

Index of Ghanaian Mining Laws

Mining Laws

The Mercury Ordinance, 1933

The Mercury Ordinance was proclaimed by the government of the Gold Coast colony, banning the sale of mercury to natives. According to Ofofu-Mensah the law was passed by the colonial government as part of an effort to crack down on local gold miners, who were refusing to work in European mines.¹

The Minerals Ordinance, 1936

The Mineral Ordinance details the conditions under which mining can be conducted in the Gold Coast Colony. In particular it restricts holding a concession to those who were literate and were deemed to possess sufficient income, confers discretionary powers in the governor, limits the buying and selling of minerals, restricts mining under 100 yards from a public space and withholds compensation to workers injured due to their “own misconduct”.

The Minerals Act (Act 126), 1962

The Minerals Act of the newly independent Ghana reaffirmed national control of mineral resources (Article 1) and detailed proper use (Article 2). The act also makes a distinction between “stool land”, that is community lands vested in a traditional chief, and public lands managed directly by the government. The act also grants the right of pre-emption to the Republic of Ghana for all materials “raised, won or gotten in Ghana” (Article 5).

1 Emmanuel Ababio Ofofu-Mensah “Historical overview of traditional and modern gold mining in Ghana” (2011) *International Research Journal of Library, Information and Archival Studies* 1:1.

Minerals and Mining Law (PNDC 153), 1986

Passed by the military government of Flight Lieutenant Jerry Rawlings, the 1986 mining code was intended to modernize and liberalize the mining sector, as part of series of structural adjustment programs (SAP's) undertaken by the Ghanaian government throughout the 1980's.² The act reduces the government stake in mining companies to 20% (Article 22), sets the royalty rate between 3 and 12% and provides for greater dispute mechanisms (Article 31). The law also removes many import duties for mine equipment and immigration quotas for workers (Article 27) and as well provides for a number of capital allowances so as to increase the attractiveness of the sector to foreign capital. The act also requires mine operators to reduce pollution (Article 72) but does not require a separate environmental approval to operate.

Mercury Act (PNDC 217), 1989

Repealing the 1933 ban, the act legalizes the possession and use of mercury provided that they do so with government authorization and buy it from a government authorized dealer (Article 1). In particular it grants licensed small-scale miner the right to buy “a reasonable quantity of mercury” from small-scale miners and requires them to make use of it in a way that respects “good mining practices” (Article 4). It also provides penalties for those miners who fail to do so or deal mercury without a license (Article 5). Despite the limitations imposed by the act the selling to and use of mercury by unregistered small-scale miners remains very common and is largely unforced.³

Small-Scale Mining Act (PNDC 218), 1989

2 Gavin M. Hilson, “Structural Adjustment in Ghana: Assessing the Impacts of Mining-Sector Reform,” (2004) *Africa Today* 51:2.

3 Benjamin A. Teschner, “Small-scale mining in Ghana: The government and the galamsey,” (2012). *Resources Policy* 37.

The Small-Scale mining law was passed to legalize and formalize Ghana's large informal mining sector. The law allows small-scale miners to apply for minerals rights from the Secretary of Lands and Natural Resources (Article 1.1) for a duration of 3 to 5 years (Article 4.1) and declares that license to be non-transferable (Article 7). It also provides for the creation of District Small-Scale Gold Mining Centres (Article 8) to register miners, monitor operations, provide training and submit reports to the Minerals Commission. The act also prohibits the use of explosives (Article 13), limits the purchase of mercury to government authorized dealers (Article 14) and regulates the selling of gold (Article 17). Despite government hopes of limiting illegal mining, it is estimated that around 85% of small-scale miners still operate informally.⁴

Precious Minerals Marketing Corporation Act (PNDC 219), 1989

Also passed in 1989, the act changes the name of the state owned Diamond Marketing Corporation to the Precious Minerals Marketing Corporation and gives it the ability to buy gold from registered small-scale miners. Like the mercury act, enforcement is often lax, with the commission accepting gold from registered and unregistered miners alike.⁵

Mineral Commission Act (Act 450), 1993

The Act lists the functions of the Mineral Commission, Ghana's primary regulatory body for mining activities. These functions include formulating policy on exploration and exploitation, advising the Minister of Mines, monitoring operations and collecting data on mineral resources (Article 1). The rest of the act details the functioning of the Commission including the appointment of members (Article 3) and the powers of the Minister to make regulations (Article 18).

