

Report of UNDP “Nkitahodie” Policy Dialogue Series 2017



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Artisanal and Small-Scale
Mining Legal Regime
in Ghana:

Policy Options for Addressing
Gaps and Challenges

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Nkitahodie

(E N G A G E M E N T)

United Nations Development Programme





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UNDP Ghana Sustainable Development Cluster brought together stakeholders from government, traditional authorities, the judiciary, think tanks, civil society, the academia, development partners and the main political parties to deliberate on policy options to address the gaps and challenges in the current artisanal and small-scale mining legal framework in Ghana.

Nkitahodie in Twi Language connotes interaction and engagement. Thus, Nkitahodie Policy Dialogue Series is an interactive forum created by UNDP Ghana to provide platform and avenue for policy makers, politicians, civil society, researchers and public to interact and find solutions to key development issues in Ghana.

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The analysis and policy recommendations in this publication do not necessarily represent those of the United Nations, including UNDP, or the UN Member States.

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I. Introduction

Artisanal Small-Scale Mining (ASM) has become an issue of national interest due to its evident impact on the environment and society at large. Recognizing the need to regulate the sector, the Government of Ghana has taken important steps with the establishment of the high level inter-ministerial task force to lead and coordinate government efforts to end illegal mining, and the development of the Multilateral Mining Integrated Project (MMIP) by the Ministry of Lands and Natural Resources to reform the ASM sector in a systemic, comprehensive and sustainable manner.

Small-scale mining of precious minerals continues to make significant contributions to the country's foreign exchange earnings. For example, total gold production by small-scale miners rose from 2.2% of national production in 1989 to 28% in 2011, attributed to both licensed and unlicensed miners¹. According to the Minerals Commission (2015), large-scale mining and the mining support services sub-sector employ about 27,000 people. An estimated 1 million people are employed in Ghana's small-scale mining sector². However, poverty and significant unemployment have fueled the rapid upsurge of galamsey operations (i.e. illegal mining) in many parts of the country.

Some have attributed the inability of successive governments to regulate and reduce illegal artisanal mining activities to the weak implementation and *enforcement* of defined policies and laws which guide their operations. Others argue that these policies are ineffective, with minimal incentive for the government to correct this problem—that is, to strengthen policies to facilitate increased formalization of the activities of the small-scale mining activities. Although the government of Ghana has long legalized small-scale mining, requiring prospective applicants to follow a series of streamlined regulations to obtain concessions, bureaucratic inefficiencies have impeded formalization, making illegal activities more appealing. Coupled with the breakdown in most areas of traditional institutions and norms that protected the environment and held natural resources in trust for collective benefits, weak political incentives to challenge the status quo among others have been some of the underlying causes of the upsurge in illegal mining activities in Ghana. Despite the role that traditional authorities and other opinion leaders can play in the fight against illegal smallscale mining in Ghana, the current laws on small-scale mining does not actively involve the traditional authorities/ opinion leaders in the control and management of the mining operations in their respective traditional areas.

As elaborated in the White Paper “Mapping Mining to the Sustainable Development Goals”, presented

¹ Artisanal & Small-Scale Mining (ASM) Framework (2015). Minerals Commission

² United Nations Economic Commission for Africa, 2011

by UNDP and other partners to the World Economic Forum in 2016³, the mining industry can impact positively and negatively across the SDGs. Mining can foster economic development by providing opportunities for decent employment (especially to the youth), business development, increased fiscal revenues, and infrastructure linkages. Historically, however, mining has contributed to many of the challenges that the SDGs are trying to address - environmental degradation, displacement of populations, worsening economic and social inequality, armed conflicts, gender-based violence, tax evasion and corruption, increased risk for many health problems, and the violation of human rights. While the mining industry is diverse, the scope and nature of typical mining activities highlight some common opportunities to leverage and contribute to the SDGs.

The second series of the “Nkitahodie” Policy Dialogue sought to provide a platform to critically examine the gaps in the ASM legal regime and provide concrete policy options and recommendations for its reform. The role of traditional authorities was examined in more detail. Participants were drawn from the public sector, research and academia, civil society organizations, miners’ associations, development partners, political parties, and the media (see list of participants in Annex 2).

