Why Uganda’s new Mining Law and Policy Should Be Gender Responsive

In 2014, Uganda completed a $75 million national mineral survey funded by the World Bank that identified occurrences of a wide range of mineral resources such as gold, uranium, tin, coltan, nickel, copper and tungsten scattered in different parts of the country. The survey, intended to develop advanced geological data, divided Uganda into six blocks and found western Uganda, to be the most endowed¹.

Although the mining sector in Uganda is mainly characterised by artisanal, small scale miners and is generally portrayed as a traditional, unskilled, unchanging sector by government and the media, in reality it is a sector that is highly dynamic, responsive, and connected to the broader development nationally. The December 2015 Auditor general’s report on Regulation, Monitoring and promotion of the Mining sector noted that artisanal and small scale mining operations produce over 90% of the national mineral output and employ about 200,000 Ugandans.

Therefore, Uganda’s mining industry, if well managed has the potential to transform the country and catapult it into the ranks of middle income nations as indicated in the country’s Vision 2040.

Government of Uganda is currently in the process of reviewing and updating the legislative framework of the mining sector. The process involves amendment of the old mining act of 2003² and drafting a new mineral policy to update the old one of 2001. This is aimed at improving regularisation of mining activities in the country and amending the social and environmental impact provisions for the sustainable exploration, development and production of the country’s vast mineral resources.

This process is a historic decision that was long overdue given that the mining sector is frequently and popularly associated with under regulation and illegalities such as child labour, use of dangerous chemicals like mercury, environmental destruction and human rights violations attributed to a general vagueness in the laws as well as a failure to implement existing laws. This has had significant impact on the environment and the lives of local communities involved in mining activities in the country.

¹ http://www.worldbank.org/en/results/2013/03/19/developing-uganda-s-mining-sector
² http://energyandminerals.go.ug/downloads/Mining_Reg_Commerce.pdf
And because of pre-existing gender roles and cultural structures women experience these impacts in different, and often more prominent, ways than men. Women are affected disproportionately.

Moreover, the mining act of 2003 doesn’t have a preliminary section outlining adherence/compliance to social and environmental principles. Yet this is paramount especially for women since it shows who is liable to compensate them for loss of livelihoods through environmental pollution, for loss of livestock, loss of property, environmental rehabilitation and liabilities to relocated community members. The act negates the importance of compliance to environmental and social principles in mining activities. As a result, women continue to bear the brunt of the negative environmental and social implications of mining activities in the following ways:

**Less involvement in Community Consultations and Decision Making:** Women have the right to information about projects that will affect them. They have the right to participate in decision-making however Section 78 of the act, there is no provision requiring a mineral rights holder/licensed company to conduct a public hearing and undertake community consultations in order to secure free, prior and informed consent from the affected communities before applying for a mineral right. As a result, Mining Companies too often enter into small negotiations with men, making women neither party to the negotiations and making the benefits of the mining industry fewer for women.

The patriarchal notion that women do not have much to say but should rather leave it to the men who know what is best for them is also evident. It is easy to assume that this applies only to the most disadvantaged women. But even at the highest levels, women have not been meaningfully involved in dialogues on extractives. For example if you attend a conference on mining, chances are most of the speakers will be men- male political leaders, male community leaders completely ignoring the views of over 50% of the country’s population. The dire consequence of this is that solutions reached at these discussions fail to meet the unique needs of women. It is therefore important that Women are meaningfully involved in the law review process as this is essential to making a law that takes into account their needs.

**Compulsory Land Acquisition and grabbing:** The acquisition of land for mining projects has the greatest impact on women. Women need land to grow food to feed their families or for subsistence farming. Lost access to land via land grabbing and compulsory acquisitions by government and mining companies means that woman’s livelihoods become more precarious. Furthermore, it is often men who receive compensation leaving out the women. Men continue to claim that women only have access rights and not land ownership rights. Also, the current clauses regarding compensation are vague and do not provide enough detail to effectively prevent delayed or inadequate compensation.

Section 82(1) of the mining act states that The holder of a mineral right shall on demand made by the owner or lawful occupier of any land subject to such mineral right, pay the owner or

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lawful occupier fair and reasonable compensation for any disturbance of the rights of the owner or occupier.” It doesn’t state a timeline for when compensation must be paid or a penalty for delay in payment of compensation.

This leaves local communities waiting for many years for compensation and resettlement. And due to loss of traditional livelihoods women are forced engage in transactional sex to earn an income increasing their risk of experiencing violence and contracting HIV/AIDS

**Environmental pollution:** Women are typically responsible for household food and water collection in Uganda. Mining is a major user of water and water pollution from mining activities mean women finding it harder to fend for their families. Water Pollution also means increased incidences of disease and women’s burden of looking after the sick.

Yet Section 26 and 41 of the act currently doesn’t include, information regarding plans to manage environmental impacts and restoration in the application materials for an exploration license and mining lease. This indicates that the environmental and social impacts as well as planned mitigation strategies are not taken into account as important criteria during the decision to allocate the mining rights.

In addition, the act Under Section 80(1)(a) Right to graze stock and cultivate, states that the loss or damage arising from mining activity shall be borne by the owner or lawful occupier of the land and not the licence or leaseholder. Clearly, the mineral holder should be held liable for any contributions to social and environmental harm arising from mining activities.

Mining operations may lead to significant environmental damage and degradation. The rights holder should pay appropriate compensation not only for certain disturbances, but any negative environmental impact caused by mining operations if and when they arise.

**Elusive Jobs and employment benefits:** Significant gender disparities exist in male and female access to jobs in artisanal mining. Women often perform marginal support roles with minimal profitability. For example in mining sites in Mubende distric,it is common sight to find women relegated to droumage (crushing, sorting and washing of minerals, sifting the crushed minerals, and processing the waste). Moreover, this is done using dangerous chemicals such as mercury, without protective gear like gloves, nose masks for protection. Droumage, in particular, is among the most toxic mining activities. Mercury is used during the process to extract gold from dust dug from the gold rocks in the mines.

According to the World health Organization WHO exposure to mercury is the biggest cause of health hazards facing Small scale or artisanal gold miners. The UN organization says in a report on the Health effects of Mercury that due to Mercury’s effects, children and women of child-bearing age are considered vulnerable populations because mercury can be passed from a mother to her unborn child. Women are therefore often the most impacted by the precarious working conditions in artisanal mining.

Government needs to realise that women and men are uniquely affected by the mining industry and put in place an effective instrument that is responsive to mining practices that exacerbate
gendered harms thus minimizing the potential negative consequences of mining on women and deliver the development gains that the mining industry promises to Ugandans equitably.

Recommendations

- The new mining law and policy should be gender responsive. This means that it should seek to prevent and address negative gendered impacts of mining by analysing the social, cultural and economic context in which mining activities are undertaken. This should then inform how regularisation of the activities will either reinforce the status quo or be a vehicle for positive change.