⁴ *Ibid.*

⁵ *Ibid.*

The Minerals and Mining Act (Act 703), 2006

Passed in 2006 to replace the 1986 act, Act 703 is very much in the same vein as its predecessor, seeking to provide favorable conditions for foreign investors. Like previous acts it reaffirms minerals as the property of the state (Article 1), details the concession process (Article 6) and makes the distinction between land title and subsurface rights (Article 9). The act however, does contain some new elements such as reducing royalties to between 3-6% (Article 25) and providing a greater number of tax and customs exemptions for concession holders (Article 29). Unlike past acts, it is more explicit about environmental protection, requiring approval from both the EPA and the Forest Commission before operations can begin (Article 18). Another notable addition is the ability of companies to make 15 years “stability agreements” with the government, which ensure that the concession holder will not be adversely affected by any new legislation that is passed after the concession is granted (Article 48). In terms of small-scale miners, the act is very similar to the *PNDC 218*, requiring a license to mineral rights, allowing for the establishment of District offices for small-scale mining, controlling mercury and mineral sells, and criminalizing those who buy and sell minerals illegally (Articles 82-99). Finally the act provides for the further regulation of mining activities in the interests of public and environmental health (Article 110).

National Mining Policy, 2010

The National Mining Policy seeks to outline current government positions on mining as well as future challenges. Of these the most notable are addressing environmental issues, minimizing social conflicts, assisting small-scale miners, ensuring an equitable distribution of economic benefits, attracting more local capital and ensuring adequate public consultation. The policy seeks to balance a favourable regulatory climate with environmental and social protections as well as mediate between large-scale mining and small-scale miners and affected communities. It also discusses the need to encourage and facilitate women's participation in the sector as well as improve occupational health in

mining communities. In terms of small-scale miners, the policy pledges to provide them with greater access to finance, simplify the licensing process, reserve of areas for small-scale mining, encourage safer technology, help with the formation of representative associations and improve health and safety. The policy also discusses the need to generate Geo-Data support for both large-scale and small-scale miners as well as the importance of promoting alternative livelihoods in mine affected communities.

Land Laws

Constitution of the Republic of Ghana, 1992-Chapter 21: Land and Natural Resources

Approved by a citizen referendum following the restoration of multi-party democracy in 1992, the Ghanaian constitution provides the basic laws of the republic. Of particular note is Chapter 21 which provides an overview of land and resource rights in the country. Most importantly the Constitution draws a distinction between privately-held lands, public lands, and stool and skin lands, which are lands entrusted to traditional authorities in accordance with customary law. Unlike private lands, stool and skin lands cannot be disposed of but must be managed in keeping with traditional practices, with some government oversight. The constitution also outlines the rights and responsibilities of traditional authorities, and the way in which proceeds from these lands are to be divided between the community, the traditional leadership and the government. The Constitution also grants the government exclusive mineral rights and provides for the creation of a Regional Lands Commission to develop and implement regional development plans.

National Land Policy, 1999

The first comprehensive land policy in the nation's history, it seeks to mitigate land conflicts and ensure proper use. The Policy outlines a number of guiding principles, the most important of which are:

- Equitable and reasonable access to land

- Fair access to land and security of tenure
- Polluter Pays for mining and timber operations
- The private sector as an engine of growth subject to land use guidelines
- Community participation in land management
- Land as a common national property held in trust for the people of Ghana

In keeping with these principles the policy outlines the following objectives:

- Ensure sustainable land use
- Protect the rights of landowners and their descendants from becoming landless or tenants on their own landless
- Ensure adequate compensation when government acquires stool land
- Prevent land encroachment and theft
- Ensure continuous education of the general public in land matters

The policy also outlines that decisions with respect to the disposal of land should take into account both its present natural resources and its conservation for future generations. The policy also prohibits extractive activities such as mining in fully protected areas such as parks, while describing all other lands as open for extraction. The policy also prohibits mining in wetlands and lands with primary forest cover. Finally the policy invests in the government the power to intervene in facilitating investors' access to lands, including stool and family held lands.

Health Laws

Ghana Health Service and Teaching Hospitals Act, 1996 (Act 525)

The act allows for the creation of the Ghana Health Service to operate at a national, district and regional level as well as providing for the creation of state-owned hospitals and health station.

National Health Insurance Act, 2003 (Act 650)

Passed in 2003, the act establishes a national health insurance scheme to ensure universal access

to basic health care. The act describes three forms of permissible insurance schemes: district mutual health insurance, private commercial health insurance and private mutual health insurance (Article 11). The act explains how each of these health schemes operate, and what support they can receive from the National Insurance Fund in the forms of subsidies (Article 33). It also explains how best to provide health care in the case of indigents (Article 38). The act also dictates the conditions for subsidy provision (Article 81) and allows for for-profit private insurance schemes (Article 41).