³ http://unsdsn.org/wp-content/uploads/2016/11/Mapping_Mining_SDGs_An_Atlas.pdf



II. Expert Presentation

Lawyer Augustine Niber (Executive Director, Center for Public Interest Law) framed the discussion by reviewing the existing legal and regulatory framework on ASM, examining what is working and what is not, and sharing lessons and experiences from other countries.

A. Review of the existing legal and regulatory framework in the mining sector

History of legal and regulatory frameworks on small-scale mining

Gold Mining Products Protection Ordinance (CAP 149) was passed in 1905 in the colonial era to prevent indigenes from dealing in gold and any other ventures associated with gold. This was followed by the passage of the Mercury Ordinance in 1932, which made it illegal for indigenes to own mercury. After independence, Ghana passed the Provisional National Defense Council (PNDC) Law 1989 Law 218 in 1989 to legalize and license artisanal and small-scale mining. The Minerals Commission was mandated with the responsibility of providing technical assistance to prospective and registered small-scale miners in Ghana and promoting their activities. Other legal frameworks formulated to regulate mining included, the Mercury Law 1989 (PNDCL 217), which legalized the purchasing of mercury for gold recovery purposes from authorized dealers, and the Precious Minerals Marketing Company Law 1989 (PNDCL 219), which established the Precious Minerals Marketing Board as the authority to buy and sell gold and diamonds.

The Current Legal Framework

The Minerals and Mining Act 2006 (Act 703) repealed the Small-Scale Mining Law 1989 (PNDC L 218) and combined the provisions for small-scale and large-scale mining in one Act. In 2012, supporting Legislative Instruments (LI)⁴ were introduced to complement and implement the Mining Act. The Minerals and Mining (Amendment) Act, 2015 (Act 900) amended sections 25, 99, 106, 107 and 110 of the Act 703⁵. The Minerals and Mining (Amendment) Act, 2015 (Act 900) provides for regulations to be made to prescribe the manner for the payment of royalties; the confiscation of equipment used in illegal small-scale mining and for related matters. Other supporting regulations/Acts are; the Environmental Protection Agency Act 1993 (Act

4 Minerals and Mining (General) Regulations 2012 (LI 2173)

- Minerals and Mining (Support Services) Regulations, 2012 (LI 2174)
- Minerals and Mining (Compensation & Resettlement) Regulations, 2012 (LI 2175)
- Minerals and Mining (Licensing) Regulations 2012 (LI 2176)
- Minerals and Mining (Explosives) Regulations, 2012 (LI 2177)
- Minerals and Mining (Health, Safety and Technical) Regulations, 2012 (LI 2182)

5 Section 25 of act 703 amended. The Minerals and Mining Act, 2006 (ACT 703), referred to in this Act as the principal enactment, is amended by the substitution for section 25 of Royalties.

Section 99 of Act 703 amended. The Principal enactment by substitution for section 99 of "offences and penalties"

Section 106 of Act 703 amended. The principal enactment is amended in section 106 by the addition of a new subscales (2) as follows: (2) without limiting section 99, a court before which a person is convicted under this Act shall order the forfeiture to state of the mineral in respect of which the offence was committed.

Section 107 of Act 703 amended: The principal enactment is amended in section 107 by the deletion of subsection (2).

Section 110 of Act 703 amended. The principal enactment is amended in section 110 by the addition of a new paragraph after paragraph after (u) in subsection (2) as follows: " (v) prescribing the rate for royalty and the manner of royalty payment in respect of mineral."

490) and the Environmental Impact Assessment Regulation 1999 (LI 1652).

B. Identifying what is working and not working

What is working?

- Continuous activities for geological investigation and demarcation of suitable areas for small-scale mining operations are taking place. This data will enable the government to in future demarcate places or areas for small-scale mining operations and will also make the monitoring of their operations effective. The establishment of district offices manned by Minerals Commission personnel has been useful for giving technical assistance to small-scale miners.
- The Small-scale Miners Association is quite active in the country. This presents a strategic entry point for the regulation of the sector. Again, capacity building training programmes could be tailored through consultations and dialogue with the association.

