not simply as a substitute for “women”) refers to the differentiated and structural ways that extractive governance affects diverse populations. For meaningful systemic change to occur, lawmakers must acknowledge the varying ways that extractive governance impacts societal groups and the relations between them, and address

Box 5. Women and children

A limited number of the documents used the phrase “women and children.” This phrase itself undermines the goal of promoting gender equality, because it implies that women are unequal to men in that they, like children, are weak and in need of protection from those in power (presumably men). It prevents women from making choices like adults about what employment to pursue. This usage is out of line with international standards, particularly the International Labor Organization’s Discrimination (Employment and Occupation) Convention, C111.

the root causes of inequality, rather than simply seeing women as a homogenous vulnerable group.⁸³ Lawmakers should also consider an asset-based approach to extractive governance, thinking of women and gender minorities not as vulnerable groups, but instead considering the strengths of their diverse communities and looking for ways to enhance and realize their assets.

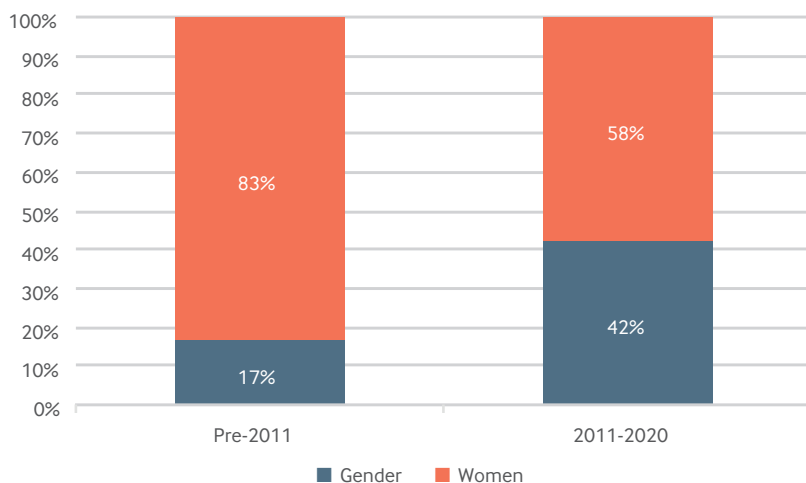


Figure 4. Mentions of “women” and “gender” in directly-related documents

The 30 directly-related documents varied in the ways that they addressed the concepts of gender-based discrimination and equality. The documents often described women in terms of their roles or their vulnerability. Specifically, women are considered as workers, as a vulnerable or marginalized group, or as uniquely impacted stakeholders. The sections below discuss gender-based discrimination and equality, and the role of women in the extractive sector.

83 Christina Hill, Chris Madden and Nina Collins, *A guide to gender impact assessment for the extractive industries* (Women and Mining, 2019); Charlotte Ørnemark, *In It Together: Advancing Women’s Rights through the Extractive Industries Transparency Movement* (Publish What You Pay, 2019); Author links open overlay panel; Seema Arora-Jonsson, “Virtue and vulnerability: Discourses on women, gender and climate change,” *Global Environmental Change*, May 2011, www.sciencedirect.com/science/article/abs/pii/S0959378011000069

GENDER-BASED DISCRIMINATION AND EQUALITY

Some documents contained references to eliminating gender-based discrimination, while others expressed a commitment to gender equality. While sometimes used interchangeably, this language represents differing goals. Preventing gender-based discrimination means preventing discrimination based on gender identity. For example, Sierra Leone's Petroleum (Exploration and Production) Act states that extractive companies and their subcontractors "shall not engage in discriminatory practices on grounds of race, nationality or gender in the conditions of service provided for personnel."⁸⁴ While this provision aims to prevent discrimination, it does not explicitly aim to promote gender equality. In the context of hiring, pursuing gender equality would mean not only avoiding discrimination, but also developing programs to actively train and recruit from marginalized groups.⁸⁵

Mongolia's Law on Petroleum, State Policy on Petroleum Sector Development and Its Action Plan (2018-2027) explicitly aims to promote gender equality by training and employing women in the sector. The country's Geology, Mining, Petroleum and Heavy Industry Sector Gender-Responsive Policy Action Plan of Implementation (2019 to 2026) also identifies gender stereotypes and attitudes as a root cause of gender discrimination, violence and inequality, and builds a strategy to tackle stereotyping.

In some documents, such as The Canadian Minerals and Metals Plan, the language is more ambiguous. For example, when writing about Indigenous women's employment, the document aims to "support the greater participation of women" by "eliminating barriers to employment."⁸⁶

While several documents referred to gender equality, many did so without offering provisions for achieving it. Kenya's Mining and Minerals Policy Sessional Paper No. 7 of 2016 notes that "challenges experienced by women in the sector are exacerbated by the gender inequalities in access and control over resources, including productive assets."⁸⁷ Despite noting gender inequality as an issue, the policy does not develop a plan for addressing it.

84 Republic of Sierra Leone, Sierra Leone's *Petroleum (Exploration and Production) Act 2011*, 58.

85 Katharina Rick, Iván Martén, and Ulrike Von Lonski, "Untapped Reserves: Promoting Gender Balance in Oil and Gas," (Boston Consulting Group, 2017), www.bcg.com/publications/2017/energy-environment-people-organization-untapped-reserves

86 Government of Canada, *The Canadian Minerals and Metals Plan 2019*, 20.

87 Republic of Kenya, Ministry of Mining, *Mining and Minerals Policy Sessional Paper No. 7 of 2016*.

THE ROLE OF WOMEN

In the documents reviewed, drafters frequently organized provisions for the sector around the perceived roles or status of women. This included women's roles as workers, perceptions of women as a vulnerable or marginalized group, and women as uniquely impacted stakeholders in the extractive sector.

Women as workers

Canada, Colombia, Kenya, Mongolia, Nigeria and Sierra Leone all have laws or policies that specifically address women's employment in the extractive sector. Some, such as Sierra Leone's Petroleum (Exploration and Production) Act or Kenya's Mining Act No. 12, include only general prohibitions of discriminatory practices on the basis of gender, sex or pregnancy. Others, such as Nigeria's 2004 Labour Act, include more specific measures. As noted earlier, this law prohibits women's underground manual labor and limits their ability to work at night (which it defines as taking place from 10 p.m. to 5 a.m.). While the intention appears to be to protect women from work deemed unsuitable, there is no justification for the provision, which discriminates against women, restricting their employment options.



Local Berber women protesting at the lack of jobs being given to locals at a nearby mine site near Boumalne and Tinghir.

Photo by James Merabi, available under CC BY-ND 2.0.

Box 6. Prohibitions on women's work in the extractive sector

Several countries have provisions that prohibit women from working underground, at night or in the extractive sector as a whole. In the countries analyzed, we found laws prohibiting women from working in mines in Nigeria, Morocco, Tunisia, Sierra Leone and Argentina (although the Argentinian and Sierra Leonian laws seem not to be followed in practice, despite still being technically in force). Several other countries had recently repealed or amended similar laws: Colombia (ban lifted in 2015/2016), Ghana (ban lifted in 2003), Indonesia (ban lifted in 2003), Kenya (ban lifted in 2007) and Mongolia (ban lifted in 2008). According to the World Bank, 60 countries worldwide still have laws that restrict women's employment in mining.

Many of these are based on the British Mines and Collieries Act of 1842, which removed women from the coalface in British underground mines, due to a combination of genuine concern about the hazardous nature of the work and "moral panic" about men and women working together in dimly lit underground areas. This legislation took hold in British colonies and was further spread by the International Labor Organization's 1935 adoption and promulgation of a convention prohibiting women's underground work.

The British act also prohibited the use of child labor in mining, due to the dirty and dangerous nature of the work. While children are inherently vulnerable and need protection, the conflation of women and children, and the view that both require the same kind of protection, has been an enduring rationale for the harmful stereotyping of women and denial of equal rights.

This type of prohibition continues to have a dramatic effect on women's participation in the extractive sector, and ultimately on the wage gap. Technical mine-site jobs, such as engineer, geologist and analyst, are higher-paying than clerical or administrative jobs in the sector. However, because of these restrictive provisions and their legacies, women are overwhelmingly employed in lower-paid functions. For example, in Canada, only 5 percent of mine-site workers are women. (A similar gap is observed globally in the oil and gas industry, where women hold only 10 to 30 percent of field jobs.) Even though these prohibitions have been lifted in many countries, their legacies persist. Centuries of women's absence from mine sites has led to cultures and norms that still contribute to their unequal participation in the sector. Denied experience working in mining underground, women hold few management or board positions in extraction.

This forcibly limited participation means women's labor throughout the extractive value chain may become invisible, resulting in lack of unionization, weak organization, and poor policies and protections.

See: "Gender in oil, gas and mining: An overview of the global state-of-play," *The Extractive Industries and Society* 7 (2019), 380-388, and Kuntala Lahiri-Dutt, "The act that shaped the gender of industrial mining: Unintended impacts of the British Mines Act of 1842 on women's status in the industry," *The Extractive Industries and Society* 7 (2019).

Several documents include provisions for supporting job opportunities or local employment, including training. The Canadian Minerals and Metals Plan and the corresponding Canadian Minerals and Metals Plan: Action Plan 2020 set a goal to increase women's participation in the mining labor force to 30 percent by 2030, through human resources and mining literacy campaigns. The plan focuses on Indigenous women and the specific barriers they face to participating in the industry, such as workplace culture and discrimination. It features the government's Canadians of Mining campaign, which aims to present portraits and personal testimonies of individuals involved in the industry to a wider audience, highlighting the diversity of careers available and encouraging more women, Indigenous people and minorities to join the mining workforce. These documents nominally support increasing the number of women in leadership positions and the inclusion of Indigenous women in the mining labor force.

