

Mining Research

Overview and Introduction

Context

Ghana is rich in mineral resources. In 2022, gold exports from Ghana were valued at approximately \$9.53 billion, making it the 13th largest exporter of gold in the world for that year. Gold was the most exported product from Ghana in 2022. The total exports from Ghana in 2022 were about \$20 billion, indicating that gold exports constituted roughly 47.65% of Ghana's total exports for the year.¹ Ghana is Africa's number one exporter of gold overtaking South Africa in 2019 with 4.8 million ounces of output,² even though it holds significant reserves that are yet untapped. The country is also the ninth-largest global diamond producer and eleventh-largest producer of bauxite.³ Other minerals that are commercially exploited include manganese, kaolin, silica, mica, and clays. Ghana also recently discovered commercial quantities of lithium and is said to be developing lithium mining and processing.

Minerals have been defined as a substance in solid or liquid form that occurs naturally in or on the earth, or on or under the seabed, formed by or subject to geological process including industrial minerals but does not include petroleum as defined in the Petroleum (Exploration and Production) Act, 2016 Act 919 or water.⁴ Minerals in their natural state, under or upon any land in Ghana, rivers, streams or water courses throughout Ghana are the property of the Republic and vested in the President, on behalf of and in trust for the people of Ghana.⁵

Though the mining sector provides many benefits to the people of Ghana, the provision of jobs, the generation of foreign revenue as well as the development of mining areas, there have also been several negative effects caused by this sector. The mining sector, especially illegal mining has had many environmental impacts on the country. Mining activities have polluted water bodies and led to deforestation. It is evident that if the government does not curb illegal mining, Ghana may soon lose all of its water bodies and the country may have to import its drinking water.⁶ There has also been the problem of air pollution in mining areas from the mining activities.⁷ The pollution of the water and air in host communities leads to many health complications for the people in the area. Some of these complications include skin diseases, ulcers, respiratory disorders, and many other infections borne out of mercury poisoning.⁸ In addition to these health complications, water pollution caused by mining destroys the lives of fishes and other living organisms in the water bodies and this affects the livelihood of the people and ecological balance in those host communities.

In addition to the harmful impact the mining sector has on the environment and health, illegal miners can get away without the payment of taxes on the minerals they illegally mine. The illegal mining (galamsey) sector accounted for 34% of gold production in 2013, however taxes were not paid to the government for this percentage.⁹

¹ The Observatory of Economic Complexity. Gold in Ghana. Retrieved from <https://oec.world/en/profile/bilateral-product/gold/reporter/gha>; accessed 1 April 2024

² Agbota Edem, 'Mining in Ghana: History, Challenges and Future' (7 May 2022 Blog Convergence)

³ GlobalData (2023). Bauxite Mining Market by Reserves and Production, Assets and Projects, Demand Drivers, Key Players and Forecast to 2026.

⁴ 1992 Constitution of Ghana, Article 257(6).

⁵ Ibid

⁶ Ibid

⁷ Aboka Yaw Emmanuel and others, 'Review of Environmental and Health Impacts of Mining in Ghana' (Journal of Health and Pollution 01 March 2018)

⁸ Ibid

⁹ 'Legal and regulatory changes in Ghana address challenges facing mining.' Oxford Business Group

There is also the challenge of investment in the mining sector. It is evident that the dwindling investment in exploration in the country's mining sector could trigger a downward trend in production within the next 10 years.¹⁰ Ghana now ranks fourth in the league of planned investments into mining exploration behind Cote d'Ivoire, Burkina Faso and Mali.¹¹ There is therefore the likelihood of lesser returns in the near future if investments in the minerals sector are not encouraged.

In this context, the law has a vital role to play in ensuring that the negative impacts of the sector on the health of Ghanaians and on the environment and biodiversity are minimized, that the rights of local communities are respected and that they participate in the decisions that affect them, and that the mining sector provides real added value to the country in social, economic and environmental terms.

Given the issues outlined above and the substantial economic influence of mining on Ghana's economy, these briefings aim to offer a comprehensive overview of the mining sector in Ghana. In collaboration with our Ghanaian partner, the TaylorCrabbe Initiative, ClientEarth has conducted extensive legal research on the regulatory framework governing mining in Ghana. These papers contribute to the discussion by:

1. Providing a deeper understanding of the national legal and institutional frameworks currently regulating mining in Ghana.
2. Identifying loopholes and proposing potential governance, legal, and policy reforms for the sector.

Overview of the legislative framework governing mining

In 2006, the Minerals and Mining Act, 2006 (Act 703) was passed to revise and consolidate the laws relating to mining in Ghana.