What is not working?

Gaps in the Mining Law:

- The bureaucratic and lengthy nature of the licensing process (officially 150 days, in reality it takes much longer days) pushes prospective miners to engage in illegal mining.
- There is no clear-cut distinction between what constitutes artisanal mining and small-scale mining.
- The law fails to provide a grievance mechanism for people who might be dissatisfied with the rejection or refusal to grant them small-scale mining licenses.
- Mining concessions for small-scale mining are granted with insufficient involvement of the chiefs and traditional councils or allodial owners of the land.
- The law fails to state the limit / number of concessions a miner can acquire in a designated area or even in the district that has been demarcated.

Weak Enforcement:

- According to the Support Service Regulation (LI 2174), the provision of support services to the mining sector can only be done by Ghanaian nationals. However, there is an increasing influx of foreigners providing such services and engaging in illegal mining activities.
- The Minerals Commission is under-resourced to effectively monitor mining activities and enforce regulations.
- The Small-Scale Mining Committees at the district levels are not empowered to effectively monitor small-scale mining operations in designated areas.
- The Minerals Commission does not have the power to prosecute illegal activities unless through other authorities such as the Ghana Police Service. In case no action is taken, the Minerals Commission does not have other means to enforce.



- Inability of the courts to impose strict penalties on violators of the mining laws. The courts are still imposing low fines. Notwithstanding the amendment of Act 703 by Act 900 to provide stiffer punishment for offenders, the penalties imposed by courts to persons convicted for engaging in illegal mining are considered to be too low and, therefore, do not constitute an effective deterrent. The law does not give a clear-cut provision for mining in or close to water bodies. However, there is a policy that prohibits SSM from mining near or in water bodies and is often contained in Minerals Cadaster Map to leave 100 meters buffer zone from rivers, streams etc. (no penalty/punishment).
- Water Resources Commission Act 1996 provides that a person who interferes with or alters the flow of or pollutes or foul a water course beyond the level approved by EPA commits an offence and liable to not more 500 penalty units or 2 years imprisonment.

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C. Lessons from other countries

Licensing process and granting of concessions

In Sierra Leone (Mines and Minerals Act 2009), Zambia, Mali, Niger, and Burkina Faso, artisanal mining is separated from small-scale mining. Areas designated for artisanal mining are separate from those designated for small-scale mining.

In Zambia, an officer at the local office of the Minerals Commission is authorized to grant license within 30 days of receipt of application, for a non-renewable period of two years. This speeds up the registering and licensing process.

In Sierra Leone, chiefdoms or traditional authorities' committees are involved in granting concessions.

While in Ghana the law has failed to provide a limitation to the number of concessions a person can acquired in a designated district, in the Philippines the small-scale mining Law (Republic Act No. 7076) indicates that only one small-scale mining contract may be awarded at any one time to a small-scale mining operator.

Enforcement

In Cameroon, power is granted to the officer and other public authorized institutions who oversee hydrocarbons to prosecute offences committed in the sector. They may request assistance from the law enforcement agencies where needed.

III. Panel discussion and interaction with the audience

Based on the context provided by Mr. Niber, 4 panelists shared their views on the subject and interacted with the audience. The panelists were:

- Samuel K.B. Asante, Omanhene of Asante Asokore
- Sir Denis Dominic Adjei, Justice of the Court of Appeal in Ghana
- John Opoku, Private Legal Practitioner
- Isaac Bonsu Karikari, Acting Project Coordinator of the Multilateral Mining Integrated Project

Key issues raised during the discussions are included below:

Current small-scale mining legal regime in Ghana; gaps and recommendations

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Disregard for customary Laws and allodial land owners:

Despite the recognition of customary law as part of the laws of Ghana under Chapter four of the 1992 Constitution, the mining laws do not recognize the rights of allodial land owners who have the highest paramount interest in land.

