

Issues Paper

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Gender Equality in the Artisanal and Small-Scale Mining (ASM) Sector in Southern Africa Development Community (SADC) Region

FOR
Women and Law in Southern Africa (WLSA)



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Acronyms

ACHPR	African Charter on Human and Peoples' Rights
AIDS	Acquired immunodeficiency syndrome
AMDC	African Minerals Development Centre
AMV	African Mining Vision
ASM	Artisanal and small-scale mining
AZWIM	Association of Zambian Women in Mining
BEE	Broad-based Black Economic Empowerment
CEDAW	Convention on Elimination of all Forms of Violence Against Women
DRC	Democratic Republic of Congo
EMA	Environmental Management Agency
FPIC	Free, Prior and Informed Consent
GBV	Gender-Based Violence
OECD	Organisation for Economic Co-operation and Development
HIV	Human Immunodeficiency Virus
IFC	International Finance Corporation
MAWIMA	Malawi Women in Mining Association
REAFECOM	Network for the Empowerment of Women in Mining Communities
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
SGBV	Sexual and Gender-Based Violence
TAWOMA	Tanzania Women Miners Association
UNECA	United Nations Economic Commission for Africa
USAID	United States Agency for International Development
WLSA	Women and Law in Southern Africa

About WLSA Zimbabwe

Formed in 1989, Women and Law in Southern African Research and Education Trust (WLSA) Zimbabwe is a local Chapter of a sub-regional network - member countries are Botswana, Lesotho, Malawi, Mozambique, Swaziland, Zambia and Zimbabwe - seeking to contribute to sustained well-being of women and girl children in Southern Africa through action-oriented research in the socio-legal field and advocating women's rights.

By action-oriented research we mean research which is intended to inform and influence action being taken to improve the socio-legal situation of women and girl children. WLSA work incorporates action into research by questioning and challenging the law, instigating campaigns for changes in law and in policies, educating women about their rights, providing legal advice and gender sensitising communities and leadership during the course of the research.

Vision

A society where justice is equitably accessed claimed and enjoyed by women and girls in all spheres of life.

Mission

WLSA Zimbabwe aims to be a renowned Southern Africa feminist and human rights organisation that coordinates and supports evidence based interventions to promote and protect women and girl's rights through legal and policy reform and changes to discriminatory socio-cultural practices.

Values

WLSA Zimbabwe is guided by the following values:

- Good governance (professionalism, transparency, accountability and integrity)
- Solidarity
- Ownership

WLSA Zimbabwe would like to thank and acknowledge Ford Foundation for the support in this project.

This is an issues paper on laws that govern Artisanal and small-scale mining (ASM) in Southern Africa Development Community (SADC) Region. Although the study is focusing on women in the ASM sector in the SADC region, comparative analysis and lessons learnt from East and West Africa will be made. This is in order to identify and recommend areas of best practices and the opportunities for learning. The issues paper discussed the challenges faced by women in ASM and surrounding communities. These challenges are related and reinforce gender inequalities and violations of women's rights in the ASM sector.

Marie-rose Bashwira Nyenyezi argues that, "There is no internationally agreed definition of artisanal and small-scale mining."¹ Studies define artisanal areas in terms of "mine output, labour productivity, organisation of the enterprise and levels of technology."² According with the World Bank, "Artisanal and small-scale mining (ASM) – low-tech, labour-intensive mineral processing and extraction constitutes an essential livelihood for more than 40 million people living in rural and typically impoverished areas in lower-income countries across the developing world."³ ASM is also defined as 'small groups and individuals engaged in low-cost and labour-intensive excavation of minerals using minimal mechanisation.'⁴

According to the World Bank, some of the common characteristics of ASM include the following:⁵

- It ranges from informal to formal and can be disorganised or well-organised.
- It is strongly linked to rural poverty and a lack of alternatives that would provide better opportunities for income generation.
- Participation often fluctuates with commodity prices.
- It can include scavenging from and/or coexistence with large-scale mining leases.
- It is sometimes seasonal, with mining alternated with farming, fishing, or another activity.
- It is typically labour intensive, yet may have complex labour structures, processes, and relations.
- It usually applies low levels of technology because of poor capitalisation and a lack of knowledge and skills.
- It offers very low wages and insecure and unsafe jobs, and it may involve exploitative labour relations (for instance, regarding children and vulnerable persons).
- It frequently has negative environmental repercussions, often damaging the health of the local ecology, and may affect other rural livelihoods, such as farming and fishing.
- It often includes a series of intermediary buyers who are often operating illegally themselves.
- It involves the mining of precious stones and metals (such as diamonds, rubies, gold, and silver) as well as of industrial minerals (such as stone aggregate, sand, clay, and salt) and some base metals (such as tin, tungsten, or tantalum).

1 Marie-rose Bashwira Nyenyezi (2017), Navigating obstacles, opportunities and reforms: Women's lives and livelihoods in artisanal mining communities in eastern DRC, p 27.

2 Ibid, p 27.

3 Adriana Eftimie, et al (2012), Gender Dimensions of Artisanal and Small-Scale Mining: A Rapid Assessment Toolkit. The World Bank, p 7.

4 USAID (2020), Gender Issues in the Artisanal and Small-Scale Mining Sector, p 1.

5 Adriana Eftimie, et al (2012), Gender Dimensions of Artisanal and Small-Scale Mining: A Rapid Assessment Toolkit. The World Bank, p 3.

