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Mining Research

Briefing 1 : Mineral Rights Allocation

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Table of Content

1. CATEGORIES OF RIGHTS AND PERMITS..... 2

3. ENVIRONMENTAL IMPACT ASSESSMENT PROCESS 7

4. CHALLENGES AND CONSTRAINTS IN RIGHTS ALLOCATION..... 8

a. Environmental Oversight Gap in Mineral Right Allocation..... 8

b. Challenge with Framework for Environmental Permits 9

c. Challenge with Enforcement requirements..... 10

d. Lack of clarity in Ratification of Mining Lease Extensions 10

1. Categories of Rights and Permits

The utilization of mineral resources in Ghana requires a mineral right.[1] Generally, an application for mineral rights may be submitted for any piece of land in Ghana unless that land is already under a mineral right for a specified mineral[2] or has been specifically excluded by law from mineral rights applications.[3] The Minister of Lands and Natural Resources has the authority to declare[4] that land not currently under a mineral right is reserved and cannot be applied for a mineral right for any mineral, or be applied for a mineral right for certain specified minerals, or for all minerals except certain specified ones.

However, for small-scale mining, the land must be first designated as an area for small-scale mining before licenses for small-scale mining may be issued.[5] The designation is done by publication of a notice in the Gazette.[6] The Minister is required to consult with the Minerals Commission to first decide that it is in the public interest to encourage small scale mining in that area before its designated for small-scale mining.[7] The notice in the Gazette must also detail the specific mineral that can be mined in the designated area.[8]

Mineral operations in Ghana entail reconnaissance, prospecting, or mining for minerals. The definitions of these activities are shown below in Table 1. These activities are jointly referred to as 'mineral operations' in law[9] and may be categorised into two types, based on the size of the land subject to the mineral operations:

- **A small-scale mineral operation:** a mineral operation on land with an area of up to 25 acres (10.117 hectares). Small-scale mining is reserved for citizens of Ghana.[10] Small-scale mining operations require a small-scale license.[11]
- **A large-scale mineral operation**: an operation on an area of land above 25 acres and requiring mineral rights to undertake activities.[12]

Also, mineral rights are categorised as restricted or unrestricted. Restricted mineral rights are granted in respect of a so-called industrial mineral (basalt, clay, granite, gravel, gypsum, laterite,

[1] Section 9(1) of Act 703.
[2] Mineral rights for the mining of other minerals on the same piece of land can be granted to different parties, however, the party with the first grant to the land to mine a specific mineral will be given the option to first apply for the mineral right to the new mineral before others.—Section 15(5) of Act 703
[3] Section 3 and 4 of Act 703.
[4] The declaration must be made through an Executive Instrument, and this must be authorized by the President.
[5] Section 83 of Act 703
[6] Section 89 of Act 703
[7] *Ibid*
[8] *Ibid*
[9] Section 111 of Act 703.
[10] Section 83 of Act 703.
[11] Section 82 of Act 703.
[12] Section 9(1) of Act 703.

limestone, marble, rock, sand, sandstone, slate talc, and other minerals the Minister determines)[13]. As a result of their restricted status, they may only be granted either to:

- Ghanaians[14]; or
- non-Ghanaians where the proposed investment exceeds ten million United States Dollars.[15]

From the foregoing there are eight types of licenses and mineral rights in Ghana. Their key features are captured in table 1 below.