Mongolia also promotes women's employment and economic opportunity. The country's State Policy on Petroleum Sector Development (2018 to 2027) sets indicators for local development involving women (and men), including promoting local employment, procurement and infrastructure development.

Kenya's 2017 Mining Employment and Training Regulations require a mining company to "present the particulars" of its job-creation plans for women, people with disabilities, minorities and members of mining-affected communities.⁸⁸ If companies fail to do so, their licenses will not be approved. However, the law offers no criteria for evaluating these plans.

Women as a vulnerable or marginalized group

Many of the documents characterize women as part of a vulnerable or marginalized group. In key Kenyan documents (the Mining and Minerals Policy Sessional Paper No. 7 of 2016 and the Mining (Employment and Training) Regulations, 2017), women are defined or listed as a vulnerable group, in wording such as, "women, youth, persons with disabilities and marginalized groups."⁸⁹ Sierra Leone's Environmental Regulations for the Minerals Sector also discusses the need to strengthen the role of "women, youth and marginalized segments of society in development planning" when undertaking social impact assessments.⁹⁰

Mongolia's Gender Situational Analysis: Advances, Challenges and Lessons Learned Since 2005 recognizes that women and girls are at a higher risk of being sexually exploited along mining company transport routes linked to the border with China, and that they face higher risks of sexual exploitation when working long shifts at mines. It also acknowledges the disruption to the family when women leave their children at home in urban areas. The document highlights the need for facilities and procedures that safeguard the wellbeing of women and children.

88 Government of Kenya, *The Mining Act (No. 12 of 2016)*.

89 Kenya, *Mining and Minerals Policy Sessional Paper*, 15.

90 Republic of Sierra Leone, *Environmental Regulations for the Minerals Sector 2012*, 74.

When addressing gender rights and equality, government commitments must recognize the challenges faced by women and gender minorities, and the context-specific vulnerabilities they may encounter. However, the characterization of these groups as vulnerable can also reinforce stereotypes and justify discriminatory practices. When governance documents use the term “women and children” or list “women” among groups labeled vulnerable or marginalized, they can obscure underlying discriminatory laws and practices. This can prevent women and marginalized groups from participating equally in economic sectors and decision-making forums.⁹¹ Vulnerability and marginalization are often a symptom of discrimination or inequality. Attempts to improve the symptom may delay tackling the root causes.

Women as uniquely impacted stakeholders

There is an important distinction between portraying women as marginalized or vulnerable and focusing on the specific impacts they face in extraction. Some documents note that women are stakeholders in the extractive process and that these projects may affect women differently, often more negatively, than men. Despite this recognition, very few of the documents address the locally felt impacts of extraction. Mongolia’s Law on Promotion of Gender Equality acknowledges the disproportionate effect that the environmental impacts of mining have on rural women. The country’s State Policy on Petroleum Sector Development (2018 to 2027) also includes the development of gender-sensitive resettlement plans for displaced communities.

The Canadian Minerals and Metals Plan and its corresponding Action Plan focus on indigenous women as a priority for involvement in the sector, advocating for increased employment, training and access to local procurement opportunities. However, these documents deal little with the impacts of mining on Indigenous women, saying only that they “face specific barriers to participating in the industry, related to workplace culture, discrimination and other factors,” which will be solved through increased participation.⁹²

Analysis of how the documents use the terms “women” and “gender” suggests stereotypical views of women’s homogenous role in society underpin extractive governance documents. Recognition of gender as something more than a binary biological sex was largely absent across the documents, which curtails their potential to create gender-transformative change. While several of the legal and policy frameworks have the potential to be gender transformative, realization of this potential depends on implementation and enforcement. (These issues are addressed further in Section 6 on verifiable provisions).

91 Anna Arstein-Kerslake, “Gendered denials: Vulnerability created by barriers to legal capacity for women and disabled women,” *International Journal of Law and Psychiatry* (2019), <https://doi.org/10.1016/j.ijlp.2019.101501>

92 Canada, *Minerals and Metals Plan*, 19.



Women's participation in Mongolia

Photo by Munkhgerel Batardene.

Promoting participation and inclusion

KEY FINDINGS

- Governance documents promoting participation by women and gender minorities in the extractive industries have the potential to be transformative when they engage women, gender minorities and the organizations representing them from the beginning of the design process.
- Some documents require the participation of women or organizations representing them—for example, through quotas for women’s participation (though none exceeds 22 percent). Others aim to change the culture around women’s participation, but often lack specific mechanisms for doing so. Some countries aim to increase women’s benefits from the sector directly through value and job creation.
- Despite broad recognition by extractive sector stakeholders that gender-disaggregated data is important for developing effective legal and policy frameworks and assessing their impact, little disaggregated data is available on the sector’s gendered effects.
- The few documents that require gender data disaggregation largely understand gender as the binary of women and men, rather than the full range of gender identity options. This means gender minorities are excluded or miscounted in disaggregated data used to inform policy and decision making.
- Most of the documents do not explicitly require transparency in relation to their gender provisions, yet transparency and data accessibility enable people to access information, promoting more equal participation, better accountability and governance more responsive to the diverse and gendered needs of all people.

Policies promoting participation by women and gender minorities in the extractive industries have the potential to be transformative when they engage women, gender minorities and the organizations representing them. They also need to work with disaggregated gender data and promote transparency in participatory efforts.⁹³ Research on OGP commitments shows that women, gender minorities and the organizations representing them must be engaged from the beginning of the process in order to create gender transformative extractive governance.⁹⁴ Governments and companies can include women by setting targets, engaging in outreach, mapping local organizations and inviting women and women’s groups to join the co-creation process.⁹⁵ These can include rights activists and technical specialists on committees. Government and corporate outreach efforts can include offering fellowships and carrying out targeted recruitment. Governments can also provide and encourage the development of resources to show how women’s movements can meaningfully leverage open government tools and data.

Several of the documents analyzed contain provisions that require or promote women’s participation in the extractive sector in different ways. Some use simple quotas or benefit-sharing arrangements to address women and gender. These

⁹³ Fumega et al., *Feminist Open Government*, 11.

⁹⁴ *Ibid.* This research discusses women specifically, but we infer that the same is true for the inclusion of gender minorities.

⁹⁵ *Ibid.*

quotas often require a certain number of seats on governing bodies to be allocated to women. Twenty-two of the documents make at least general statements about engaging women, but most do not offer any clear means for doing so, nor do they offer transparency or accountability mechanisms for evaluating whether companies or governments are doing this. Women's employment in the extractive sector is referenced in several of the documents, but most do not include any measures to verify the removal of barriers or the creation of opportunities.

While data disaggregation by gender is important for evaluating the impact of policy documents and the overall effects of the sector, only six documents discuss gender data disaggregation. Five documents encourage or establish transparency measures as a step towards gender equality. (See Figure 6 for a breakdown of the directly-related documents.⁹⁶)

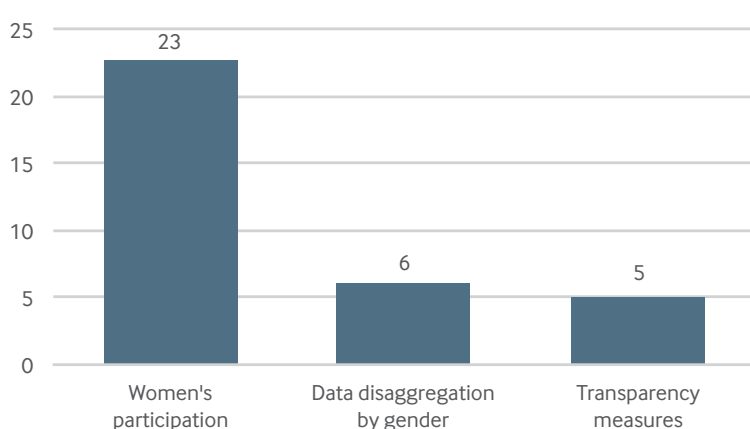


Figure 5. Function of gender provisions in directly-related documents

In what follows, we discuss the directly-related documents that include provisions on women's participation, data disaggregation by gender and transparency measures.

REQUIRING WOMEN'S PARTICIPATION

Some of the documents we reviewed required the participation of individual women or, to a lesser extent, organizations representing women. Some introduced quotas for women's participation (though none exceeded 22 percent). Other documents aimed to create broad changes to the culture around women's participation, but often lacked firm requirements or specific mechanisms for doing so. Some countries aim to increase women's benefits from the sector directly through value and job creation.

Ghana's approach to women's participation in the extractive sector is notable for its focus on setting targets for women's participation in governing bodies. All three of the Ghanaian laws we identified include this requirement, and in each, this was the sole reflection of women and gender. Ghana's 1993 Minerals Commission Act establishes the commission and requires that at least two of the nine members (22 percent) are women. The 2009 Revenue Authority Act establishes the Revenue Authority and also requires that two of the nine members of the governing authority are women. The 2011 Petroleum Commission Act establishes the Petroleum Commission and requires that at least one member out of seven is a woman (14 percent).

⁹⁶ These documents total more than 30 (the number of documents directly related to the extractives sector) because some documents contained multiple provisions.

Kenya's 2017 Mining Act (Community Development Agreement) Regulations requires that companies create and consult community development agreement committees that include a person elected to represent women. However, the regulations do not state that the representative need be a woman. These regulations also specify that the community development agreement should include programs that benefit women, youth and people with disabilities, but offer no specific details.