2

ASM in SADC Countries

Gold is considered as a primary export to Southern African Development Community (SADC) countries such as Tanzania, Zambia and Zimbabwe and contributes to gross domestic product for SADC countries. The gold value chain employs a lot of people. "It is estimated that as many as 1.5 million people in Zimbabwe could be involved in the gold value chain, and ASM produces about 63% of Zimbabwe's recorded gold production."⁶ The World Bank highlighted that in the small-scale mining sector in SADC countries has "only 10% of miners in the formal sector are women, with the remainder engaged in subsistence mining."⁷ In Zimbabwe, the gold mining sector is dominated by the ASM as a result of increased informal sector and also characteristics of the ore bodies, which are small and often not conducive to industrial mining, poor investment climate and interferences by politicians.⁸ According to International Crisis Group, the more an economy is increasingly becoming informal, it attracts people from all walks of life.⁹ For example, in Zimbabwe, "Small-scale and artisanal miners include teachers, students, who are engaged as part-time miners to earn money to pay for their education, and workers from the farming sector, working in the mines during the dry season when there are no farming activities."¹⁰

6 London School of Economics & Political Science (2021), Sustainability Impact Assessment in Support of Negotiations with Partner Countries in Eastern and Southern Africa in view of Deepening the Existing Interim Economic Partnership Agreement. Case Study: Mining Sector in Zimbabwe and Madagascar, p 6.

7 Adriana Eftimie, et al (2012), Gender Dimensions of Artisanal and Small-Scale Mining: A Rapid Assessment Toolkit, p 8. The World Bank.

8 London School of Economics & Political Science (2021), Sustainability Impact Assessment in Support of Negotiations with Partner Countries in Eastern and Southern Africa in view of Deepening the Existing Interim Economic Partnership Agreement. Case Study: Mining Sector in Zimbabwe and Madagascar, p 6-7.

9 Piers Pigou, "All That Glitters is Not Gold: Turmoil in Zimbabwe's Mining Sector in LSE, p 7.

10 London School of Economics & Political Science (2021), Sustainability Impact Assessment in Support of Negotiations with Partner Countries in Eastern and Southern Africa in view of Deepening the Existing Interim Economic Partnership Agreement. Case Study: Mining Sector in Zimbabwe and Madagascar, p 7.

The International and Regional Framework Governing ASM

3

The key international legal instruments include:

The Minamata Convention on Mercury

The Minamata Convention on Mercury is an international treaty that aims at the protection of human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds. Its objective is to protect the human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds. It bans new mercury mines, phases out of existing ones and, puts in place control measures on air emissions. It also regulates the informal sector for artisanal and small-scale gold mining. In SADC countries, only DRC out of sixteen Members, is not a party to the Minamata Convention on Mercury.

Sustainable Development Goals

Relevant Sustainable Development Goals (SDGs) include SDG 1 on poverty reduction; SDG 5 on gender equality; and SDG 8 on promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

The Convention on Elimination of all Forms of Violence Against Women (CEDAW) (1979)

Gender equality is a fundamental human right as defined by the CEDAW. Article 14 of the CEDAW recognises the rights and empowerment of women in rural areas and those in the ASM sector.

3.1 The African Charter of Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (ACHPR) seeks to promote and protect human rights in Africa. The provisions that are pertinent to ASM are Article 21 (recognise the right of all peoples to freely dispose of their wealth and natural resources); Article 22 (the right to development) and Article 24 (the right of all peoples to an environment favourable to their development). Other relevant provisions include Article 9(1) that promotes the right to receive information and judicial and non-judicial complaints mechanisms for aggrieved communities or individuals.

3.2 The SADC Protocol on Mining

The SADC Protocol on mining was developed from the background that, the mining sector is an industry of strategic importance in Southern Africa. Researches show that roughly half of the world's vanadium, platinum, and diamonds originate in the region, along with 36% of gold and 20% of cobalt; and that these minerals contribute greatly to several SADC Member States.¹¹ This Protocol aims to develop the region's mineral resources through international collaboration, and in turn improving the living standards of the people engaged with the mining industry, including women. The Member States are encouraged to harmonise their policies and procedures for mineral extraction, cooperating on improving technical capacity and sharing knowledge (Article 2(1)). The Protocol calls upon the Member States to encourage private sector developments, including small-scale projects that promote economic empowerment of those who have been historically disadvantaged in the mining sector (Articles 6 and 7. It takes into account the fact that mining activities can be dangerous and/or hazardous. The Protocol also requires that Member States to observe internationally-recognised health and safety and environmental protection standards (Article 9). This means Member States have an obligation of ensuring the safety and security of women partaking in mining activities, especially in the ASM sector.

3.3 The Africa Union African Mining Vision (AMV) (2009)

It aims to promote transparent, equitable and optimal exploitation of Africa's mineral resources to underpin broad-based sustainable growth and socio-economic development. One of its thematic areas is ASM. The AMV has been criticised for: Lack of guidance on free, prior and informed consent (FPIC); Lack of concrete proposals to address the roots of gender inequality and violence against women; Lack of guidance on remedial avenues open to communities experiencing rights violations; and Lack of guidance on fair compensation for loss of land due to mining, resettlement and measures to protect water sources and prevent acid mine drainage. It has been criticised for failing to "make the connection between the growing numbers of participants in the region's informal ASM economy and the policy and regulatory frameworks in place for the sector."¹²

¹¹ <https://www.sadc.int/themes/economic-development/industry/mining/>

¹² Gavin Hilson, Abigail Hilson, Agatha Siwale and Roy Maconachie, *Female faces in informal 'spaces': Women and artisanal and small-scale mining in sub-Saharan Africa*, p 22.