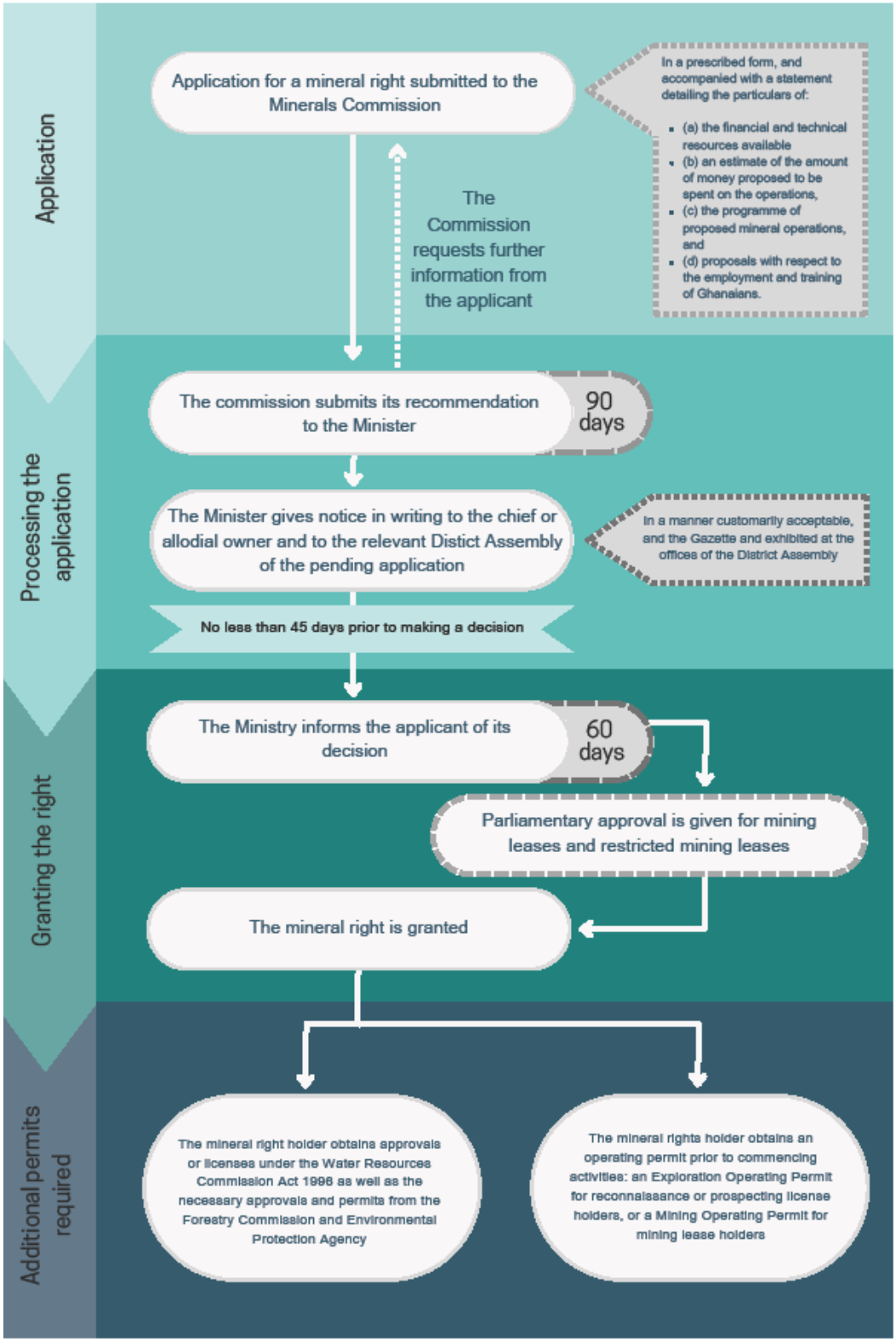
[13] Section 111 of Act 703
[14] Section 78 of Act 703
[15] Section 79 of Act 703.

TABLE1: TYPES OF MINERAL RIGHTS AND PERMITS					
Mineral Right/Permit	Duration	Scope	Parliamentary ratification	Qualification of Holder	Maximum allowable area
Reconnaissance Licence	12-months renewable once	Regional exploration. It does not include drilling, excavation or under surface operation.	Not required.	Body corporate incorporated as a company or partnership.	105,000 ha
Prospecting Licence	3-years renewable with reduction of area	Search for minerals and evaluation including making excavations and boreholes and erection of temporary structures and camps.	Not required.	Body corporate incorporated as a company or partnership.	15,750 ha
Mining Lease	Up to 30 years renewable	Extraction of minerals.	Required.	Body corporate incorporated as a company or partnership.	6,300 ha
Restricted Reconnaissance license	12-months renewable once	Same scope as reconnaissance license, but for industrial minerals only.	Not required.	A citizen of Ghana, or a non-citizen making an investment in excess of $10 million.	105,000 ha
Restricted Prospecting license	3-years renewable with reduction of area	Same scope as prospecting license, but for industrial minerals only.	Not required.	A citizen of Ghana, or a non-citizen making an investment in excess of $10 million.	15,750 ha