Women's participation is also a central element of Mongolia's 2019 Geology, Mining, Petroleum and Heavy Industry Sector Gender-Responsive Policy, and the government plans to set quotas for women's high-level participation in the sector in both public and private spheres. This document is supported by an action plan broken into two phases, 2019–2022 and 2023–2026. In the first phase, the Mongolian government plans to conduct gender mainstreaming and capacity building targeted at integrating a gender perspective into policy and regulatory reform, planning, budgeting, and monitoring and evaluation. It also aims to promote an environment that addresses gender-specific needs adequately at all levels of the extractive sector, in both public and private spheres, and to implement a strategy to combat gender stereotypes and discrimination, fostering partnerships with civil society.

The extractive sector governing documents in Peru reflect women's participation in a number of different ways. The 2012 Regulation of the Prior Consultation Law requires that women be included in the prior consultations that companies must conduct with Indigenous communities. The country's 2016 Social Management Tools for Environmental Certification guidelines explain how to include women and gender considerations in social baseline studies prepared for the Ministry of Environment. The gender approach articulated in these guidelines recommends interviewing civil society to understand the differentiated roles of men and women in their communities and to respect traditional methods of decision making. These provisions are further elaborated in Peru's 2017 Guidelines to Promote the Participation of Women in the Environmental Certification Process, which contain a detailed set of recommendations for companies (including extractive companies) on how to include women in the environmental certification process. The country's 2019 Ministerial Resolution No. 091-2019-mem/dm Committee for Gender Equality of the Ministry of Energy and Mines reinstates the Ministry of Energy and Mines' commission for gender equality.

Of the seven documents identified for Sierra Leone (six laws and one regulation), four reference the participation or inclusion of women. Two focus on women's involvement in governing bodies. The 2008 Environment Protection Agency Act establishes the agency and requires that one of the 14 members of the board of directors (7 percent) be a woman. The 2009 Mines and Minerals Act requires that the Minerals Advisory Board consist of two people with considerable qualifications and experience in the mining industry, "generally one of whom shall be a woman." The country's 2014 Petroleum Regulatory Act states that the agency will be governed by a board of seven directors, at least one of whom should be a woman. The country's 2012 Environmental and Social Regulations for the Mineral Sector require the inclusion of women in community liaison committees in mining areas.

Box 7. Case study: Canada's decentralized gender-based analysis

Home to nearly half the world's major mining companies, Canada produced over 60 minerals and metals worth nearly \$47 billion in 2018. The country employed 409,000 workers in mining, primary processing and metal product manufacturing.⁹⁷ Canada is a constitutional monarchy with a federal government, 10 provinces and three territories, in which mining legislative authority is constitutionally divided between the federal government, provincial governments and Indigenous territories. Except for uranium, there is separate mining rights legislation for each of the 13 Canadian jurisdictions (bar Nunavut). In each province, the legislature may exclusively make laws in relation to exploration for non-renewable natural resources and to the development, conservation and management of such resources. These include laws on the rate of primary production, environmental protection, workplace safety and labor that has an impact on mining activities.

Because this study did not investigate provincial laws, it does not adequately capture the scope of gendered references or progress in mainstreaming gender in Canada's extractive sector. At federal level, Canada's unique strategy focuses on requiring gender analysis of existing laws, programs and projects, rather than inserting gendered language into formal laws or regulations.

"Gender-based analysis plus"

Canada's government has instituted "gender-based analysis plus" (GBA+) across federal departments, including Natural Resources Canada, the federal office with authority over mining. The Minister for Women and Gender Equality also plays a leadership role in the government-wide implementation of GBA+. Canada's new Impact Assessment Act is an example of how this tool is being used.

GBA+ seeks to ensure that the differential impacts on people of all genders are considered in developing policies, programs and legislation. It provides an analytical framework that considers the effects based not only on sex and gender, but also groups identified by age, place of residence, ethnicity, socio-economic status, employment status or disability. It includes a systemic process to identify contextual, gender and diversity issues, challenge assumptions, gather facts through research and consultation, develop options and make recommendations, monitor and evaluate, and communicate and document findings.

However, researchers have pointed out that despite this intersectional approach, GBA+ analysis has largely focused on women. Bureaucratization has resulted in challenges to meaningful transformation of systemic and structural barriers that cause oppression, including failing to address masculinity, non-binary identities, disability and other identities.⁹⁸ A 2017 statement by the UN Working Group on Business and Human Rights observed that certain social, economic and cultural structures in Canada still limit the extent to which women's unique experiences are recognized in business and human rights, including pay disparity, gendered divisions of work, workplace harassment and under-representation in top decision-making positions.⁹⁹

97 "Minerals and Metals Facts," Government of Canada, Feb 22, 2021, <https://www.nrcan.gc.ca/our-natural-resources/minerals-mining/minerals-metals-facts/20507>

98 Susan Manning, Deborah Stienstra and Leah Levac, *More Promise than Practice: GBA+ Intersectionality and Impact Assessment*, (Live Work Well Research Centre, 2020)

99 <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21680&LangID=E>

REQUIRING GENDER-DISAGGREGATED DATA

Stakeholders across the extractive sector broadly recognize that gender-disaggregated data is important both to developing effective interventions and assessing the impact of legal and policy frameworks. However, little disaggregated data is available about the sector's gendered effects.^{100,101} Within our sample of 30 documents, few require the government or companies to collect gender-disaggregated data for the extractive sector. Only six of the documents make any reference to gender-disaggregated data, from Colombia, Peru and Mongolia.

Colombia's 2018 Human Rights Policy for the Energy and Mining Sector suggests the use of gender-disaggregated data to strengthen internal information systems, but does not provide detail on the data that should be collected. The country's 2020 Gender Guidelines for the Energy and Mining Sector set several specific gender-oriented goals and require agencies to collect gender-disaggregated data to measure some of this progress.

Peru's 2016 Social Management Tools for Environmental Certification, which provide guidelines for companies to design and implement social and environmental studies, suggest that companies collect "gender information," as well as data on women's expectations, work and health issues. The country's 2017 Guidelines to Promote the Participation of Women in the Environmental Certification Process recommend that impact assessments collect quantitative and qualitative data disaggregated by sex, but do not include specific targets or indicators.

Mongolia's State Policy on Petroleum Sector Development (2018 to 2027) requires gender-disaggregated data on sector-related scholarships and a gender-sensitive workplace survey. However, it does not specify the level of disaggregation, nor offer details on what this survey entails. The country's Geology, Mining, Petroleum and Heavy Industry Sector Gender-Responsive Policy Action Plan of Implementation (2019 to 2026) promotes the use of gender-disaggregated data in baseline studies.

The few documents that require gender data disaggregation largely understand gender to be only the binary of women and men. As a result, even where gender-disaggregated data is collected, gender minorities are excluded or miscounted in information used to inform policy and decision making.¹⁰² This compounds the invisibility of gender and sexual minorities and the issues that impact them.¹⁰³ Creating visibility through data collection and disaggregation can help reduce stigma and facilitate additional data collection and research, as well as advance policies and the development of services to address the needs of gender minority populations.¹⁰⁴

100 Gender-disaggregated data and statistics are more than data disaggregated by sex. Gender statistics rely on sex-disaggregated data and reflect the realities of gender and related policy issues. They allow for the measurement of the differences between genders on various social and economic dimensions, but their data production also accounts for and conceives of concepts and methods that reflect gender roles and inequalities in society. European Institute for Gender Equality, "Sex-disaggregated data," (2020), eige.europa.eu/gender-mainstreaming/methods-tools/sex-disaggregated-data

101 Mayra Buvinic, Rebecca Furst-Nichols and Gayatri Koolwal, *Mapping Gender Data Gaps* (data2x, 2014).

102 Forcing some gender minorities to self-select or be counted as either "women" or "men" through a binary data collection system will inaccurately capture their gender, creating statistical inaccuracies.

103 The Williams Institute, *Exploring International Priorities and Best Practices for the Collection of Data about Gender Minorities*, March 2017, 5, williamsinstitute.law.ucla.edu/wp-content/uploads/Intl-Data-Collection-Gender-Minorities-Mar-2017.pdf

104 *Ibid.*, 5.

International best practices for inclusive gender data collection and disaggregation are still in formation, but some consensus has emerged on important elements. Governments should promote data collection practices that:

- Include affected communities in developing norms and best practices around minority data collection.¹⁰⁵
- Use data-gathering methods that ensure privacy and anonymity.¹⁰⁶
- Adopt culturally appropriate measures and terminology. A single global approach is unlikely to be feasible, given that conceptions of gender and the terminology used to describe it vary worldwide. For example, while gender minorities exist in all countries, certain identities, such as “two-spirited,” are specific to some countries’ Indigenous populations, but are not relevant elsewhere. Accordingly, researchers should tailor data-collection mechanisms to the community under study.¹⁰⁷
- Use a two-step measure to better capture the existence of gender minorities, asking respondents for their assigned gender at birth as well as their current gender expression.¹⁰⁸ Alternatively, a single-step measure can ask whether the respondent’s gender is the same as at birth or include options such as “trans woman/man,” “gender queer,” “non-binary” or “not listed: ____.”
- Understand sexual orientation and gender identity as two separate identities, and, if trying to capture data on both gender and sexual minorities, allow participants to select multiple options or create separate measures for each.¹⁰⁹ For example, a participant may be both a trans woman (which is a gender identity) and a lesbian (which is a sexual identity). Researchers should design the survey so that this participant could select both identities, rather than being forced to choose one.
- Allow participants to opt out of disclosing their gender. Disclosure can be an uncomfortable and potentially unsafe step for gender minorities, so offering the option “prefer not to reply” may make gender minorities comfortable enough to continue in the data collection process.¹¹⁰
- List gender identity options alphabetically, rather than in a way that prioritizes binary gender orientations. (For example, options could be listed as, “cisgender man; cisgender woman; genderqueer/nonbinary; trans man; trans woman; not listed: _____; prefer not to reply.”) The term “other” should not appear as an option, as it contributes to marginalizing identities that are less common.