Other laws that make up the regulatory framework include:

- Minerals and Mining (Amendment) Act, 2015 (Act 900),
- Minerals and Mining (Amendment) Act, 2019 (Act 995),
- Minerals Commission Act, 1993 (Act 450),
- Minerals Development Fund Act, 2016 (Act 912),
- Minerals Income Investment Funds Act, 2018 (Act 978),
- Minerals income Investment Fund (amendment) Act, 2020 (Act 1024), Kimberly Process Certificate Act, 2003 (Act 652) and
- Precious Minerals Marketing Company Act 1989 (PNDCL 219).

¹⁰ Agbota Edem, 'Mining in Ghana: History, Challenges and Future' (7 May 2022 Blog Convergence)

¹¹ Ibid

There are also ten subsidiary legislation that flow from the Minerals and Mining Act that regulate general services¹²; support services¹³; compensation and resettlement;¹⁴ licensing;¹⁵ explosives¹⁶; health, safety and technical¹⁷; mineral operations¹⁸; equipment¹⁹; ground rent²⁰, and local content and participation.²¹

This regulatory framework is complemented by constitutional provisions and statutes of general application.

Overview of the Institutional Framework

The institutions overseeing mineral resource management in Ghana have specific roles and functions. These entities regulate various aspects related to mining, land use, and environmental protection. Mineral resources in Ghana are held by the President in trust for the nation. The grant and revocation of mineral rights is done through the Minister of Lands and Natural Resources (MLNR).

The **Ministry of Lands and Natural Resources** (MLNR) is the primary institution responsible for making and implementing government policy on lands, forestry, and mineral resources. MLNR is headed by a Minister of State and assisted by deputy ministers, one of which oversees mines. The Ministers of Lands and Natural Resources are the president's agents for purposes of managing the lands and natural resources of Ghana including mineral resources.

The MLNR has a chief director who is the administrative head of the ministry and advisor to the Minister. MLNR has one Technical Directorate specifically focusing on mining as well as the following units/directorates with a specific focus on mining: Finance and Administration; Policy Planning, Budgeting, Monitoring and Evaluation (PPBME); Research, Statistics, and Information Management (RSIM); Human Resources Management and Development (HRMD); three Technical Directorates (Forestry, Mines, and Lands) and an Internal Audit Unit. MLNR also provides ministerial supervision for the following state agencies: The Minerals Commission; Forestry Commission; Lands Commission and the Office of the Administrator of stool lands.

The **Minerals Commission**, a constitutionally established resource commission, acts as a consultative body for mineral resource exploration. It formulates recommendations for mineral exploration and exploitation, advises the Minister, and monitors mining activities. The Minerals Commission also enforces compliance within the mining sector, imposing administrative penalties for violations. It also plays an important role in the grant and allocation of mineral rights by making recommendations to the Minister for grants.

The **Environmental Protection Agency** (EPA) and **Forestry Commission** (FC) also influence mineral resource utilization. Mining applicants need permits from EPA for environmental compliance, and the EPA collaborates with the Minerals Commission to align resource utilization with environmental laws. FC

¹² Minerals And Mining (General) Regulations, 2012 (L.I. 2173)

¹³ Minerals and Mining (Support Services) Regulations, 2012 (L.I 2174)

¹⁴ Minerals and Mining (Compensation and Resettlement) Regulations, 2012 (L.I 2175)

¹⁵ Minerals and Mining (Licensing) Regulations, 2012 (L.I 2176)

¹⁶ Minerals And Mining (Explosives) Regulations, 2012 (LI 2177)

¹⁷ Minerals and Mining (Health, Safety and Technical) Regulations, 2012 (L.I 2182)

¹⁸ Minerals and Mining (Mineral Operations – Tracking of Earth Moving and Mining Equipment) Regulations, 2020 (L.I 2404)

¹⁹ Minerals and Mining Equipment) Regulations, 2020 (L.I 2404)

²⁰ Minerals and Mining (Ground Rent) Regulations, 2018 (L.I 2357)

²¹ Minerals and Mining (Local Content and Local Participation) Regulations, 2020 (L.I 2431)

safeguards forests and wildlife, preventing mining in protected areas. An application for a mineral right must be accompanied by a forest entry permit issued by the Forestry Commission if it impacts a forest reserve or protected area.

Water Resources Commission (WRC) regulates water resource utilization, granting approvals and licenses for water usage by mineral rights holders, while safeguarding water resources from mining-related harm.

Land Commission and **Land Use and Spatial Planning Authority** (LUSPA) contribute by determining compensation for mining-affected individuals, managing public lands, and overseeing land boundaries.