Restricted Mining Lease	Up to 15 years renewable	Extraction of industrial minerals.	Required.	A citizen of Ghana, or a non-citizen making an investment in excess of $10 million.	6,300 ha
Small-scale mining licence	Up to 5 years renewable	Extraction of minerals limited to just Ghanaian citizens.	Not required.	A citizen of Ghana, of at least eighteen years old, and registered by the Minerals Commission.	10.2 ha
Licence to buy and deal in minerals	Subject to the terms and conditions contained in the license	Subject to the terms and conditions contained in the license.	Not required.	Holder may be a natural person or body corporate.	Subject to the terms and conditions contained in the license.

2. Procedure for securing Mining Rights and Permits

The procedure for obtaining a mineral right is presented in Figure 1 and is succinctly and similarly regulated for all mining rights, whether for reconnaissance, prospecting, or mining. Additional permits, particularly an EPA, are needed subsequently.



Although legislation requires notice to be given to the chief or allodial owner of the land to be subjected to mining operations and to the District Assembly, the procedure does not allow for public consultations. The procedure does not also require as mandatory steps, the generation of an environmental impact assessment report, a plan for site remediation after mining activities are concluded, or the provision of channels for communities to request for redress of their concerns from the Ministry. These are raised as challenges in the later paragraphs of the briefing.

Further to these steps, mining leases and restricted mining leases necessitate parliamentary approval due to the scale of their resource exploitation nature. Leases are submitted to Parliament by the Minister, having gone through the Minerals Commission, Cabinet review, and consideration by Parliament's Mines and Energy Committee. Subsequently, the lease undergoes plenary voting for ratification. Failure to ratify a mining lease renders the lease void with no rights arising therefrom, unless Parliament has previously resolved that such mining leases will be exempted from the requirement of ratification. The need for parliamentary ratification is steeped in having the people, for whom mineral resources are held in trust for, have a deciding say in the grant or otherwise of rights for the exploitation of the natural resources. The mineral right is not subject to any publicity requirement.

Post obtaining the mineral right, an operating permit is essential before commencing activities. Exploration Operating Permits are for reconnaissance or prospecting license holders, while mining lease holders require Mining Operating Permits. Additionally, environmental compliance entails securing an Environmental Permit after an environmental impact assessment (see below). If forest resources are affected, a permit from the Forestry Commission is required

To begin exploration operations, a Prospecting or Reconnaissance license holder must apply to the Inspectorate Division of the Minerals Commission. The application must be accompanied by an Exploration Operation Plan which is renewable at the beginning of every year[16]. The mining lease holder must also apply to the Inspectorate Division of the Minerals Commission for a Mining Operating Permit. This must be accompanied by a Main Mining Operating Plan covering activities over the lifetime of the mining operations. Pending the issue of the Mining Operating Permit, the Chief Inspector of Mines may issue a temporary mining operating permit for a maximum period of six months to allow the mining lease holder of the permit to develop a detailed Main Mining Operating Plan for approval before commencement of mining operations.

A mineral right can be renewed at any time before expiring. Within a period of at least 3 months before the expiration of an existing lease, the holder may apply in a prescribed form to the Minister to have his grant extended. He must attach a proposed program of mineral operations to the application. Upon application for renewal of a mineral right, the lease is deemed to continue until the application is determined.[17]

3. Environmental Impact Assessment Process

A license holder cannot obtain a mining operating permit without first obtaining an Environmental Permit (EP) from the Environmental Protection Agency (EPA).[18]

[16] Regulation 6 of Mineral and Mining (Health, Safety & Technical) Regulation, 2012 (LI 2182)
[17] Minerals and Mining Act 2006(Act 703) Section 44
[18] Regulation 1 of Environmental Assessment Regulation, 1999 (LI 1652)

To obtain an EP, a mineral right holder is required to register with the EPA by applying and paying the requisite fees.[19] The EPA then carries out an initial assessment and issues a screening report, which will determine whether the application will be approved or objected to.[20] The initial assessment also provides information for EPA to determine the nature and scope of environmental assessment required for the EP. In some instances, the EPA may only require the operator to submit a preliminary environmental report.[21] The preliminary environmental report is less extensive and covers less scope than the environmental impact assessment. The choice between a preliminary environmental report and an environmental impact assessment is at the discretion of the EPA.