¹⁰⁵ *Ibid.*, 11.

¹⁰⁶ Jennifer Glick, Katherine Theall, Katherine Andrinopoulos and Carl Kendall. “For Data’s Sake: Dilemmas in the Measurement of Gender Minorities,” US National Library of Medicine, National Institutes of Health, 13 March 2018, www.ncbi.nlm.nih.gov/pmc/articles/PMC6526522/

¹⁰⁷ The Williams Institute, *Exploring International Priorities and Best Practices for the Collection of Data about Gender Minorities*, 13.

¹⁰⁸ For example, in a binary survey or a one-step survey, a transgender person who identifies as a woman would simply be counted as a woman, which, while accurately capturing her gender, would prevent her from being counted as a gender minority. However, a two-step survey that asks for gender assigned at birth in addition to current gender identity will more accurately capture gender minority status. *Ibid.*, 13; Glick et al, *For Data’s Sake*.

¹⁰⁹ Juli Adhikari and Jocelyn Frye, “Who We Measure Matters: Connecting the Dots Among Comprehensive Data Collection, Civil Rights Enforcement, and Equality,” *Center for American Progress*, 2 March 2020, <https://www.americanprogress.org/issues/women/news/2020/03/02/481102/measure-matters-connecting-dots-among-comprehensive-data-collection-civil-rights-enforcement-equality/>

¹¹⁰ Dushyant Naresh, “Best Practices for Gender Inclusive Surveys,” *Invoke: Big Qual Decisions*, August 2020, invoke.com/blog/best-practices-for-more-gender-inclusive-surveys

- Use gender-neutral language in data collection, such as “they/them” rather than “him/her” in English. Research designers should follow leading practices for gender-neutral terms in the language they are using.¹¹¹
- Train researchers in gender-sensitive data collection practices.¹¹²

REQUIRING TRANSPARENCY AND DATA ACCESSIBILITY

Open, transparent government in which citizens can access and understand data can create more equal participation, better accountability and more responsive governance, service delivery, and gender and sustainability outcomes.¹¹³

Transparency and data accessibility can help ensure that government is responsive to the diverse and gendered needs of all its citizens.¹¹⁴ However, most of the documents we found do not explicitly require transparency in relation to their gender provisions.

The 2019 Canadian Minerals and Metals Plan requires that the government create a public platform to present job opportunities in the sector and encourage more diverse applicants, including women.

Colombia’s 2018 Human Rights Policy for the Energy and Mining Sector mentions the EITI, the Organisation for Economic Co-operation and Development and the UN Sustainable Development Goals as inspirations for the country’s commitment to transparency. The document recognizes transparency and access to information as enabling participation.

Kenya’s Mining and Minerals Policy Sessional Paper No. 7 of 2016 provides a strategy for developing a transparent fiscal regime, licensing procedures and regulatory framework.

Peru’s 2016 Social Management Tools for Environmental Certification and 2017 Guidelines to Promote the Participation of Women in the Environmental Certification Process discuss transparency as a means of encouraging participation. The Peruvian Ministry of Environment’s EVA platform allows the public to access the documents that companies submit to obtain environmental certification, including baseline studies, civil society participation plans and all other official documents.

111 Gendered language is much more pervasive in many languages other than English. Research designers should follow leading practices for gender-neutral terms in the language they are using. The UN currently offers guidance for Arabic, Chinese, English, French, Russian and Spanish. United Nations, “Gender Inclusive Language,” <https://www.un.org/en/gender-inclusive-language/guidelines.shtml>

112 The Williams Institute, *Exploring International Priorities and Best Practices for the Collection of Data about Gender Minorities*, 15.

113 Buvinic, Furst-Nichols and Koolwal, *Mapping Gender Data Gaps*.

114 Fumega et al., *Feminist Open Government*.



Photo by Lauren DeCicca for NRGi

The need for verifiable gender provisions

Key findings:

- Many extractive sector governance documents express a commitment to gender equality or the rights of women. However, very few contain provisions that are verifiable, make plans for verification or provide enforcement mechanisms.
- Without requirements for governments or companies to provide verification of gender-related actions they have taken, these documents may amount to little more than unfulfilled promises.
- Some provisions are easily verified, such as quotas for women's representation in consultative bodies. However, these are also relatively basic provisions and do not tackle the root causes of gender discrimination and inequality.
- Most documents contained provisions that are only partially verifiable, with some provisions that could be verified and others that could not. While some of the provisions are written in ways that allow them to be verified, few documents included actual mechanisms or plans for their verification.
- A lack of specificity is a significant design flaw in extractive sector governance documents. While many express a desire to honor human rights or achieve gender equality, they lack the detail necessary to build measurable and verifiable impact. Specific targets and verification processes must be built into extractive governance documents at the design stage to ensure gender-transformative change.

Many of the directly-related documents include language that expresses a commitment to some form of action or ambition in relation to gender equality or the rights of women. However, very few contain provisions that are verifiable, make plans for verification or provide enforcement mechanisms. For example, a document may include an intent to consult women when crafting extractive governance policy, but without a requirement for a government or company to provide verification of whom they have consulted, these documents may amount to little more than unfulfilled promises.

Some provisions from our sample are easily verified, such as quotas for women's representation in consultative bodies. However, these are also relatively basic provisions and are not unproblematic. Most of the quotas imposed only added one to three women to an organization's governing board, never exceeding 22 percent of overall board membership. Because these quotas fall short of creating space for a critical threshold for women or other marginalized people, they run the risk that the few people in these positions will be stereotyped, tokenized and easily overshadowed or dismissed.¹¹⁵ While increasing women and gender minorities' participation in governing or consultative bodies is important, the provisions in these documents are unlikely to tackle the root causes of gender discrimination and

¹¹⁵ *The White House Project: Benchmarking Women's Leadership* (The White House Project, 2009), 14.

inequality. The documents that created positions for women on consultative bodies did not include provisions to achieve women's equity throughout the extractive supply chain, and are therefore unlikely to make expedient or meaningful change.¹¹⁶ However, documents that establish broader-based quotas, such as the Canadian Minerals and Metals Plan, which aims to increase the number of women in the workforce from 14 to 30 percent by 2030, create provisions that are both verifiable and aim to have a more pervasive impact.

In considering the gender commitments made in the 30 documents directly related to the extractives sector, we divided them into three categories—verifiable, partially verifiable and not verifiable. We evaluated documents as verifiable if their gender provisions could be confirmed through a simple assessment or if they provided benchmarks and means for conducting assessment. Partially verifiable documents contained some provisions that could be verified and others that could not. Unverifiable documents did not present clearly quantifiable targets or means for their assessment.

Most documents contained provisions that are only partially verifiable. While some of the provisions are written in ways that allow them to be verified, few documents included actual mechanisms or plans for their verification.

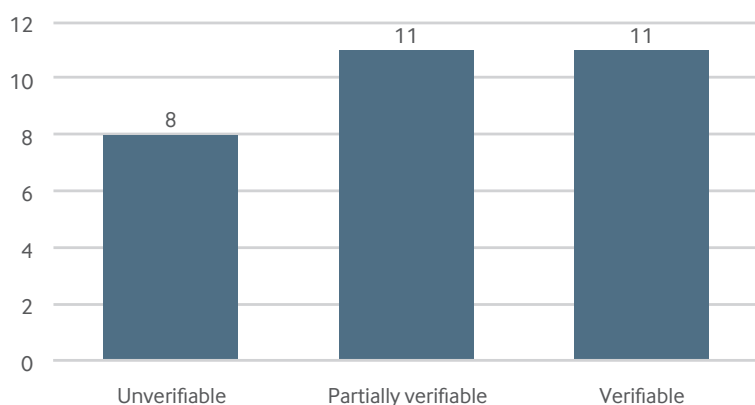


Figure 6. Verifiability of gender commitments in extractive governance documents

VERIFIABLE PROVISIONS

Table 3 below shows the directly-related documents that have verifiable gender components. Most of these documents provide simple quotas for women's inclusion on governing boards, or prohibitions against women working in mines. While most only have the potential to be gender targeted at best, their simplicity makes them easy to verify. For example, it is easy to assess whether Ghana's Minerals Commission board of directors includes the requisite two women. Other documents contain some enforcement mechanism. Nigeria's Labour Act, which prohibits women from working at night or in underground mines, states that companies that breach the law will be fined. However, without the presence of inspectors or other measures, it is difficult to say that provisions such as this are verifiable, rather than simply enforceable.

¹¹⁶ United Nations Division for the Advancement of Women, *Equal Participation of Women and Men in Decision-Making Processes, with Particular Emphasis on Political Participation and Leadership* (2005), <https://www.un.org/womenwatch/daw/egm/eql-men/FinalReport.pdf>

Country	Document name	Explanation
Argentina	Law No. 11,317, Labor of Women and Children	Assessment of whether women are engaged in underground work is easily verifiable.
Ghana	Minerals Commission Act	Provides a simple quota that is easily verifiable.
Ghana	Petroleum Commission Act	Provides a simple quota that is easily verifiable.
Ghana	Minerals Development Fund Act	Provides a simple quota that is easily verifiable.
Morocco	Decree No. 2-10-183	Assessment of whether women are engaged in underground work is easily verifiable.
Morocco	Labor Code	Assessment of whether women are engaged underground work is easily verifiable.
Nigeria	Labour Act	An enforcement clause provides for a fine if the law is breached.
Sierra Leone	The Environmental Protection Agency	Provides a simple quota that is easily verifiable.
Sierra Leone	The Petroleum Regulatory Act	Provides a simple quota that is easily verifiable.
Sierra Leone	Employers and Employed Law	Assessment of whether women are engaged in underground work is easily verifiable.
Tunisia	Labor Code	Assessment of whether women are engaged in underground work is easily verifiable.

