

# OVERVIEW OF MINING LEGAL AND REGULATORY PROVISIONS WITHIN THE SUB-REGION AND THE GENDER GAPS

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# Introduction

- The principal legal and regulatory framework that govern mining within the West African sub region include;
- ECOWAS Directive for Harmonizing of Guiding Principles
- West African Monetary and Economic Union (WAEMU,)
- The West Africa Mineral Development Policy
- National mining laws, regulations and policies

# ECOWAS Directive for Harmonizing of Guiding Principles

Outlines eight (8) guiding principles for the mining sector, they include:

- **Mineral as State resources** (vesting of mineral resources in the State, acquiring mineral rights etc.)
- **Protection of the environment** (environmental protection obligations)
- **Protection of national interest** (Stability Agreements, Fiscal framework etc.)
- **Access to Information** (Duty to maintain records, transparency, good governance, public access to information etc.)
- **Human Rights obligations** and mining activities (Human Rights obligations, sustainable development and local community interests etc.)
- **Dispute resolution** (complaints procedure, settlement procedures etc.)
- **Institutional and Implementation Arrangements** (focus of Member States, The president of ECOWAS Commission etc.)
- **General and Final provisions** (general provisions, publication, difficulties of implementation etc.)

# Objectives of ECOWAS Directive

- Harmonize and coordinate policies and programmes relating to the exploitation of natural resources
- Ensure high standards of accountability for mining companies and government agencies.
- Promote human rights, transparency, and social equity and also provide protection for local communities and the environment in mining areas.
- Balance the need to provide incentives for investors and protecting the revenue base and country resources
- Improve transparency in mineral policy formulation and implementation processes in mining within the sub region.

# Mineral in its natural state

- Mineral in its natural state is vested in Member States to held and managed in trust for the People.
- Acquisition of land for mineral development shall be in accordance with existing law.
- Acquisition of land for mineral development shall be subject to the payment of adequate and prompt compensation.

# Computation of Compensation

- Loss or deprivation of the use of natural surface of the land;
- Inconveniences caused to the land owner/occupier
- the loss or damage to immovable properties and their appurtenances;
- Loss of revenue (Agricultural income, other reasonable loss)
- Be in accord with best international practices.

# Protection of the Environment

- Designate lands as “no go zones”
- To obtain necessary permits and approvals to protect forest, environment, natural resources and public health.
- Member States to enact legislation to provide complaint mechanisms and audits on environment.
- Comply with international best practices
- Mining activities are to contribute to the wider goal of sustainable development.

- Stakeholders to be given adequate notification and financial support for effective participation in EIA
- Not to contaminate rivers & water bodies
- Develop & implement reclamation, closure and post closure plans.
- Prevent & manage the spillage of cyanide, mercury etc.
- Set up a reclamation fund



# Stability Agreement

- Stability agreements to be based on negotiations:
- Reflect national interest
- Address issues of adverse effects of changes in
  - existing law
  - level of and payment of royalties, taxes and duties
- Ratification by Parliament.

# Fiscal Regime

- States to optimize and protect mining revenues by enacting appropriate legislation.
- Exemptions from payment of import & other duties subject to meeting social obligations to mining communities.
- Staff to pay taxes.
- Personal remittances shall not be tax free.
- Member States by law are to ensure effective distribution & transfer of mining incomes to local communities.

# Transferability of Capital

- Mining companies to be allowed to open a foreign account and retain a portion of foreign exchange to acquire spare parts & other inputs for mining provided the evidence exist to the effect that no such funds are readily available without the use of such account;
- The purchase of spare parts plant , equipment consumables machinery
- Debt servicing , payment of dividends
- Remittance in respect of quotas expatriate personnel.
- Transfer of capital in case of liquidation
- Companies should be guaranteed free transferability of convertible currency per annum at a rate agreed with member states and in accordance with the Foreign Exchange laws of the Member States.

# Localization Policy (Domestic Content)

- Companies shall submit detailed programmes for recruitment, technology transfer and training of local personnel.
- Provision of social corporate responsibility and alternative livelihood programmes to serve as a condition for grant of mining right.
- Give employment preference to citizen especially affected communities.

# Mining Documents and records- Access to Information

- Companies are required to maintain at an address documents and records.
- Permit authorized officers of Member States to inspect the records and make copies
- Furnish the relevant state institutions with annual reports on its operations.
- Member states shall pass laws that penalize companies who provide false, misleading incomplete or knowingly misrepresent information to the public or government

# Transparency/ Good Governance / Access to information

- Mining records, document & information are public documents and are to be made available to the public.
- No data on degradation on human health, environment or worker safety shall be confidential.
- Member States encouraged to pass freedom of information laws.
- Member States to measures to promote transparency of information on mining revenues and to foster the subscription to EITI.

# Human Rights Obligations

- Provides for mining companies, government and mining related business entities to respect and promote the recognized human rights( including the rights of women and children and workers)
- They must also respect rights of local (mining ) communities
- Member States must make adequate provision for the progressive realization of economic, social and cultural rights and the empowerment of women.
- Mining companies are to strictly comply with Member states laws on the prohibition, carrying and use of arms.

# Sustainable Development and local community Interest

- Conduct their activities that respect their right to development in which people are entitled to participate, contribute and enjoy social, cultural and political dev't in a sustainable manner.
- Respect the rights of local communities to own, occupy, develop, control, protect and use their lands, other natural resources and cultural and intellectual property.
- Companies are to:
  - Obtain the free, prior, and informed consent of local communities before exploration begins; at each subsequent phase and post-mining operations.
  - Maintain consultations and negotiations on important decisions affecting local communities throughout the mining cycle.