National Health Insurance Act, 2012 (Act 852)

Similar in many ways to the National Health Insurance Act of 2003, the 2012 act updates it as well as making some key changes. Article 27 requires that employers ensure that their employees are registered, while Article 98 provides greater quality insurance guarantees. One key change is Article 112 which dissolves the District mutual health insurance schemes, replacing them with private schemes.

Environmental Laws

Environmental Assessment Regulations 1999

Passed in 1999 the act establishes the need for an environmental permit for activities in which the environment is perceived as being at risk (Article 1). For an environmental permit to be given an environmental impact assessment (EIA) must be conducted (Article 3). The act also outlines the elements required for an EIA, including identification of pollution risks, ecological changes, affected flora and fauna and changes to cultural and economic patterns as well as steps towards mitigation and reclamation (Article 14). The act also mandates that a public hearing be held during the EIA process as a form of consultation and that citizens' concerns be incorporated into the final draft (Article 17). It also outlines penalties for failing to comply with environmental regulation, including the suspension of a concession (Article 26). The act defines environmental impact as an act affecting health, personnel safety, biodiversity, habits, customs, cultural heritage or legitimate means of livelihoods, and states that

all mining concessions over 10 ha are required to go through the environmental permitting process.

L.I. 1692 Water Use Regulations, 2001

The Water Use Regulation Act invests in the state-run Water Commission the power to make decisions concerning water use, whether they be commercial, industrial, environmental or for the purposes of power generation (Article 1). It all requires users to seek a permit from the Water Commission before water use (Article 1) upon which the public has 3 months to submit objections (Article 3). The Water Commission also has the power to investigate cases to prevent irreparable damage to water resources (Article 5) as well as hold hearings in the case of public opposition (Article 6). The act also gives priority to water use that is in line with “prevailing water policy”, is for domestic use or contributes to national development (Article 7). The Commission, in consultation with the EPA, can demand from users an EIA or environmental management plan (Article 12) and can charge permit holders for water use (Article 21). The water costs for mining operations are set at 10.00GH¢/m³.

National Water Policy, 2007

The National Water Policy of Ghana was formulated in 2007 to provide a framework for the sustainable development of the nation's water resources. The policy identifies the different stakeholders involved in water use and water conservation and seeks to negotiate between competing water requirements. As a guiding principle it recognizes water as a finite and vulnerable resource and seeks to adopt the precautionary principle in minimizing activities with the potential to negatively affect water resources. In regards to mining it identifies the need to balance between the demands of communities and mining firms in terms of water use, requiring that mining operations develop and implement environmental management systems which take into account impacts on water resources. The policy also identifies anthropogenic climate change as a contributing to water scarcity in the region and prohibits private ownership of water in Ghana.

International Conventions

UNEP Mercury Programme, 2009 (Decision 25/5)

Developed by the Governing Council of the United Nations' Environmental Programme (UNEP), Decision 25/5 discusses the importance of and outlines steps to reduce mercury emissions by national governments. The decision identifies mercury as a chemical of “global concern” due to its negative environmental and human health effects and requests specific measures be implemented to limit its use. It identifies the need for provisions to reduce mercury supply and demand, improve storage facilities, reduce trade in mercury, reduce emissions, remediate contaminated sites, increase awareness of mercury's effects and support capacity building, especially in developing countries. It also recommends conducting awareness raising of mercury-free alternatives and mercury reduction in ASGM communities.

Minamata Convention, 2013

The Minamata Convention on Mercury is an international agreement developed by the UNEP to regulate global mercury emissions and control mercury access. The convention was the result of three years of negotiations following the passing of decision 25/5 by the UNEP Governing Council in 2009, and seeks to meet the criteria outlined by that document. According to Article 1 of the Convention “The objective of this Convention is to protect the human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds.” The convention prohibits the export of mercury by the parties without government consent and assurances of proper use (Article 3). It also states that parties will take steps to reduce mercury use in ASGM through education, the promotion of alternative technologies and by providing technical and financial assistance (Article 7). The convention encourages the adoption of “best available techniques” in terms of mercury emissions, releases and disposal (Articles 8, 9 and 11). The convention also requires implementation plans from

all parties (Article 20), reporting on measures taken (Article 21) and ratification by member states (Article 30). In Annex C, the convention details the requirements expected of ASGM National Action Plans. These include:

- Seeking to eliminate: whole ore amalgamation, open burning of amalgam, burning in residential areas and cyanide leaching sediments and tailing where mercury has been added
- Formalizing the ASGM sector
- Developing strategies to manage the trade and prevent the diversion of mercury
- Involving stakeholders in the planning process
- Addressing the public health aspect of mercury exposure in communities and among miners
- Addressing the effects on vulnerable populations especially children and women of child-bearing age

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