Table 3. Extractive governance documents with verifiable gender commitments

PARTIALLY VERIFIABLE PROVISIONS

Table 4 below shows the governing documents that are partially verifiable. These documents tend to contain much more ambitious gender provisions than those that are easily verifiable. For example, Mongolia's State Policy on Petroleum Sector Development (2018 to 2027) seeks to promote a cultural shift in work-life balance and gender relations. This offers the potential for gender-transformative change, but is difficult to measure and verify. However, the policy does include a results framework with clear objectives, expected outcomes and activities, specific enough to allow for measurement of implementation and impact.

Mongolia's framework, The Geology, Mining, Petroleum and Heavy Industry Sector Gender-Responsive Policy (2019 to 2026) includes financing mechanisms and clear monitoring responsibilities for the ministry. Activities include requirements for specific gender assessment of all policies, laws and legislative acts in the sector. The framework outlines commitments to develop a budget methodology; monitoring and evaluation frameworks; project impact, labor and workplace health risk assessments, and gender-sensitive training modules and guidelines for the elimination of gender-based violence and discrimination. The ministry is to assess environmental, human rights and socio-economic impacts of the sector and provide guidance for work-life balance and internal policies for all public organizations and private companies. This includes enforcement of a representation quota at senior management level and gender-ratio mechanisms among sectoral human resources. The document also sets a goal to develop a framework for fostering partnerships and strategic alliances, including incentive mechanisms for businesses and collaboration with civil society to train and empower women and strengthen leadership skills.

Country	Document name	Explanation
Canada	The Canadian Minerals and Metals Plan	Very few components are verifiable, except for the target of having 30 percent women's employment in the mining sector by 2030. However, most components simply advocate for "more" women and minorities, or use similarly vague measures.
Canada	Canadian Minerals and Metals Plan: Action Plan 2020: Introducing the Pan-Canadian Initiatives: March 2020 Preliminary Version	Very few components are verifiable, except for the target of having 30 percent women's employment in the mining sector by 2030. However, most components simply advocate for "more" women and minorities, or use similarly vague measures.
Colombia	Human Rights Policy for the Extractives Sector	Some elements are verifiable, such as whether gender-disaggregated data was collected. While it is possible to assess whether a gender approach exists in policy evaluations, there is no quantifiable way to assess their quality.
Colombia	Gender Guidelines for the Energy and Mines Sector	These guidelines set many quantifiable targets that are verifiable. However, some goals simply call for "more" women or "increasing" the number of women in certain positions. While this is technically verifiable, it is vague.
Kenya	Mining and Minerals Policy Sessional Paper No. 7 of 2016	This paper outlines the development and implementation of a gender mainstreaming plan for the Ministry and the mining sector to institutionalize gender equality and inclusivity.
Kenya	Mining Act (Community Development Agreement) Regulations, 2017	The act requires a woman representative to be elected by the community to represent them in setting community development agreements. Requires programs that benefit women to be included in agreements, but includes no evaluation mechanisms.
Mongolia	State Policy on Petroleum Sector Development (2018 to 2027)	Some elements are verifiable, such as whether gender-disaggregated data was collected or whether a gender-sensitive workplace survey was conducted.
Mongolia	Geology, Mining, Petroleum and Heavy Industry Sector Gender Responsive Policy Action Plan of Implementation (2019 to 2027)	Some elements are verifiable, such as whether baseline studies include gender-disaggregated data.
Peru	Guidelines to Promote the Participation of Women in the Environmental Certification Process	Some elements are verifiable, such as whether gender-disaggregated data was collected in baseline studies. However, the guidelines' overall goals of promoting women's participation are not quantified or verifiable.
Sierra Leone	The Mines and Minerals Act	Some components are verifiable; for example, it is possible to evaluate whether women are on Community Development Association committees, although there are no quantifiable requirements.
Sierra Leone	Environmental and Social Regulations for the Mineral Sector	It is possible to evaluate whether community development agreements include a gender strategy, though there are no metrics provided for assessing the quality of the strategy.

Table 4. Extractive governance documents with partially verifiable gender commitments

While measuring broad cultural shifts can be challenging, setting interim goals provides an opportunity for verifiable progress. For example, the Canadian Minerals and Metals Plan and its corresponding action plan set an aggressive goal of more than doubling women's employment in the mining sector to 30 percent by 2030. However, these documents fail to set interim targets that would allow for accountability over the next decade of action. The act also includes commitments respecting Indigenous knowledge and a new planning phase that seeks broader preliminary input into proposed resource development and extraction projects. However, to date there is little guidance on how to include intersectionality—the interconnected nature of social categorizations such as race, class and gender, which create overlapping systems of discrimination—in impact assessments.¹¹⁷

Some of these partially verifiable documents focus on increasing women's participation in decision making and benefit sharing in mining-affected areas through community development agreements. While these are partially verifiable in that it is possible to tell whether women are on the committees that negotiate these agreements, the documents offer no way to quantify women's participation or assess its efficacy.

While many of the regulatory documents mentioned participation or inclusion, most focused on quotas or broad requirements, such as participation associated with environmental impact assessments. These brief mentions limit the mandate or opportunities to collect accurate and in-depth qualitative and quantitative information needed for meaningful gender mainstreaming plans. Only Sierra Leone's Environmental Regulations for the Minerals Sector and Kenya's Mining Act (Community Development Agreement) Regulations mention requirements for the inclusion of women or gender programs in provisions outlining community development agreements, a critical tool for engaging local mining communities.



Coal mines outside of Samaca, Colombia.

Photo by Scott Wallace / World Bank, available under CC BY-NC-ND 2.0.

¹¹⁷ Manning, Stienstra and Levac, "More Promise than Practice," 82.

UNVERIFIABLE PROVISIONS

Table 5 below shows the extractive governance documents that do not contain verifiable gender-related provisions. While they contain references to women's equality or participation, most offer no specific mechanisms through which they plan to achieve their goals or ways of measuring and verifying their success. For example, Nigeria's National Gas Policy plans to use low- and middle-income women who use kerosene and firewood for fuel as community influencers to transition their communities to liquified petroleum gas. However, the document offers no specifics on how many women, how they will be approached or quantifiable expected outcomes of their involvement.

Country	Document name	Explanation
Kenya	The Mining (Employment and Training) Regulations	No specific requirements or validation mechanisms.
Nigeria	Mining and Metal Sector Investment Promotion Brochure	No specific requirements or validation mechanisms.
Nigeria	National Gas Policy	No specific requirements or validation mechanisms.
Peru	Regulation of the Prior Consultation Law	It is possible to assess whether women were included in prior consultations, but these regulations provide no assessment mechanism.
Peru	Ministerial Resolution N° 091-2019-mem/dm Committee for Gender Equality of the Ministry of Energy and Mines	It is possible to assess whether women were included in prior consultations, but these regulations provide no assessment mechanism.
Peru	Social Management Tools for Environmental Certification	While it is possible to review whether consultations took place, these guidelines offer no indicators to assess women's participation or the impact they had in decision making.
Sierra Leone	The Petroleum (Exploration and Production) Act	Prohibits employment discrimination, but offers no requirements or validation mechanisms.
Sierra Leone	Artisanal Mining Policy for Sierra Leone, 2018	No specific requirements or validation mechanisms.

Table 5. Extractive governance documents with no verifiable gender provisions

BUILDING VERIFIABLE COMMITMENTS

In recent years, the OGP has sought to make higher-impact commitments.¹¹⁸ A key component of this is how commitments are designed. OGP has found that the design gap—the lack of ambition, relevance and specificity in commitment design—is more significant than the implementation gap—the disconnect between policy and practice.¹¹⁹

This design gap surfaces in our research on how countries approach making gender-related commitments in their extractive governance documents.

Ambition. Many of the gender commitments in the documents lack ambition. Simple quotas that assume men’s participation as the default and make a basic requirement for minimal participation by women or gender minorities are unlikely to achieve a gender-transformative effect. While quota laws can be effective in creating such change, they should not be viewed as a panacea and should be instead supported by broader systemic change.¹²⁰

Relevance. Relevance is also a key issue for gender commitments in the extractives sector. There is a profound lack of gender-related commitments in extractive governance documents, despite the sector’s impact on women and gender minorities.

Specificity. Our research shows that lack of specificity is a significant design issue in extractive sector governance. While many documents articulate a desire to honor human rights or achieve gender equality, they lack the detail necessary to build measurable and verifiable impact.



Mining in Mongolia.

Photo by Munkhgerel Batardene.

¹¹⁸ Vossler and Foti, *When More is More*.

¹¹⁹ *Ibid.*, 15.

¹²⁰ United Nations Division for the Advancement of Women, *Equal Participation of Women and Men in Decision-Making Processes, with Particular Emphasis on Political Participation and Leadership* (2005), 18, <https://www.un.org/womenwatch/daw/egm/eql-men/FinalReport.pdf>



Gold mining, North Burkina Faso

Photo by Hervé Lévyte, available under CC BY-NC 2.0

Indirectly-related documents

KEY FINDINGS

- The scope and scale of gender-transformative approaches in the extractive sector depend on a country's overall regulatory gender framework, cross-sectoral provisions relevant but not limited to extractives, and sector-specific directives.
- Countries' broader governing documents are more likely to contain references to women, gender and sex than those that explicitly regulate the extractives sector.
- Documents indirectly-related to the extractives sector include those protecting women against violence or addressing labor issues, equality, environmental or impact assessment, water, land or fisheries, or procurement. They can also include constitutional provisions, national development plans, climate change strategies or gender equality programs.
- The type of documents that regulate the mining sector may indicate that governments are creating strategic national approaches to gender, and using these frameworks to shape more detailed sector-specific guidelines and regulations.
- There is need for more research on how indirectly-related regulatory interventions are impacting the extractives sector, and whether inclusion of gender in a policy or legal framework directly about oil, gas or mining will result in greater progress towards gender equality in practice, compared to cross-sectoral interventions.