Uncertainty in the Law: Ghana's mining laws lack certainty and fail to give specifications on the requirements for mining, who needs to be consulted in the licensing process, who exactly has an interest or stake in the land.

Prosecution of Offenders:

The sentencing and conviction of offenders are not deterrent enough.



For example, section 99(3) of Act 900, stipulates the minimum penalty units an offender can be charged with, but does not do the same for the sentence penalty. When this happens, the verdict is left at the discretion of the court.

Geological Surveys: Geological institutions are not sufficiently consulted before granting concession. Geological data are also scattered among different institutions with lack of coherence and coordination. There is, therefore, the need to resource the Geological Services department to be able to carry out their mandate.

Clear distinction between Artisanal Mining and Small-Scale Mining: The Act 703 defines small-scale mining operation as a mining operation over an area of land in accordance with the number of blocks prescribed not exceeding 25 acres (10 hectares). However, it fails to provide an operational definition for artisanal mining. The Artisanal and small-scale mining, therefore, take place concurrently and the terms are often used interchangeably in Ghana. This lack of clear distinction in the law further weakens the ability of state regulatory agencies to properly enforce and respond to the challenges in the small-scale mining sector.

Involvement of traditional authorities

Permitting and Licensing: Traditional Authorities are barely involved in the registration, permitting and licensing of mining concessions. Chiefs are not represented in the local government where they have legitimate roles to play. Involvement of traditional authorities should, therefore, start with the granting of licenses and land leases.

Position of Traditional Authorities in the Mining law: All authority related to permitting and licensing in Section B of Act 703 of the Mining law is given to the Minister of Lands and Natural Resources, with no reference to traditional authorities.

The Multilateral Mining Integrated Project (MMIP)

The discussion gave the representative from the Ministry of Lands and Natural Resources the opportunity to give an update on the status of implementation of the MMIP.

Key ongoing operations:

- Operation Vanguard to check the activities of illegal mining
 - Advocating and working towards reducing the license acquisition process by 40%
 - Undertaking an assessment of all mining permits for small-scale miners
 - Deploying drones to map out areas of galamsey activities to come up with the necessary actions to stop it
 - Reviewing mining laws to involve traditional authorities

Successes so far:

- Improvements in water quality in certain areas of the country
 - Deployment of drones for 'Operation Vanguard' to patrol areas at odd hours to arrest perpetrators who mine at night
 - Geological survey department given 8% of the sum of the project budget to facilitate proper demarcation of mining sites



IV. Conclusion and recommendations

Despite current government's efforts to halt the successive decline of the environment from unsustainable small-scale mining activities, the policy dialogue identified gaps and challenges in the current legal and regulatory frameworks, which can be addressed and, alongside the implementation of the MMIP, ensure responsible mining by artisanal and small-scale miners. Key recommendations emerged during the discussions are included below.

Reforms of the Mining Law: licensing process, granting of concessions, environmental protection

- The roles of traditional rulers in the leasing and licensing of mining lands should be clearly defined in the law.
- The acquisition process for issuance of mining licenses should be simplified to prevent people from flouting the licensing procedure as exemplified by Philippines legal framework and Zambia.
- The creation of a one-stop-shop office for the acquisition of small-scale mining licenses should be considered.
- There should be a clear definition of what constitutes artisanal mining and small-scale mining. Also, separate designated areas should be demarcated solely for artisanal mining and small-scale mining as practice in Sierra Leone, Zambia, Mali, Niger, and Burkina Faso.
- An amendment of the law to: a) limit the number of concessions a person can acquire in a designated area and districts; and b) expressly prohibit mining in or near water bodies and provide stiffer punishment for offenders including traditional authorities and family leaders who indiscriminately lease out unapproved mining lands to miners without recourse to the Law.
- Aggrievance mechanism should be established for dissatisfied applicants in the case of refusal of a license.
- A dialogue should be established to discuss the involvement of chiefs and their traditional councils in the granting and monitoring of artisanal and small-scale mining concessions and operations.
- The provision of mining support services to small-scale mining license holders should be streamlined in line with LI 2174.
- The introduction of certification of gold from sustainable ASM should be considered.
- In line with the provisions of the Minamata Convention that Ghana ratified in 2017, the necessary mechanisms to gradually phase out the use of mercury use in artisanal and scale gold mining should be established. Alternatives to mercury use should be explored.
- Regular and tailored capacity building trainings should be offered to small-scale miners and related associations or bodies.