The EPA is required by law to decide within 90 days from the date of receipt of the application.[22] The EPA is required to publish in the gazette and the media a notice of every EP issued within 3 months of the date of the issuance of the permit.[23] An EP is valid for 18 months, effective from the date of issue.[24]

The holder is also required to obtain an environmental certificate within 24 months from the date of commencement of operations after an environmental permit has been issued.[25] The environmental certificate is a permanent license that replaces the environmental permit, which is temporary. The environmental certificate is issued on the completion of stated conditions on the environmental permit such as the acquisition of the other permits and approvals were applicable and the compliance with mitigation commitments indicated in the environmental impact statement or preliminary environmental report on commencement of operations.[26] Finally, the holder is again required to submit an environmental management plan within 18 months of commencement of operations and thereafter, every three (3) years.[27] The environmental management plan sets out the steps that will be taken to manage any significant environmental impact that may result from the operations. A holder is further required to submit an annual environmental report every 12 months from the date of commencement of operation to the EPA.[28]

4. Challenges and Constraints in Rights Allocation

a. Environmental Oversight Gap in Mineral Right Allocation

The present regime arrangement allows mineral rights to be awarded without the performance of an environmental impact assessment (EIA) ahead of mining operations. This means the potential impact of mining activities on the environment may not be considered in making the decision of whether to grant a mineral right. The situation is different in other jurisdictions such as Liberia, Sweden, Finland, Poland[29] and Belgium, where an EIA is a mandatory process in the grant of mineral concessions. Further, where law enforcement is lacking, there is a real possibility that mining activities will commence without the performance of the environmental impact assessment required by law.

[19] Regulation 4 of LI 1652
[20] Regulation 5 and 6 of LI 1652
[21] Regulation 6 of LI 1652
[22] Regulation 20 of LI 1652
[23] Regulation 8 of LI 1652
[24] Regulation 21 of LI 1652
[25] Regulation 22 of LI 1652
[26] Regulation 23 of LI 1652
[27] Regulation 24 of LI 1652
[28] Regulation 25 of LI 1652
[29] The mining permitting process in some selected developed economies, Land Use Policy, V131, August 2023

Conducting EIAs before commencing mining operations is crucial for several reasons. EIAs serve as a comprehensive evaluation tool that assesses the potential environmental consequences of mining activities. This process identifies and quantifies potential impacts on ecosystems, water quality, air quality, biodiversity, and local communities. Most importantly, it can identify ecosystems where mining activities should not be conducted due to ecological sensitivities, high biodiversity significance or presence of threatened flora and fauna. By conducting EIAs before mining operations, the potential negative effects can be anticipated, mitigated, and managed through proper planning and safeguards.

The present arrangement has significant implications. Firstly, it overlooks the critical assessment of mining's potential environmental impact when determining whether to award a mineral right. This gap may lead to the approval of projects that could have adverse consequences on the environment. The absence of an obligation to conduct EIAs at this stage undermines the normative value and practical function of EIAs. The failure to include EIAs in such activities, which could potentially have profound, adverse environmental consequences, would render EIAs a meaningless bureaucratic process, rather than an important step in managing Ghana's environment and its resources. It also undermines the sustainable development goals and jeopardizes the long-term well-being of affected areas and communities.

In essence, the absence of a mandatory environmental impact assessment before the commencement of mining operations may result in hasty decisions that prioritize short-term gains over long-term environmental preservation.

b. Challenge with Framework for Environmental Permits

The current procedure mandated by the Environmental Protection Agency (EPA) requires operators to submit an Environmental Management Plan (EMP) within 18 months after commencing operations, in addition to an annual environmental report.[30]

Further, the law is silent about the consequences of an unsatisfactory plan. Legislation does not prescribe in detail the minimum contents of an EMP. This sequence - where the submission of the EMP occurs post issuance of the environmental permit and the start of operations - poses a significant challenge to the goal of proactive environmental protection. Essentially, this timeline does not align with a precautionary approach to environmental management for several reasons.