A Review of Mining Laws in Selected SADC Countries



This part provides a brief review of some mining laws in SADC countries.

4.1 Mining Laws in Botswana

Mining activities are mainly governed by the Mines and Minerals Act (Chapter 66:01). The Mines, Quarries, Works and Machineries Act (Chapter 44:02) deals with the health and safety of employees involved in prospecting, mining and quarrying activities. The Environmental Assessment Act provides for the environmental impact assessment of prospecting and mining activities. The Precious and semi-Precious Stones (Protection) Act (Chapter 66:03) deals with prospecting and mining activities related to discoveries of precious and semi-precious stones.

4.2 Mining Laws in Lesotho

In Lesotho, mining is primarily regulated by the Mines and Minerals Act of 2005. The Act provides for appointment of the Mining Board in terms of Section 12. However, there are no gender considerations in appointment of its members. The Act has a specific provision for small-scale mining and application forms on the schedule to the Act. The availability of forms makes it easier for women to access information on the requirements for one to apply for a permit. It also makes it easy for women to apply on their own. Section 46 provides for mining permits and small-scale mining. The Act has an explicit provision for small-scale mining. The Lesotho National Development Corporation (State Mining) Act of 1968 provides for the prospecting, mining and ancillary matters.

4.3 Mining Laws in Malawi

The mineral sector in Malawi is mainly regulated by the Mines and Minerals Act (1981); Petroleum (Exploration and Production) Act (1983) and Explosives Act. The Mines and Minerals Act stipulates the rights, duties and obligations of Government and exploration and mining companies. The Act provides for issuance of mining permits to citizens and residents.

4.4 Mining Laws in Mozambique

The Mining Law of 2014 provides for exploration of mineral resources and administrative procedures. It provides for mining certificates for small-scale mining operations and mining passes for artisanal mining operations. In addition, the Mining Law provides for environmental compliance. The environmental licencing procedure involves a public consultation process involving the local communities. This means the local communities have a right to be consulted and participate in the decision-making process on mining related activities. The Mining Law is supported by Regulations on Health and Safety of Mining Activities; Environmental Regulations for Mining Activities; Regulations regarding Labour on Mining Activities; and Regulations on Marketing of Minerals.

4.5 Mining Laws in South Africa

In South Africa, mining is mainly regulated by the Mineral and Petroleum Resources Development Act (Chapter 28:02). Section 57 provides for the setting up of the Minerals Petroleum Board. Section 59 (1) provides for membership of the Board that should reflect the gender and racial composition of South Africa. The Act provides an obligation to the Government to assist historically disadvantaged persons entering the mining sector under Section 13. In addition, Section 14 provides for preferential prospecting and mining rights to historically disadvantaged persons that include women. Furthermore, the Broad-based Black Economic Empowerment Act (53/2003) (BEE Act) of South Africa Broad-based Black Economic Empowerment (BEE) is a government policy that seeks to advance economic transformation and enhance the economic participation of Black people (such as African, Coloured and Indian people who are South African citizens) in the South African economy.¹³ It also provides for the need to establish a legislative framework for the promotion of black economic empowerment; and such empowerment can be extended to the participation in the mining sector.¹⁴

4.6 Mining Laws in Namibia

Mining is regulated by the Minerals (Prospecting and Mining) Act 33 of 1992. The Act provides for the Minerals Board of Namibia which has mandate on overall administration of mining. Some members are drawn from representatives from the small-scale prospecting and mining operations and trade union in terms of Section 11 (1)(c) and (d), respectively. This means the needs and challenges of small-scale miners are brought to the Board.

4.7 Mining Laws in Zambia

The primary legislation governing mining in Zambia is the Mines and Minerals Development Act (2015). It regulates the governing of mining rights, licences as well as protection of the environment. The Act has gender sensitive legal provisions. For example, Section 6 provides for equitable gender representation when appointing members of the Mining Licences Committee that deals with issuance and cancellation of mining licences. Although the Minister has an obligation to ensure equitable gender representation this is discretionary. Artisanal mining and gold panning certificates are granted only to citizens or corporates wholly owned by citizens. Therefore, the Act promotes participation of women in ASM. The Act has incorporated provisions on safety, health and environmental protection, and these are issues pertinent to the ASM sector.

¹³ <https://www.nortonrosefulbright.com/en-za/knowledge/publications/fe87cd48/broad-based-black-economic-empowerment-basic-principles>

¹⁴ <https://www.gov.za/documents/broad-based-black-economic-empowerment-act>

4.8 Mining Laws in Zimbabwe

The main laws and policies that govern mining in Zimbabwe include the Mines and Minerals Act of 1961; Minerals Marketing Corporation of Zimbabwe Act of 1982; Base Mineral Export Control Act of 2001; Gold Trade Act of 2006; Indigenization and Economic Empowerment Act of 2008; and The Income Tax Act of 1967. These laws are outdated and not aligned with the sustainable principles on mining that include sustainable development, social and environmental impact assessments; human rights impact assessments and due diligence principles. They also do not promote women participation and address gender-based violence in ASM sector and surrounding mining communities. The Mines and Minerals Act is not aligned with Section 17 of the Constitution of Zimbabwe which promotes gender balance and stipulates that woman should consist at least half the membership of all appointed governmental bodies.