The lifecycle of oil, gas and mineral extraction projects involves a wide range of legal, economic and policy decisions often controlled by different governmental ministries and offices—from broad governance frameworks around participation, to taxation and revenue distribution, to social and environmental impacts.¹²¹ This means the scope and scale of gender-transformative approaches in the extractives sector are likely to depend on a country's overall regulatory gender framework, other sector provisions that are relevant but not limited to extractives, and sector-specific directives.

Although a complete review of every potential document indirectly related to the extractive sector was beyond the scope of this research, our 12-country review investigated the inclusion of gender or references to women in policy or legal frameworks that cut across many sectors, including extractives. Of the 62 documents we found, 32 were indirectly related to the extractive sector in this way.

Although our research into indirectly-related documents was not exhaustive, we found that countries' broader governing documents are more likely to contain references to women, gender and sex than those that explicitly regulate the extractives sector. Figure 7 below shows both directly and indirectly-related documents broken down by type. Laws were the most common type of document we found.

¹²¹ *Natural Resource Charter: Second Edition* (Natural Resource Governance Institute, 2014).

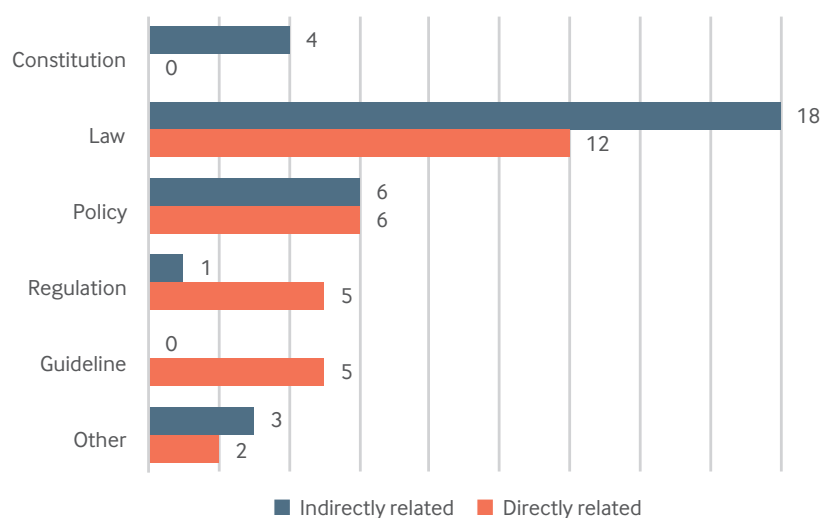


Figure 7. Type of regulatory document

Documents indirectly related to the extractives sector generally cover two broad topics:

- 1 Specific policy areas that cut across several commercial activities, including, but not limited to, provisions relevant to the extractive sector. Examples include laws that protect women against violence or address labor, equality, environmental or impact assessment, water, land or fisheries, or procurement.¹²²
- 2 Documents that provide broader strategies or statements of government policy in which gender and extractives are mentioned, but not together, with no explicit connection made. These include constitutional provisions that mention gender or women's equal rights, national development plans, climate change strategy documents or gender equity programs.

An exception to these categories is documents that would otherwise be indirectly related, but instead include provisions with gendered language that directly relate to the extractives sector, for example, labor laws that contain provisions prohibiting women from working in mines. See Appendix 2 for indirectly-related documents found in each country.

The constitutions of Ghana, Kenya, Mongolia and Tunisia all contain references to women, gender or sex. Although they do not directly regulate the extractive sector, constitutions are the foundation for a country's other laws, including the extractive sector regulatory framework.

In Argentina, we found the 2009 Comprehensive Protection Law to Prevent, Punish and Eradicate Violence Against Women in Interpersonal Relationships. Although this law does not directly relate to the extractive sector, the link between the extractive industries and gender-based violence is well documented, particularly in regions dominated by mining.

¹²² An exception to this is documents that include specific provisions regulating the extractive sector that also mention women, gender or sex. These include, for example, provisions in labor codes that specifically prohibit women's work on extraction sites.

In Canada, we found several laws that mention women, gender or sex that indirectly regulate the extractive sector. The Impact Assessment Act requires that impact assessments consider and consult Indigenous women. The Fisheries Act protects fisheries from pollution, including mining pollution, and says that sex, gender and other factors may influence decision making under this act. The Indian Act sets parameters for how the Canadian government interacts with First Nation bands and their members, and includes specific provisions related to women.

Colombia's National Development Plan (2012 to 2022) includes frequent mentions of women, gender and sex, with a chapter specifically related to UN Sustainable Development Goal 5, on gender equality and women's empowerment.

In addition to Ghana's constitution, we found six indirectly-related documents that refer to women, gender or sex. Three laws, the Water Resources Commission Act, the Ghana Revenue Authority Act and the Land Use and Spatial Planning Act, establish quotas for women on governing boards (like the directly related Ghanaian documents). The Ghana Shared Growth and Development Agenda advances the "Better Ghana Agenda," which seeks, among other things, to rectify past discrimination against women by promoting equality of opportunity, increasing women's participation in governance and decision making, reducing the disproportionate number of women living in poverty and mainstreaming gender into socio-economic development. The Constitution of Ghana contains language on women's rights, including the economic equality of all citizens, while the National Gender Policy aims to mainstream gender throughout Ghanaian governance, including natural resource governance.

In Indonesia, we found three indirectly-related documents that each contained a single reference to women or gender. The Environmental Protection Management Law states that environmental management should reflect proportional justice for every citizen, regardless of region, generation or gender. The Agrarian Reform and Management of Natural Resources Decree states that management of all natural resources should be conducted fairly, sustainably and in a way that ensures justice and gender equality. Agrarian Law 5/1960 mentions mining as a function of land use and states that both men and women have the right to obtain land.

Kenya has four indirectly related laws that mention women or gender, in addition to its constitution. The Environmental Management and Co-ordination Act mentions women as representatives in the district environmental committees responsible for management of the environment, including decision-making about environmental impact assessments. The Public Procurement and Asset Disposal Act includes a requirement that "every procuring entity" spend at least 30 percent of its yearly procurement value with "disadvantaged groups," which include women, youth and people with disabilities. It also requires disaggregated data to detail this procurement. The Community Land Act protects against gender-based discrimination in land occupancy rights. The National Policy on Gender and Development outlines the country's gender policies, including collecting gender-disaggregated data on natural resource degradation and climate change, and ensuring gender equity and compliance in mining laws and policies.

In addition to its constitution, Mongolia has several indirectly-related documents that mention women, gender or sex. The Law of Mongolia on the Promotion of Gender Equality requires gender-sensitive policymaking, mainstreams gender in the country's development policy, sets requirements for gender-based budgeting and establishes data disaggregation practices. The National Program on Gender Equality provides the action plan for implementing this law. The Green Development Policy includes a single reference to ensuring sufficient salary for “women taking care of children” as part of vocational training and job placement efforts.

Peru's Action Plan on Gender and Climate Change promotes women's participation and the collection of gender-disaggregated data across multiple sectors: production, education, health, the environment and agriculture.

We found a single Nigerian indirectly related document that mentions women, the Nuclear Safety and Radiation Protection Act, which details precautionary measures for pregnant women.

Sierra Leone has two indirectly related laws that mention women or gender. The Public Procurement Act requires that the government's policy on promoting and appointing women should be followed under this law. The National Water Resources Management Agency Act requires that one woman be appointed to the Water Catchment Area Committee and that the National Water Resources Management Agency be guided by principles including the consultation and participation of women and other relevant stakeholders.



Mining in Mongolia.
Photo by Munkhgerel Batardene.

We did not find any documents related to the extractives sector in Tunisia, but found two laws that mention women and indirectly influence the sector's governance, in addition to the country's constitution. The Regional Commission for the Promotion of Rural Women establishes a commission to ensure that improvements in women's rights extend to rural women. The Governmental Decree Establishing the Peer Council for Equality and Equal Opportunities between Women and Men establishes a council to mainstream a gender approach into the country's development policies.

For the countries we researched, we found more indirectly-related documents outside the extractive sector that include references to gender or women. The type of regulatory documents that we found that directly relate to the mining sector may indicate that overall, the countries that we reviewed are creating broad, strategic national approaches to interventions on gender, relevant to many sectors and development programs. They then use these frameworks to shape more detailed sector-specific guidelines and regulations.

This analysis showcases a number of entry points for strengthening gender transformative regulatory interventions. It highlights the need for more research on how indirectly related regulatory interventions are impacting the extractive sector. Research is needed to better understand whether inclusion of gender in a policy or legal framework directly about oil, gas or mining will result in greater progress towards gender equality in practice, when compared to interventions that cut across many sectors.



Leach Pad Carachugo, Peru. Photo by Carlos Olivares, available under CC BY-NC 2.0.



Woman working the salt evaporation ponds in Maras, Peru.

Photo by Jess Kraft

Recommendations

While our analysis of extractive governance documents in 12 sample countries is revealing, we have not yet researched their implementation and effects, so cannot yet offer draft language for gender-transformative laws, policies, regulation and guidelines. However, we are able to draw recommendations from our research that can help shape gender-transformative OGP commitments.