First, by allowing operations to begin before the EMP is reviewed and approved by the EPA, there is a missed opportunity for pre-emptive assessment of potential environmental risks and for the inclusion of mitigative measures in mining practices to minimise or avoid potentially adverse environmental impacts The crux of a precautionary approach is to anticipate and mitigate harm before it occurs, not to address it post facto. The delay in EMP submission means that the EPA cannot verify if the proposed environmental safeguards are sufficient to prevent or minimize harm from the outset of operations.

Moreover, the period before the EMP is submitted and assessed could witness substantial environmental harm that might be irreversible or require extensive efforts to remediate. This gap exposes the environment to risks that could have been identified and mitigated through a thorough review of the EMP before operations commenced. There is no requirements for the EMP to be made public before review, but copies of reviewed EMPs are available on websites by the EPA to improve compliance on the part of the mineral right holders. Furthermore, the reliance on an annual environmental report as a tool for ongoing assessment does not compensate for the initial lack of scrutiny. While these reports are vital for monitoring

[30] Regulation 24 and 25 of L.I 1652

compliance and environmental performance, they are retrospective and, as such, are more suited for adjusting practices rather than preventing harm.

To address these concerns and align with a precautionary approach, it is imperative to revise the current regulatory timeline. A more effective strategy would be to require the submission and approval of the EMP prior to the issuance of an environmental permit and the commencement of operations. This would enable the EPA to assess and require adjustments to the EMP to ensure that it adequately addresses all potential environmental impacts before any harm can occur. Such a revision would not only safeguard the environment more effectively but also align operators with best practices in environmental management from the outset, thereby fostering a culture of responsibility and precaution.

c. Challenge with Enforcement requirements

Enforcing legal requirements in the mining sector in Ghana has several complex challenges, which stem from a combination of factors including governance, resource limitations, and the diverse nature of the sector. A recent Performance Audit Report of The Auditor-General on Regulating Reclamation Activities at Small-Scale Mining Sites, 2021 indicated that in the past decade, there has been a failure to post Reclamation bonds, to receive, assess and monitor operating plans and to verify and certify reclamations of mineral rights holders especially holders of small-scale mining licenses. Furthermore, the prevalence of illegal small-scale mining activities (Galamsey) makes enforcement challenging. Illegal miners often operate in remote areas, making it difficult for regulatory authorities to detect and control their activities effectively.

d. Lack of clarity in Ratification of Mining Lease Extensions

Mining leases are to be granted for a maximum of an initial term of 30 years and may be renewed for an additional term of 30 years.[31] Whereas there is an express requirement in law for the need of parliamentary ratification of the initial grant[32], legislation is silent on ratification of extensions granted after the first term.

Parliamentary ratification offers a structured platform for transparency and accountability. Given the potential for mining activities to result in extensive environmental degradation, displacement of communities, and other social upheavals, it is imperative that such decisions are made transparently. The requirement for parliamentary ratification underscores the role of long-term planning and policy coherence in resource management. As mining leases often span decades, the conditions under which they were originally granted may significantly change over time. Parliamentary review of lease extensions allows for the reassessment of mining projects considering current environmental standards, technological advancements, and socio-economic priorities. This ensures that mining activities remain aligned with national development goals and global sustainability commitments it is therefore imperative that extensions are subject to ratification.

Further, parliamentary ratification serves as a critical check against the undue influence of private interests. The mining industry is notorious for its potential to generate substantial revenues, which can sometimes lead to decisions that favour short-term economic gains over long-term sustainability and equity. Parliamentary ratification acts as a safeguard, ensuring that decisions on lease extensions are made in the public interest rather than being unduly influenced by powerful mining lobbies.

[31] Section 41 and 44 of Act 703
[32] Section 5 of Act 703

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