The Environmental Management Act [Chapter 20:27] ensures that mining takes place in a manner that protects the environment in a sustainable way.¹⁵ The Act lists mining activities as some of the projects that cannot be done without approval from the Environmental Management Agency (EMA) through an environmental impact assessment report and a clearance certificate.¹⁶ The environmental impact assessments should include human rights assessments which are important in addressing abuses, violations and concerns of women in mining activities. They also give room for the redress and remedies of any such identified grievances.

¹⁵ <https://idg.com/practice-areas/mining-laws-and-regulations/zimbabwe>

¹⁶ <https://idg.com/practice-areas/mining-laws-and-regulations/zimbabwe>

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Gaps in ASM Mining Laws

- Artisanal mining is recognised by several Governments as an important sector and also in enacting laws that can formalise artisanal mining activities.¹⁷ There are several criticisms levelled against these laws, chief among this is formalisation of the ASM sector that still reinforces gender inequalities and gender-neutral legal provisions that are tainted with discriminatory practices and attitudes towards women.
- Although mining laws may have gender neutral legal provisions, women face various barriers to participation in ASM sector. The barriers include limited access rights to land, mining claims, licences and technologies. Generally, the mining laws do not clearly provide for the promotion and strengthening of participation of women in the ASM sector.
- The mining laws also do not have appropriate reporting mechanisms for sexual GBV, violence and sexual harassment that disproportionately affect women miners and those from surrounding mining communities. The SADC member states have no legal provisions that protect women from sexual abuse during mining activities. Sexual abuse is addressed criminal laws or other legislation on sexual harassment but these are not harmonised with mining laws.
- The laws are also not supported by due diligence principles such as those developed by the Organisation for Economic Co-operation and Development (OECD) that deal with reporting and mitigating risks including human rights abuses.¹⁸
- The mining laws have no mineral traceability provisions. The traceability measures within the gold mining sector can be used to trace origin of minerals up to the end-users.¹⁹
- Inheritance laws do not address transferability of mining claims by surviving spouses and children. For example, "The introductory provisions in the laws generally fail to target discrimination around inheritance law, customary traditions, or the rights of women to engage in mining and commercial mineral transactions."²⁰ A typical example was that of "female gold traders in the Democratic Republic of Congo (DRC) play a crucial role in the supply chain, but because they are not registered with the mining authorities, recent changes in the mining law mean authorities consider them to be illegal."²¹ It was further highlighted that in women cannot own diamond mining sites in Côte d'Ivoire as a result of customary law that excludes their ownership but in Tanzania, mining licence papers are transferrable to a widow on condition that a valid marriage certificate is paid and is able to pay the transfer fees.²² More importantly, mining claims are transferred to a woman, widow, mother, or daughter in Central Africa Republic.²³
- Most environmental laws in the region promote environmental impact assessments, they do not promote human rights impact assessments. The laws have largely remained periphery to the mining laws in that there is institutional resistance and poor enforcement of these laws.²⁴
- The health and safety of women is not provided for legislation governing mining. Health and safety issues are generally provided for mining employees in labour related laws. This means women in ASM sector are excluded because they work in the informal sector.

17 Marie-rose Bashwira Nyenyezi (2017), Navigating obstacles, opportunities and reforms: Women's lives and livelihoods in artisanal mining communities in eastern DRC, p 27.

18 USAID (2020), Gender Issues in the Artisanal and Small-Scale Mining Sector, p 11.

19 London School of Economics & Political Science (2021), Sustainability Impact Assessment in Support of Negotiations with Partner Countries in Eastern and Southern Africa in view of Deepening the Existing Interim Economic Partnership Agreement. Case Study: Mining Sector in Zimbabwe and Madagascar, p 20.

20 USAID (2020), Gender Issues in the Artisanal and Small-Scale Mining Sector, p 6.

21 Ibid.

22 Ibid.

23 Ibid.

24 Tumai Murombo, 'Regulating Mining in South Africa and Zimbabwe: Communities, the Environment and Perpetual Exploitation', 9/1 Law, Environment and Development Journal (2013), p. 41, available at <http://www.lead-journal.org/content/13031.pdf>.

Challenges faced by Women in the ASM Sector



There are several challenges that women face the ASM sector. These include:

6.1 Limited Role of Women in ASM Sector

Hinton acknowledges the role play by women in ASM by indicating that there is a highest percentage of female artisanal miners in Africa that ranges from between 40 and 50% while in some regions, the ASM workforce comprised of 60 to 100% women.²⁵ This is attributed to the fact that due to limited skills, women do not participate in large scale mining companies and also their familial obligations tie them to household chores and care work.²⁶ Thus, the ASM is mainly dominated by men. There are few women who are miners and majority of them are involved in small-scale mining operations. Some small-scale miners are members of the Zimbabwe Miners Federation and they have cooperatives have tribute licences that allow them to legal licensed claims. "Most miners operate in syndicates, comprising small groups of miners, usually numbering between 5 to 20 miners per syndicate, usually with a sponsor who will provide financing for the syndicate to operate in a particular area."²⁷ Some operate legally as syndicates in abandoned industrial mines and may result in some fatalities.