Enforcement

- Small-scale Mining Committees at the district levels should be empowered to effectively monitor small-scale mining operations in designated areas. In the long term these committees should replace the operation vanguard. Funding for their operations should be included in the quarterly disbursement of the District Assembly Common Fund.
- The creation of mine guards like the forest guard in the forestry sector or marine police in the fisheries sector for the monitoring and arresting of illegal operators should be considered.
- Sanctions for officials of regulatory and enforcement institutions who condone illegal mining operations should be instituted.
- The institution of reward schemes for districts that are able to eliminate illegal mining activities and sanctions to those where illegal mining is pervasive should be considered.



Annex 1: Profile of Speakers

DR. SAMUEL K. B. ASANTE

DR. Samuel K. B. Asante (Aka Nana Susubribi Krobea Asante, Omanhene of Asante Asokore) is a legal practitioner with LL.B (Hons), from Nottingham in 1956, LL.M from London in 1958, and a doctor of juridical science from Yale University Law School 1965.

He was a pioneer Lecturer in Law (1961-65) at the University of Ghana and participated in the establishment of the Law Faculty at the University.

He was also a lecturer in Law at Leeds University Law Faculty, UK, Visiting Fellow Clare Hall and Visiting Member of the Law Faculty, Cambridge University UK, Adjunct Professor, Howard University Law School, Washington DC, and Visiting Professor of Law, Temple University Law School in Philadelphia USA.

Beyond academia, Dr. Asante has served in various capacities including Attorney with the World Bank, Solicitor General and Deputy Attorney General of Ghana, Chief Legal Adviser and a Director at the UN Centre on Transnational Corporations New York (UNCTC). He has chaired numerous international and national seminars and workshops and was also the Chairman of the Committee of Experts that formulated proposals for the 1992 Constitution of Ghana. Nana is a Fellow of many international professional associations including the World Academy of Arts and Sciences.

He has published extensively in business and law and has advised numerous governments around the world in these areas. He is a recipient of the Ghana National Book Award for Distinguished Writers and the National Award of Order of the Volta, Officer Category, for public service.



SIR DENIS DOMINIC ADJEI

A graduate from the University of Ghana and Ghana School of Law. He holds an Executive Master in Public Administration (EMPA) from the Ghana Institute of Management and Public Administration (GIMPA). He further holds Master of Laws (LLM) in the Specialization of Criminology and Criminal Justice from University of London. He obtained Master in Judicial Studies (MJS) from Duke University School of Law, U.S.A. Justice Dennis Dominic Adjei is a Justice of the Court of Appeal in Ghana.



He is the Director of the Judicial Training Institute and an Associate Professor of Law (Adjunct) at the University of Cape Coast Law Faculty at Cape Coast and Kwame Nkrumah University of Science and Technology Law Faculty in Kumasi. He is also a senior lecturer (Adjunct) at the Ghana School of Law. Over the past several years, Sir Dennis has been involved in training programmes for the Judiciary in Ghana, Sierra Leone, and select countries in South Africa. He has authored three textbooks in the areas of Law of Interpretation in Ghana, Land Law in Ghana, and Criminal Law in Ghana. In March 2017, Sir Dennis was appointed Chairman for the United Nations Environment Programme for Environmental Law Training in the Judiciaries of Africa.

DR. ISAAC BONSU KARIKARI

DR. Isaac Bonsu Karikari is an astute professional in Ghana's Land management. An Alumnus of KNUST where he completed his Bachelor's Degree in Land Economy, Dr. Karikari also holds a PhD from the University of Leeds, UK (2003), after having obtained his MSc from the International Institute for Geo-Information Science and Earth Observation (ITC), the Netherlands in 1998.