COMMITMENTS SHOULD BE AMBITIOUS

Many of the documents that we reviewed contained unambitious gender provisions. For example, the simple quota requirements in Ghana's documents, even if well-implemented, are likely to do little to transform gender relations in the country's extractive sector or beyond. These quotas provide for nominal women's representation in select governing bodies. However, provisions often do not require that the women appointed to these positions have any particular qualifications or experience representing women's interests in any demonstrable way. While overly rigorous requirements could be used to justify the exclusion of women from these positions, with no requirements stated, it is also possible that the women appointed may be chosen to fill these quotas specifically because they are likely to be compliant with dominant cultures.

Research shows that in order to effect gender-transformative change, there needs to be a critical mass of women (more than one third) in leadership positions.¹²³ Otherwise, women are stereotyped, tokenized and easily overshadowed or dismissed. It is not until this critical threshold is reached that perceptions begin to shift and fundamental change begins to occur. Documents should use quotas to require the presence of women and gender minorities in significant numbers, not only on governing boards, but throughout the entire extractive governance structure and supply chain in order for gender-transformative change to occur.¹²⁴

Beyond creating quotas for participation by women and gender minorities, documents should be ambitious about creating systemic change. For example, they can be designed to require transparency on benefit impact agreements, to promote the collection and transparency of data on local procurement and employment, and to build interventions to address gender-differentiated impacts in communities affected by extraction.

¹²³ *The White House Project: Benchmarking Women's Leadership* (The White House Project, 2009), 14.

¹²⁴ While there is a significant body of literature discussing quotas and a critical threshold for women's participation, there is not a comparable body of literature discussing what quotas are appropriate for the inclusion of gender minorities. However, early research on the subject suggests that having single-dimension quotas for women's participation without corresponding quotas for more descriptive representation may have the unintended result of suppressing the participation of other marginalized groups. We have avoided making a prescriptive recommendation for quotas for gender minorities here, but encourage countries to monitor leading practices as they emerge, and act accordingly. Maryann Reid, "What Happens When White Women Become The Face Of Diversity?" *Forbes*, 18 February 2020, www.forbes.com/sites/maryannreid/2020/02/18/what-happens-when-white-women-become-the-face-of-diversity/?sh=7b062c69287d; Varun Karekurve-Ramachandra and Alexander Lee, "Do Gender Quotas Hurt Less Privileged Groups?" *American Journal of Political Science*, 28 February 2020, onlinelibrary.wiley.com/doi/10.1111/ajps.12511

Beyond having ambitious goals for participation by women and gender minorities, documents should also be bold in the type of change they aim to create—from shifting culture in the extractive industries, to changing the way decision-making occurs in extractive-affected communities and realigning economic power. Reform of the extractive sector has the potential to drastically impact the lives of people in affected communities and countries. In creating related documents, governments should carefully consider their desired and likely impacts, and aim to generate gender-transformative change.

COMMITMENTS SHOULD REQUIRE AND ENABLE THE PARTICIPATION OF WOMEN AND GENDER MINORITIES

To bring about gender-transformative change, commitments must mandate significant participation by women and gender minorities throughout the extractive governance structure and supply chain. However, historic and ongoing structural inequalities mean mandating such participation is not sufficient to create gender-transformative change. To rectify these inequalities, governments will need to promote overarching changes to national policy, enforcement and awareness in areas such as parental leave, anti-discrimination protection and sexual harassment prohibitions, as well as sector-specific policies, as outlined below.

Participation commitments should create targeted education and job training

To enable women and gender minorities to participate successfully in the extractive sector, governments must provide commitments for the education, job training and skills building necessary to address historic and structural inequalities. The Canadian Mining and Metals Plan calls for the inclusion of more Indigenous women in the sector, saying that “this can be facilitated with training in the trades, postsecondary education, and entrepreneurial mentoring.”¹²⁵ While the plan does not offer detail or targets for this training, education or mentoring, its inclusion acknowledges that addressing structural inequalities will require a multi-faceted and systemic approach.

Participation commitments should create compatible workplaces

Extractive sector workplaces cannot simply include more women or gender minorities, they must become welcoming workplaces for them. For extractive sector workplaces to truly create gender-transformative change, these workplaces must address the gender differentiated roles of work in society. The Mongolian Geology, Mining, Petroleum and Heavy Industry Sector Gender-Responsive Policy Action Plan of Implementation (2019-2026) aims to create such change through provisions that address the foundations of workplace discrimination and accessibility. The document recognizes that, “Policy and planning processes that detect and minimize differing roles and responsibilities of women and men employees in their families and households might prevent women’s career advancement or push them into less secure and lower-paid jobs, while restricting men’s contribution and capacities to participate in family affairs, thus potentially

¹²⁵ Canada, Minerals and Metals Plan, 18.

increasing their health-related risks. Therefore, adequate work-life planning and pursuing a relevant ‘work-life balance’ policy, is one of the fundamental requirements for promoting gender equality.”¹²⁶

Creating workplaces compatible with addressing the needs of different genders will involve conversations with diverse stakeholders and deeper thinking about communities’ needs. The Artisanal Mining Policy for Sierra Leone, 2018 states that women’s participation in artisanal mining has unintentionally led to children missing education opportunities due to lack of alternative childcare. In this case, ambitiously facilitating women’s participation in the sector will mean addressing childcare, child safety and education issues.

Participation commitments should require input from women and gender minorities

Several of the documents reviewed require that companies solicit women’s input into environmental impact assessments or building community development agreements. For example, Peru’s 2012 Regulation of the Prior Consultation Law states that companies should include women in prior consultation processes for all projects that affect Indigenous peoples’ communal rights. However, while this document and others like it often call for women’s consultation, they rarely specify what that consultation should entail, how many women should be consulted or on what topics. Nor do they establish mechanisms that ensure women’s inputs influence project trajectories or governance.

Governments should seek women and gender minorities’ input into extractive governance by developing guidance for gender-responsive stakeholder consultation and facilitating the participation of national and local women’s organizations, including through increased funding. In order to make sure that their input is substantive and creates an impact, documents should quantify the number of women and gender minorities to be consulted, the mechanisms and topics for their consultation and the ways in which their inputs will be translated into governance. They should create mechanisms to provide women and gender minorities with information that helps them understand their rights and the issues before them. They should also consider holding women-only consultation meetings to ensure that women’s voices are heard, and provide for safe transportation and childcare so that women can attend meetings.

Governments should repeal commitments that restrict women’s participation

As detailed in Box 6, many documents that restrict women’s participation in the extractives sector are a direct legacy of British colonialism. These provisions have prevented women from taking higher-paying jobs in the sector and have consequently deprived them of the experience needed to participate in the upper levels of management and decision-making. In response, country governments should remove these antiquated provisions from their documents and aggressively pursue job training and recruitment.

¹²⁶ Mongolia, Geology, Mining, Petroleum and Heavy Industry Sector Gender-Responsive Policy Action Plan of Implementation (2019-2026), 8.

COMMITMENTS SHOULD BE VERIFIABLE

Lofty language that promises women's empowerment and an end to inequality was common in the documents reviewed. However, if provisions are not verifiable, these goals are likely to amount to little more than unfulfilled promises. For a commitment to be verifiable, it must include quantifiable goals and targets, set timelines for their achievement and establish a plan to monitor and evaluate progress.

As prescribed by the OGP, commitments should begin by addressing the status quo and setting a target for improvement. For example, in its commitment to increasing women's participation in the mining labor force, the Canadian Minerals and Metals Plan first states that this is currently at about 14 percent, and then makes a commitment to increase it to 30 percent by 2030. This commitment is verifiable in that it both sets a target and a timeframe within which that target should be achieved.

Commitments can go a step further by setting intermediary benchmarks for targets. In the Canadian example, setting a midpoint target of 23 percent women's employment in the mining labor force by 2025 would allow the government, companies and oversight actors to monitor progress towards the commitment, and push for accountability if progress was too slow to meet the 2030 target.

Governments should also address how they intend to monitor and evaluate progress towards their goals. They may need to address funding mechanisms for monitoring and evaluation in associated planning documents, to create clear mandates and lines of accountability for implementing gender equality and mainstreaming initiatives.

COMMITMENTS SHOULD REQUIRE DATA DISAGGREGATION

Our research highlighted the acute lack of gender-disaggregated data available. While many countries are making commitments to gender equality, without this data, they often develop policies that fail to account for the unique experiences and needs of men, women, boys, girls and gender minorities. Data disaggregation should pay particular attention to gender and its intersections with characteristics such as age, disability and ethnicity. Governments are working to address labor biases, create diversification strategies that are gender-inclusive, build inclusive gender practices, create enhanced environmental monitoring and develop gender-responsive revenue management. However, without data disaggregation, it is difficult to know who is participating and to hold governments accountable.

As countries work to develop governing documents that address the differentiated impacts of extraction on people with different gender or other identities, the collection of gender-disaggregated data will be crucial to assessing whether these documents are having the intended effect.

Commitments should require the collection of gender-disaggregated data and for this data to be analyzed when creating policy. For example, Colombia's 2018 Human Rights Policy for the Energy and Mining Sector, which encourages the design of specific sectoral policies to promote women's participation, requires the Ministry of Mines and Energy to use gender-disaggregated data to evaluate its internal policies.

Governments should also establish clear areas of responsibility by providing guidelines, tools, communication, open-data platforms and public institutions for data use. Gender data collection and disaggregation should include gender minorities and follow leading international practices, such as data protection policies and sensitization training for data collectors, as detailed on page 52-53.