Despite women being majority of the ASM workforce, their earning is only one quarter of what men earn in the sector.²⁸ Studies have established the fact that "women work longer hours than men in mining sites but earn on average about one quarter of what men earn."²⁹ Women are also involved in gold panning and processing but excluded from potentially valuable opportunities such as digging and sluicing. This exclusion is based on the perception that women are incapable of sluicing and are not strong enough as compared to their male counterparts.³⁰ Studies have established that women are increasingly moving away from the indirect supportive roles that sustain the male workers by taking up direct roles and income generating opportunities along the ASM value chain.³¹ Income from such activities is used to support their households but is limited because of the indirect and low value opportunities that are available and restricted by discriminatory practices and attitudes towards female artisanal miners and those from neighbouring mining communities.

25 Jennifer J. Hinton, Women and Artisanal Mining: Gender Roles and the Road Ahead, p 2.

26 Ibid, p 3.

27 London School of Economics & Political Science (2021), Sustainability Impact Assessment in Support of Negotiations with Partner Countries in Eastern and Southern Africa in view of Deepening the Existing Interim Economic Partnership Agreement. Case Study: Mining Sector in Zimbabwe and Madagascar, p 7.

28 USAID (2020), Gender Issues in the Artisanal and Small-Scale Mining Sector, p 1.

29 Ibid, 5.

30 Women In/And Mining (WIAMO), Women in Artisanal and Small-Scale Mining. A Snapshot of Challenges and Opportunities for Empowerment in Rwanda, p 2.

31 USAID (2020), Gender Issues in the Artisanal and Small-Scale Mining Sector, p 1.

It is important to note that gender dimensions of artisanal mining are often ignored.³² Meaningful participation of women in artisanal mining is affected by the triple roles that are performed by women at individual, household and community levels. However, the role played by women in mining communities and their livelihoods are often ignored. This means they do not contribute to key decisions relevant to management of the ASM sector as well as siting of the mines in a way that does not disproportionately affect and displace them from their agricultural lands. Violations of land rights affect women's access to finance that can expand opportunities for them to effectively participate and invest in the ASM and thereby transform their social and economic status.

6.2 ASM and Violence

To note is the fact that some of the roles of women in ASM are shaped by cultural norms and taboos well as violence in the sector. Research has noted violence perpetrated by machete gangs around gold mining sites in Zimbabwe³³ and DRC. However, the fight against the machete gangs in Zimbabwe resulted in police arresting of 56,764 "Operation Chikorokoza Ngachipere/Isitsheketsa Kasiphele' and 'No to Machete Gangs', the majority of them were legal miners.³⁴ They were freed after paying fines. Some of the violence in ASM sector and around the mining areas is gender-based which is perpetrated by small-scale miners on their counterparts.

6.3 Sexual and Gender-Based Violence (SGBV), Sexual Harassments and Sexual Exploitation in ASM Sector

The USAID highlights the vulnerability of women in ASM to sexual exploitation in countries affected by conflict such as DRC and Central Africa Republic.³⁵ In addition, the women "face extremely high levels of forced transactional sex in mines, where they are compelled to trade sex for the right to work or provide support services in mining areas".³⁶ Those who live in proximity to mining areas are also at risk to sexual exploitation by armed gangs. It is important to note that women are easily targeted by gangs that rob of their gold ore. This is because they have limited resources, connections and networks that are required for them to operate on sites such as industrial mines that have higher ore grades.³⁷

32 Women In/And Mining (WIAMO) Women in Artisanal and Small-Scale Mining. A Snapshot of Challenges and Opportunities for Empowerment in Rwanda, p 1.

33 London School of Economics & Political Science (2021), Sustainability Impact Assessment in Support of Negotiations with Partner Countries in Eastern and Southern Africa in view of Deepening the Existing Interim Economic Partnership Agreement. Case Study: Mining Sector in Zimbabwe and Madagascar, p 7.

34 London School of Economics & Political Science (2021), Sustainability Impact Assessment in Support of Negotiations with Partner Countries in Eastern and Southern Africa in view of Deepening the Existing Interim Economic Partnership Agreement. Case Study: Mining Sector in Zimbabwe and Madagascar, p 7-8.

35 USAID (2020), Gender Issues in the Artisanal and Small-Scale Mining Sector, p 6.

36 Ibid.

37 London School of Economics & Political Science (2021), Sustainability Impact Assessment in Support of Negotiations with Partner Countries in Eastern and Southern Africa in view of Deepening the Existing Interim Economic Partnership Agreement. Case Study: Mining Sector in Zimbabwe and Madagascar, p 8.

Botha, D highlights that there is evidence that “women are still exploited and sexually harassed in the mining industry”.³⁸ Sexual harassment is referred to “Incidents taking place on a daily basis vary from whistling; name calling; use of vulgar or derogatory language; display of body parts; physical contact, ranging from touching to sexual assault and rape; to the exchange of sexual favours for promotion.”³⁹ Mhaka (2021) indicates incidents that daily threaten the health and safety of women in the ASM sector vary from intimidation, discrimination, name calling, sexualised talk, display of body parts and the exchange of sexual favours for promotion.⁴⁰ It is further argued that it is viewed “as an abuse of power by which perpetrators use their position to exploit subordinates. Sexual harassment occurs in every kind of work setting, but some settings are more prone to sexual harassment than others”.⁴¹ Sexual harassment usually take place in an environment where there is higher male ratio as compared to that of females. Given the fact that the mining sector is male dominated, the vulnerability of women to sexual harassment is very high.