Ghana Geological Survey Authority serves as a repository for geoscientific data from public and private entities, offering vital information to mining and exploration ventures.

Lastly, the **Office of Administrator of Stool Lands**²²(OASL) handles royalties and rents distribution from mining operations on stool lands, ensuring equitable allocation to the rightful beneficiaries. The Office is headed by the Administrator of Stool Lands who is appointed by the President of Ghana and who has oversight over all stool lands in the country.²³ Where the Minister for Lands and Natural Resources deems it necessary, a branch may be opened in each region to act as the regional office of the Administrator of Stool Lands.²⁴ Once created, an officer of stool lands is to be appointed to the regional office and they are to act as custodians for the stool lands in that particular region.²⁵ The OASL is given the power to appoint the staff it may need through the Public Services Commission.²⁶ The Administrator of Stool Lands has a duty to keep records of the offices' finances for auditing by the Auditor-General, each year.²⁷ They also have the duty to submit a report on their activities within the previous financial year, as well as on how revenue was used in that year to the Minister for it to be presented before parliament.²⁸

Four thematic briefings

The first briefing in this paper presents an overview of the ownership of mineral rights as well as mineral rights allocation. It discusses who owns mineral rights in Ghana, the framework that governs minerals and mining as well as the various mineral rights available. It also addresses the areas of land these mineral rights are allowed to cover. The purpose of this briefing will be to outline the complex framework involved in the grant of mineral rights, the interplay of several state institutions in the regulation of various mining rights, and the challenges that exist in the mining regime in Ghana.

The second briefing in this paper tackles benefit sharing arrangements in the mining sector. It summarizes how revenue collected by the government from the mining sector is distributed equitably between the state, landowners and fringe communities which host mining activities. The aim of this briefing is to discuss the challenges identified in the benefit sharing arrangements provided by statute. These challenges include the ambiguity of the Constitution's prescribed mode for disbursing revenue generated

²² Stool lands includes land, interest or rights over land controlled by a stool, skin or the head of the particular community for the benefits of the subjects. A stool or skin is the traditional ruler over a particular area in the country.

²³ Office of the Administrator of Stool Lands Act 1994, Section 2

²⁴ Office of the Administrator of Stool Lands Act 1994, Section 10

²⁵ Office of the Administrator of Stool Lands Act 1994, Section 11

²⁶ Office of the Administrator of Stool Lands Act 1994, Section 4

²⁷ Office of the Administrator of Stool Lands Act 1994, Section 13

²⁸ Office of the Administrator of Stool Lands Act 1994, Section 14

from stool lands, the inadequacy of allocations into the Mineral Development Fund, Transparency and Accountability among others.

The third briefing in this paper deals with stakeholder engagement and grievance mechanisms. This discusses the involvement of civil society organizations, host communities and the public in the governance and management of mining. The briefing will include discussions on public forums prior to grant of environmental licenses. The purpose of this briefing is to outline the shortcomings of grievance mechanisms provided for in statute as well as the ways to promote stakeholder engagement in the mining sector.

The fourth briefing will then offer insight into mining in forest reserves. It will include information on the process to obtain a mining right in a forest reserve; outline the effects of mining in the forest reserve and on environmental conservation efforts. The briefing also highlights the legal challenges inherent in the recently passed Environmental Protection (Mining in Forest Reserves) Regulation 2022 (L.I. 2462) within the context of environmental conservation efforts by civil society organizations.

Dennis Martey

In-Country Associate of ClientEarth in Ghana & Managing Associate at TaylorCrabbe
dennis.martey@taylorcrabbegh.com

Raphaëlle Godts

Law & Policy Advisor at ClientEarth
rgodts@clientearth.org

Clement Kojo Akapame

In-Country Associate of ClientEarth in Ghana & Partner at TaylorCrabbe
clement.akapame@taylorcrabbegh.com

Benjamin Ichou

External consultant
benjamin.ichou@protonmail.com

Ruth Pauline Naa Shormeh Norteye

Research Assistant at TaylorCrabbe
r.norteye.intern@taylorcrabbegh.com

www.clientearth.org

This document was written for general information and does not constitute legal, professional, financial or investment advice. Specialist advice should be taken in relation to specific circumstances. Action should not be taken on the basis of this document alone. ClientEarth endeavours to ensure that the information it provides is correct, but no warranty, express or implied, is given as to its accuracy and ClientEarth does not accept responsibility for any decisions made in reliance on this document.

Brussels Beijing Berlin London Warsaw Madrid Los Angeles Luxembourg

ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.