Since 1992, Dr. Karikari has worked with many respectable institutions such as the Lands Commission of Ghana, the Forestry Commission, KARICEL Foundation, The Millennium Challenge Account and the Millennium Development Authority in various capacities related to Land management in Ghana. He is currently the Acting Project Coordinator of the Multilateral Mining Integrated Project at the Ministry of Lands and Natural Resources where he has been serving since February 2017.

JOHN OPOKU

John Opoku is a graduate of the University of Cape Coast where he read for a Bachelor of Arts (B/A Hons) Degree in Geography and Diploma in education. He later attended University of Ghana and the Ghana Law School and was called to the BAR on 6th October 1989. From 1984 to 1999, John Opoku worked in various capacities at the West African Examination Council (WAEC) after which joined the Ghana School of Law



from 2000 to 2003 as the Deputy Registrar (Academic) and later, Acting Registrar.

In 2002, he received training in Street Law in Washington DC. On his return, he took up Human Rights Education in the mining areas. He became the Chairman of the Management Advisory Group set up by IFC, FIAN, WACAM and Host Communities to resolve Human Rights issues at the Iduapriem Ashanti Mines at Tarkwa (2005 - 2012). From 2005 to 2017, Mr. John Opoku was the Member/Chairman of the University of Cape Coast Superannuation Board.

He is trained in Alternative Dispute Resolution (ADR), a member of the Ghana Association of Chartered Mediators and Arbitrators (GHACMA) and the Ghana Bar Association (GBA).

Currently, he works as a private Legal Practitioner and Consults on Human Rights and Labour issues for National and International organizations such as Care International, Population Services International (PSI), Tianshi Ghana Limited, Kairo International, Maritime Dockworkers Union MDU and WACAM among others.

AUGUSTINE NIBER

Augustine Niber holds a Master of Laws Degree (LL.M) from Indiana University School of Law, Indianapolis, USA 2007; a Bachelor of Laws Degree (LL. B) from the University of Ghana, Legon 1997, and a Barrister-at-Law Certificate from the Ghana School of Law 1999. Mr. Niber was called to the Ghana Bar in Ghana in 1999. Mr. Niber is the Executive Director of the Center for Public Interest Law (CEPIL).



Mr Niber is a qualified legal practitioner/consultant with more than 17 years of experience in providing legal assistance and consultancy to diverse clientele and civil society organizations in Ghana, West Africa and the United Nations. Mr. Niber has ample experience working on the legal and regulatory framework in the natural resource sector especially mining and oil and gas.

UMARU SANDA AMADU (THE MODERATOR)

Umaru Sanda is a 30-year-old Ghanaian journalist working with **Citi FM**, **Citi TV** and **Citifmonline.com** all based in Accra. Umaru has practiced journalism in Ghana for close to eight years spanning television, online, newspaper and radio. He has worked with Accra based **TV3** and **The Globe** newspaper. At **Citi FM**, he hosts the weekend news analysis programme **The Big Issue** which airs Saturday mornings at 9am where he moderates a live radio panel discussion. He also presents the 30-minute news bulletins at midday **Citi Prime News** which comprises detailed reportage of the day's major news events. Umaru is also a sit-in host of the radio station's flagship evening news programme, **Eyewitness News** which airs at 5:30pm each weekday. He leads the production of major news and current affairs programmes and also assists the News Editor in managing the 30-member Citi Newsroom.



In addition to his work as a local journalist, Umaru also serves as the Accra correspondent for the **Anadolu News Agency**. He is interactive on Social Media through **@UmaruSanda** on Twitter and **Umaru Sanda Amadu** for Facebook.



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- 6 CLEAN WATER AND SANITATION
- 7 AFFORDABLE AND CLEAN ENERGY
- 8 DECENT WORK AND ECONOMIC GROWTH
- 9 INDUSTRY, INNOVATION AND INFRASTRUCTURE

Annex 2: List of Participants

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