Chinembiri (2019) states that women are harassed and abused at all stages of the mining process by men who are involved in the licensing process; strangers in the bush during prospecting; men who want to muscle in on their mines; and Police who request sexual favours to look the other way over mining violations.⁴² Torr (2021) states that domestic violence is rampant in mining communities and statistics on gender-based violence in these areas are hard to come by, with violence normalised and few women filing reports.⁴³

6.4 Cultural Norms and Taboos in ASM

There are some cultural norms, taboos and stereotypes that affect participation of women in artisanal miners. Most women do not have direct contact with more valuable deposits because they are often excluded to go into the mining pits when they are menstruating.⁴⁴ This was confirmed by Doris Buss et al, where women in tin mining were excluded in Western region of Uganda because they considered as “unclean and their presence could lead to the disappearance of tin in that mine.”⁴⁵ In Rwanda, women are “seen to bring bad luck or spiritual pollution, or because their presence would offend social norms, gender is still relevant both in structuring that exclusion (and its exceptions), but also in regulating the performances of masculinity which have an effect on male livelihood practices.”⁴⁶

38 Botha, D. (2016). Women in mining still exploited and sexually harassed, p 1. SA Journal of Human Resource Management/SA Tydskrif vir Menslike hulpbronnbestuur, 14(1), a753. <http://dx.doi.org/10.4102/sajhrm.v14i1.753>

39 Ibid.

40 Mhaka, G. (2021) Chronicle. Gender Inequality, health and safety of women in small-scale mining. <https://www.chronicle.co.zw/gender-inequality-health-safety-of-women-in-small-scale-mining/>

41 Botha, D. (2016). Women in mining still exploited and sexually harassed, p 2. SA Journal of Human Resource Management/SA Tydskrif vir Menslike hulpbronnbestuur, 14(1), a753. <http://dx.doi.org/10.4102/sajhrm.v14i1.753>.

42 Chinembiri, V. (2019), Global Press Journal Zimbabwe. 'Not For the Faint-Hearted': Women in Zimbabwe's Mining Industry <https://globalpressjournal.com/africa/zimbabwe/not-faint-hearted-struggles-women-zimbabwes-mining-industry/>

43 Torr, D. (2021), Shining a light on the plight of women in Zimbabwe's mining communities. VSO.

44 Nina Collins; Lynda Lawson (2014), Investigating Approaches to Working with Artisanal and Small-scale Miners: A Compendium of Strategies and Reports from the Field, p 43.

45 Doris Buss, Blair Rutherford, Jennifer Hinton and Jennifer Stewart; Joanne Lebert and Gisèle Eva Côté; Abby Sebina-Zziwa, Richard Kibombo and Frederick Kisekka (2017), Gender and Artisanal and Small-Scale Mining in Central and East Africa: Barriers and Benefits, p 29. GrOW Working Paper Series GWP-2017-02 – Research Contribution Paper.

46 Ibid, p 26-27.

In Zimbabwe, a Gender Audit conducted by Women and Law in Southern Africa (WLSA) established that women were excluded from their mines during menstruation in Penhalonga in Mutasa District.⁴⁷ In DRC, women's presence at mining site during menstruation is considered as bad luck.⁴⁸

These cultural norms limit the ability of women to effectively participate as ASM miners and also contribute to the economic development of their respective countries. This relegates their participation to the bottom of mining value chain where they provide ancillary support as cooks or service providers. The periphery nature of the role of women in ASM prevents them from seeking services such as access to credit, finance and mining equipment, health and safety protective measures and registering for mining claims. The women neither have access to collateral nor credit history. The indirect mining participation of women also limits their technical knowledge in relation to the mining market as well as access to employment and training opportunities that are pertinent for them to move from the bottom on the mining value chain and be able to meaningfully engage on the ASM governance, policies and address the barriers they face along the value chain.

A study established that in Rwanda, "Patriarchal norms, beliefs and values prevent women's full participation in ASM, even though many women surveyed find it a good job and seek improved working conditions and training in the sector; Circumstances often prevent women from accessing credit that would allow for increased income and security, and women are routinely denied direct access or control over minerals, blocking their participation in decision-making and leadership opportunities."⁴⁹ These norms and taboos exacerbate gender inequalities that exist between men and women and also affect the empowerment of men in ASM sector. This underscores the fact that gender inequalities are rooted in patriarchy and cultural norms and this is reflected in limited by women to access to resources such as land. These cultural norms also affect the women to protect themselves from HIV infections around mining towns hence most mining towns are HIV hot-spots. This was noted by USAID in DRC where mining zones reported 4.5% compared to a national prevalence of 1.1%.⁵⁰ According to the International Finance Corporation (IFC), "Mining projects often result in women facing additional risks such as loss of agricultural land and property rights, lack of access to resources, heightened insecurity and violence, limited voice in decision making, health risks from pollution, heightened socio-economic vulnerability, increased prostitution and greater exposure to sexually transmitted diseases, such as HIV and AIDS."⁵¹

47 WLSA Gender Audit (2012).

48 Marie-rose Bashwira Nyenyezi (2017), Navigating obstacles, opportunities and reforms: Women's lives and livelihoods in artisanal mining communities in eastern DRC, p 33.

49 Women In/And Mining (WIAMO) Women in Artisanal and Small-Scale Mining. A Snapshot of Challenges and Opportunities for Empowerment in Rwanda, p 1.