COMMITMENTS SHOULD REQUIRE TRANSPARENCY

When extractive sector governance and processes are not transparent, men—who overwhelmingly occupy positions of power—have access to information and are therefore able to safeguard their power and control how community resources are spent.¹²⁷ When information is transparent, women and other marginalized groups have greater opportunity to participate in governing processes and hold their representatives accountable. For example, if mineral royalties paid to mining-affected communities and the associated budgets are transparent, all community members are able to see how money is being spent and to advocate for priorities that meet their needs.

Countries should consider developing transparency commitments for the extractive sector in line with existing frameworks such as the EITI. As well as implementing the EITI's general transparency provisions, countries should incorporate its gender requirements into extractive sector governance documents. In particular, countries should codify gender parity in EITI multi-stakeholder groups, disaggregate data in EITI reporting and ensure accessible and inclusive public consultations, dialogues and events.

COMMITMENTS SHOULD CONNECT TO ONGOING EFFORTS

Gender commitments in the extractive sector should connect with a country's own ongoing efforts and international initiatives to promote gender-transformative change.

Governments should align national-level commitments

To have a gender-transformative impact, gender provisions should be mainstreamed throughout all laws, policies, regulations and guidelines that govern the extractive sector. While overarching commitments to gender equality in constitutions makes a powerful statement about a country's founding values, these commitments must also be reflected in actionable and enforceable policies directly governing the extractive sector to create provisions for gender equality. For example, if a country makes a commitment to gender equality in its constitution, that commitment should be reflected in the policies directly governing its extractive sector, including the way that mineral royalty payments are governed and disbursed, the regulations that dictate how companies should operate and interact with mining-affected populations, and guidelines that offer more detail on how to implement gender-transformative change.

¹²⁷ Marieke van den Brink, Yvonne Benschop and Willy Jansen, "Transparency in Academic Recruitment: A Problematic Tool for Gender Equality," *Organization Studies*, Volume 31, Issue 12 (2010): 1-25.

Documents should be developed with careful consideration of existing provisions, so they do not create conflicting requirements. For example, quotas or other requirements established in one governing document should be the same or compatible with those in another. While not directly in conflict with each other, the quotas in Ghana's documents for women's representation on commission boards of directors seem arbitrary and unrelated to the size of the board. The number of women required for each commission is often different, some requiring one woman while others require two. Such quotas should aim to establish a uniform percentage of women and gender minorities in leadership positions, and if the aim is to create gender-transformative change, the quota should be for at least 33 percent of positions to be held by women, to achieve critical mass.¹²⁸

As governments work to create gender-transformative change through their governing documents, they should strengthen vertical and horizontal coordination mechanisms for policy coherence, including engagement with ministries of women's affairs, or their equivalents. They should also aim to bolster the capacities and resources of gender equality institutions, and ensure the capacity and resources of public institutions that work to integrate gender equality. This can include identifying or creating gender focal points within agencies and ministries, and developing resources for training and promoting collaborative approaches and knowledge centers. In integrating gender into their documents and work, governments should establish clear mandates and lines of accountability for implementing gender equality and mainstreaming initiatives.

Governments should connect commitments to international efforts

When developing gender provisions in extractive sector documents, countries should not operate in a vacuum, but should instead build these provisions with attention to the successes, failures and learnings of other countries and organizations. International organizations such as multilateral lenders, the EITI, the UN and the OGP are synthesizing learning to help governments build commitments around extractives that have the potential to make transformative change in their countries' development, particularly for women and gender minorities. For example, Colombia's 2018 Human Rights Policy for the Energy and Mining Sector specifically mentions the EITI, the OECD, and the UN Sustainable Development Goals as inspirations for its commitment to transparency. The policy recognizes transparency and access to information as ways to enable participation.

¹²⁸ See footnote 124 for more detail.

Conclusion

As the gender-differentiated effects of natural resource extraction become increasingly clear, governments throughout the world are working to address these impacts through their governing documents. However, as our textual analysis of 12 countries' documents has revealed, many of these documents have significant flaws that are likely to prevent them from creating gender-transformative change.

The textual analysis in this report identifies several issues likely to contribute to these documents' effectiveness. However, much of their potential to create gender-transformative change lies in their implementation. The next phase of our research will look closely at the implementation of some of these laws to better understand the successes and challenges involved, and ways in which these documents are having predictable or unforeseen effects. Through two short documentaries and case studies on the implementation gap, we will explore how Sierra Leone and Mongolia are attempting to address the gender-differentiated effects of resource extraction.



Women's participation in Mongolia.

Photo by Munkhgerel Batardene.

Appendix 1. Directly-related documents, by country

Argentina	
Law	Law No. 11,317, Labor of Women and Children (Ley N° 11.317, Trabajo de las Mujeres y los Niños)
Canada	
Guideline	The Canadian Minerals and Metals Plan
Other	Canadian Minerals and Metals Plan: Action Plan 2020: Introducing the Pan-Canadian Initiatives: March 2020 Preliminary Version
Colombia	
Policy	Human Rights Policy of the Energy Mining Sector (Política En Derechos Humanos Del Sector Minero Energético)
Guideline	Gender Guidelines for the Energy and Mining Sector (Lineamientos De Género Para El Sector Minero Energético)
Ghana	
Law	Minerals Commission Act
Law	Petroleum Commission Act
Law	Minerals Development Fund Act
Kenya	
Policy	Mining and Minerals Policy Sessional Paper No. 7 of 2016
Regulation	Mining Act (Community Development Agreement) Regulations (2017)
Regulation	The Mining (Employment and Training) Regulations
Mongolia	
Policy	State Policy on Petroleum Sector Development (2018-2027)
Policy	Geology, Mining, Petroleum and Heavy Industry Sector Gender-Responsive Policy Action Plan of Implementation (2019-2026)
Morocco	
Other	Decree No. 2-10-183 of November 16, 2010 fixing the list of work for which it is prohibited to employ certain categories of people (Décret n° 2-10-183 du 16 novembre 2010 fixant la liste des travaux auxquels il est interdit d'occuper certaines catégories de personnes)
Law	Labor Code (Code du Travail)
Nigeria	
Law	Labour Act
Other	Nigeria's Mining and Metal Sector Investment Promotion Brochure
Policy	National Gas Policy

Peru	
Regulation	Regulation of Law No. 29785, Law of the Right to Prior Consultation of Indigenous or Native Peoples Recognized in Convention 169 of the International Labor Organization (Reglamento De La Ley N° 29785, Ley Del Derecho A La Consulta Previa A Los Pueblos Indígenas U Originarios Reconocido En El Convenio 169 De La Organización Internacional Del Trabajo)
Guideline	Social Management Tools for Environmental Certification (Herramientas De Gestión Social Para Certificación Ambiental)
Guideline	Guidelines to Promote the Participation of Women in the Environmental Certification Process (Lineamientos Para Promover La Participación De La Mujer En El Proceso De Certificación Ambiental)
Regulation	Ministerial Resolution N°091-2019-mem/dm Committee for Gender Equality of the Ministry of Energy and Mines (Resolución Ministerial N°091-2019-mem/dm Comité Para La Igualdad De Género Del Ministerio De Energía Y Minas)
Sierra Leone	
Policy	Artisanal Mining Policy for Sierra Leone, 2018
Law	The Environmental Protection Agency
Law	The Mines and Minerals Act
Law	The Petroleum (Exploration and Production) Act
Regulation	Environmental and Social Regulations for the Mineral Sector
Law	The Petroleum Regulatory Act
Law	Employers and Employed Law (1960)
Tunisia	
Law	Labor Code (Code du Travail)

Appendix 2. Indirectly-related documents, by country

Argentina	
Law	Comprehensive Protection Law to Prevent, Punish and Eradicate Violence Against Women in Interpersonal Relationships (Ley de Protección Integral Para Prevenir, Sancionar y Erradicar La Violencia Contra Las Mujeres En Los Ambitos En Que Desarrollen Sus Relaciones Interpersonales)
Canada	
Law	Fisheries Act
Law	Impact Assessment Act
Law	Indian Act
Colombia	
Law	National Development Plan 2018-2022 (Plan Nacional De Desarrollo 2018-2022)
Ghana	
Law	Land Use and Spatial Planning Act
Law	Water Resources Commission
Law	Ghana Revenue Authority Act
Constitution	Constitution of the Republic of Ghana (Amendment) Act
Policy	National Gender Policy
Other	Ghana Shared Growth and Development Agenda
Indonesia	
Law	Environment Protection Management
Law	Agrarian Law 5/1960
Other	Agrarian Reform and Management of Natural Resources
Kenya	
Law	Environmental Management and Co-Ordination Act, Revised Edition 2012 (1999)
Law	The Community Land Act
Law	The Public Procurement and Asset Disposal Act
Constitution	Constitution of Kenya
Policy	National Policy on Gender and Development
Mongolia	
Law	Law of Mongolia on Promotion of Gender Equality
Constitution	Constitution of Mongolia
Other	Mongolia Gender Situational Analysis: Advances, Challenges and Lessons Learnt Since 2005
Policy	Green Development Policy
Policy	The National Program on Gender Equality

Nigeria	
Regulation	Nuclear Safety and Radiation Protection Act
Peru	
Policy	Action Plan on Gender and Climate Change of Peru (Plan De Acción En Género y Cambio Climático Del Perú)
Sierra Leone	
Law	The National Water Resources Management Agency Act
Law	The Public Procurement Act
Tunisia	
Constitution	Constitution of the Tunisian Republic
Law	Governmental Decree Establishing the Peer Council for Equality and Equal Opportunities Between Women and Men
Other	Order of the Minister of Women, Family and Children
Law	The Regional Commission for the Promotion of Rural Women

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