50 USAID (2020), Gender Issues in the Artisanal and Small-Scale Mining Sector, p 7.

51 IFC, Sustainable and Responsible Mining in Africa: A Getting Started Guide, p 22.

6.5 Women's Land Rights and ASM

The SADC Members States have domesticated several international human rights agreements that promote women's rights. However, women still have limited access to land resources and subject to discriminatory practices and attitudes that violate the enjoyment their economic, social and cultural rights such as land rights. Land rights are important in the discourse on women's participation in ASM sector because artisanal mining such as gold panning mainly takes place on land due to limited mining equipment. It means one who has land ownership rights also has surface rights to get the minerals.

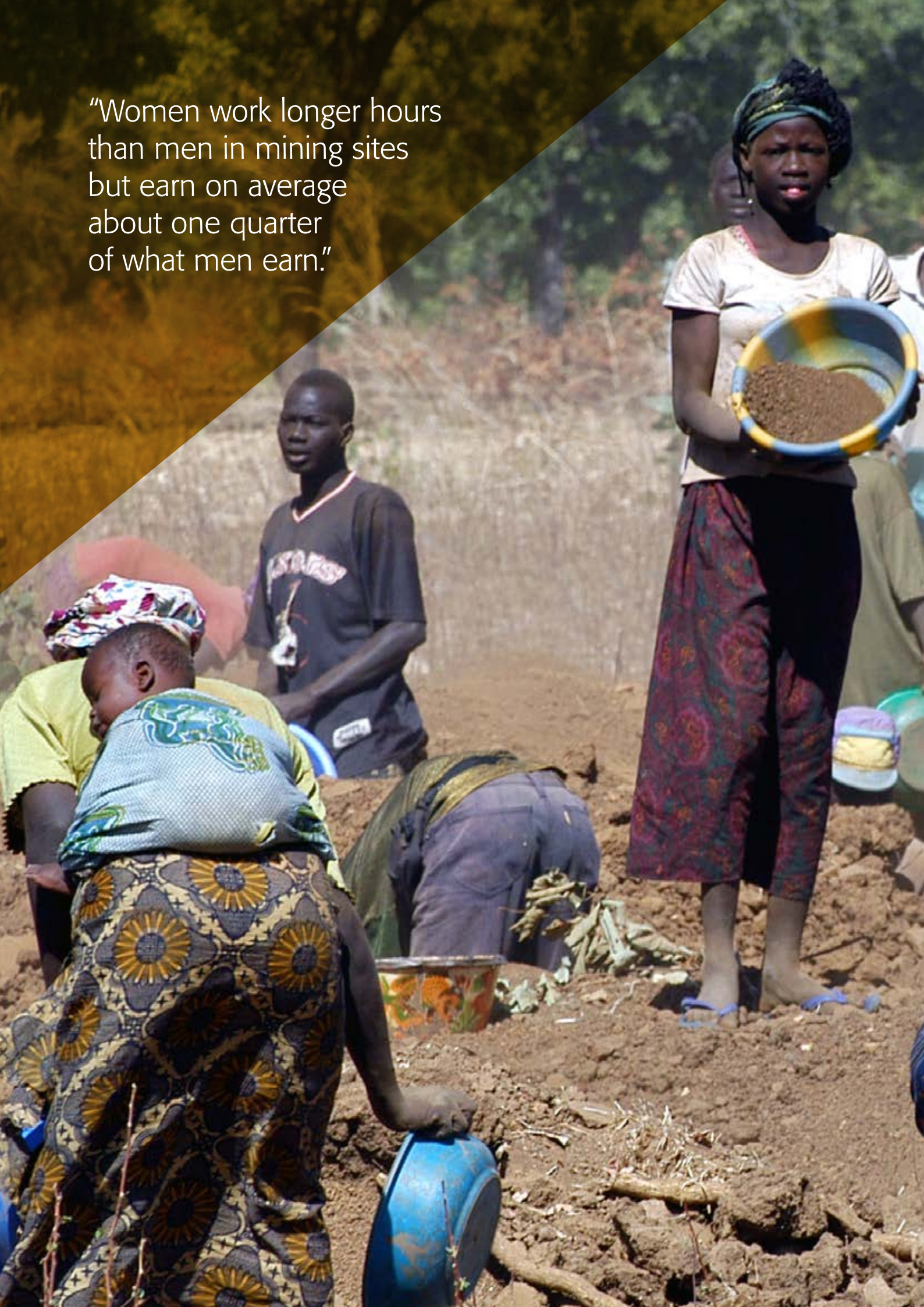
They are also affected when they are displaced by mining activities. They have limited negotiating skills regarding compensation packages which at the end of the day are taken by their husbands who are the legitimate owners of land. Thus, "Women are often left out of such consultations and important decisions, which can cause a loss of livelihoods, leading to increased insecurity and marginalisation."⁵² They also cannot make economic decisions that are independent of their husbands.

The Joint United Nations Economic Commission for Africa (UNECA), African Minerals Development Centre, and UN Women Eastern and Southern Africa Regional Office noted that women in DRC, Ghana, Guinea, Tanzania and Zambia do not have "access to capital and financing from mainstream financial facilities for mining operations; lack of appropriate machinery and technology (resulting in, for example, the extremely hazardous use of mercury to amalgamate gold); lack of access to information on availability of mining claims; extreme difficulty in acquiring mining licences; and lack of geological information on the output capacity of mines/concessions."⁵³ Women primarily work with mercury for amalgamation of gold thereby risking their lives and those of their loved ones when they discharge their duties at the household levels such as cooking and caring for the sick.

⁵² Ibid, p 23.

⁵³ UN Women Kenya, Opportunities for Women in the Legal and Regulatory Frameworks on Mining, p 2.

“Women work longer hours than men in mining sites but earn on average about one quarter of what men earn.”



7.1 Recommendations to Governments

Align Mining Laws to International standards

Some mining laws, such as in Zimbabwe, for example, are either outdated or they are silent on women's rights and health and safety issues. It is imperative that the mining legislative framework needs to be engendered through benchmarking them with the regional and international guidelines, applicable to the mining sector. Attention should be made on addressing the security and safety of women miners involve in the ASM sector. The representation of women's mining association should be made at every stage including the key decision-making positions in mining governing issues.

In addition to the above, the mining laws and policies should incorporate human rights impact assessments so that they are considered during environmental impact assessments. This will be an opportunity to identify the gender/women issues that may arise as a result of mining activities, and address them promptly.

Learn lessons from Kenya Mining Act (2016)

The Act is informed by Constitution of Kenya (2010) that promotes gender equality and non-discrimination. It has legal provisions on health, safety and environment issues. This significantly impact on women in ASM sector and from surrounding mining communities. The Act requires that mineral rights holders to adhere to environmental rights and also submit a site mitigation, rehabilitation and mine closure plan.

7.2 Recommendations to Civil Society Organisations

- Lobby and advocate for the ban on discriminatory cultural practices and norms that disadvantage women to meaningfully participate in the ASM sectors. There is also need for harmonisation of inheritance laws and mining laws to enable women and children to inherit mining claims.
- Lobby and advocate for sexual harassment laws to cover all sectors that include ASM.
- Develop programmes on addressing SGBV and sexual harassment in ASM sector.
- Develop programmes to empower Women in ASM
- Hinton JJ argues that women play a critical role in both mineral production and development of sustainable communities. This means their role could be enhanced through positive transformation of the ASM in terms of: "Gender-sensitive technology assistance initiatives; Enhancement of other skills, including managerial and accounting; Financial support through the establishment of credit lines and microlending programmes; Support for the acquisition of mineral titles; Consideration of women in the development of regulations and policies; The awareness of health and safety issues, with consideration of children who may accompany their mothers or take part in artisanal mining activities; and The challenging of social norms which prevent women from benefiting from these activities."⁵⁴

⁵⁴ Jennifer J. Hinton, Women and Artisanal Mining: Gender Roles and the Road Ahead, p 1-2.

Despite the fact that literature continues to portray the roles of women as ancillary and supportive, the international development community has realised the importance of the ASM sector and its potential in driving economic growth, alleviating poverty and contributing to sustainable development.⁵⁵ This has resulted in mainstreaming gender considerations in the ASM sector especially in the project design, implementation and monitoring and evaluation. These include reducing gender disparities in the ASM sector including access to, control over, and benefit from resources; Reducing gender-based violence in and around mine sites; and Empowering women and girls – economically, socially and politically.⁵⁶ Therefore, gender considerations go beyond health and safety issues such as restrictions of pregnant women to mining sites to limit their exposure to mercury.

- Create partnerships with women’s associations
- There are opportunities to amplify their voices and agency of miners and non-miners through supporting them to form associations and cooperatives as well as confidence building, building their capacities and skills development. For example, the Network for the Empowerment of Women in Mining Communities (REAFECOM) represents women artisanal miners’ association in the DRC’s North-Eastern Ituri Province. It has 400 members from six mining communities. Some of the associations are: Malawi Women in Mining Association (MAWIMA) (2000); Tanzania Women Miners Association (TAWOMA) (1997); Association of Zambian Women in Mining (AZWIM) (1997); and Women in Mining in Zimbabwe. These associations are central to promotion of advocacy initiatives around women participation in ASM sector; addressing barriers especially access to finance and sexual and GBV; and championing women’s land rights, women economic empowerment and transformative agenda.

7.3 Recommendations for the Mining Companies

Address sexual harassment in the mining/ASM sector: There is need to address sexual harassment in the mining sector. This requires mining companies to ensure a workplace free from sexual harassment through development of a sexual harassment policy.⁵⁷ This includes mandatory policy statement that emphasises zero tolerance of sexual harassment at the workplace; Training on the sexual harassment policy to all old and new employees; complaints handling procedures for employees who are victims of sexual harassment so that they are able to speak out and report these incidents; Thorough investigations of sexual harassment complaints; Adoption of prompt disciplinary action against perpetrators of sexual harassment and appropriate action and remedies to protect the victims.⁵⁸

55 USAID (2020), Gender Issues in the Artisanal and Small-Scale Mining Sector, p 2.

56 Ibid, p 3.

57 Botha, D. (2016). Women in mining still exploited and sexually harassed, p 4. SA Journal of Human Resource Management/SA Tydskrif vir Menslikehulpbronbestuur, 14(1), a753. <http://dx.doi.org/10.4102/sajhrm.v14i1.753>


58 Ibid, p 4-5.

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The background image shows a group of women in a dry, dusty environment. One woman in the foreground is wearing a patterned dress and carrying a blue bucket on her head. Another woman is kneeling in the background, and a third woman is standing to the right. The ground is parched and cracked, with some sparse, dry vegetation.

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