- Member states/companies ,CSO other stakeholders shall establish participatory framework including all actor to ensure collaboration and peaceful cohabitation during and post mine operations
- Member states are to cooperate with other stakeholders while taking decision on mining activities
- Set up Socio -Economic development Fund companies and other stake holder to contribute for dev't of post mine conversion activities in affected communities.

# The ECOWAS Mineral Development Policy

- The ECOWAS Mineral Development Policy (EMDP)
  - recognize the need for strategic shifts in the role of mining in the transformation of West Africa's economies.
  - aim at transforming the mining industry in ways that optimize the contribution of the sector to overall economic development;
  - seek to foster a coherent integration of mining sectors into local economies to optimize mining benefits to local communities and economies.
- ECOWAS Gazette of 2012 officially launched the EMDP developed as part of the implementation of the ECOWAS Directive on “Harmonization of Guiding principles and policies in the Mining Sector of 2009”

# EMDP

- **Vision:** to harness mineral resource capital to facilitate sustainable economic growth and integrated socio-economic development in the region
- **Mission/Main objective:** to promote the development of an efficient mineral sector in West Africa

## The vision

- (i) Complements the ECOWAS Vision
- (ii) Recognizes the AMV
- (iii) Recognizes and incorporates aspirations of the Yaoundé Declaration of on ASM (2002);
- (iv) Recognizes the Durban Declaration of 1997

# Ten (10) key objectives

- i. Improvement in geological and mineral information at regional and national level;
- ii. Optimization of the mineral value chain
- iii. Regulation and development of ASM
- iv. Harmonization of institutional, legislative and regulatory frameworks
- v. Enhancement of effective environmental protection and Strategic Environmental Assessment of mining activities
- vi. Continuous enhancement of human and technological capacity
- vii. Promotion of sustainable and integrated development of local communities, mainstreaming CSR in local development plans
- viii. Promotion and respect of human rights in all mineral development activity
- ix. Balance investor incentives with national development objectives
- x. Advocate for creation of regional markets and stock exchange with substantive local level participation

# LOCAL CONTENT AND VALUE ADDITION

- In line with EMDP, Member States commit to;
  - I. Promote the participation of national private sector and public-private partnerships in the Mineral Sector;
  - II. Facilitate access to funding for local participation in mineral projects in the Community;
  - III. Promote the pooling of local investment funds for access by local mineral operators.;
  - IV. Promote the development of national expertise and the participation of Community experts in the development of the mineral sector.
  - V. Promote the adoption of procurement policies by mineral operators that give preference to goods and services produced locally;
  - VI. Give preference to Community citizens who meet the skills requirements and professional standards in recruitment

# West African Monetary and Economic Union (WAEMU) (UEMOA)

- The first ever step towards having a sub-regional mining framework was in accordance with the treaty of 1994 establishing the West African Monetary and Economic Union (WAEMU)
- Under WAEMU the eight (8) French speaking West African states namely Bénin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo adopted a mining policy and consequently Common Mining Code (known as the WAEMU(UEMOA) Common Mining Code).

# (WAEMU) (UEMOA) Mining Policy

- UEMOA Common Mineral Policy was enacted 2000 which provides, among other things, for:
  - Promotion of the mining sector;
  - Harmonization of the regulatory frameworks;
  - Setting up of a sub-regional system for geological information;
  - Development of competitive local mining companies;
  - Local processing of mineral products;
  - Preservation of the environment.

# WAEMU (UEMOA ) Mining Code

- WAEMU Mining Code is govern all of the operations relating to exploration, exploitation and commercialization of mineral substances on all of the territory of the Union.
- Objectives of Mining Code:
  - ▣ Define the types of mineral mining titles in the Union;
  - ▣ Simplify the process through which mineral titles are granted;
  - ▣ Define a model mining convention;
  - ▣ Adopt a program for the protection of the environment; and
  - ▣ Define a tax system applicable to minerals.



# Key provisions of Mining Code

- Stability of the fiscal and customs regime during the period of validity of the mining titles;
- Free transfer of money necessary to the activities regulated by the Mining Code;
- Free transfer of net benefits to be distributed and of the monies used to finance project after the payment of taxes;
- Free circulation and commercialization of the products derived from the exploitation activities;
- Mining royalties to be set at the Community level in implementing regulation; and
- 10% carried interest in favor of host government.

# Gender Gaps

- Generally, gender is not given much or any attention/importance in the ECOWAS Directive, WAEMU Code, the EMDP, and National laws and regulations of countries in the sub-region .
- The ECOWAS Directive , WAEMU code and the EMDP, failed to recognize the important role of women in mining and the challenges women face in the sector. As such they failed to provide guidelines for Member States to promote the participation and the rights of women in the mining sector.

# The ECOWAS DIRECTIVE

- The ECOWAS Directive in its preamble is conscious that a certain community of interest require special consideration by mining companies, government and investors.
- Such group includes local people, artisanal miners, mine workers and people within the communities who are **marginalized** .
- Only two provision of the ECOWAS Directive mentioned women specifically.
  - i. *The obligation of states and companies to respect and promote recognized human rights including the rights of women, children and workers.*
  - ii. *The requirement that Member States make adequate provision for the progressive realization of economic, social and cultural rights and the empowerment of women.*

# Gender Gaps

## ECOWAS Directive

- The ECOWAS Directive requires companies to submit detailed programmes for recruitment, technology transfer and training of local personnel and also to give employment preference to citizen especially affected communities.
- The ECOWAS Directive did not take into consideration the fact that in the sub- region the participation of women in the mining sector is very low and to state that the recruitments and trainings take into account the need for the inclusion of more women.
- A study by PricewaterhouseCoopers indicates that women make up just ten percent of the global mining workforce and five percent of board positions in the top 500 globally-listed mining companies (Cook, 2013).

# Gender Gaps

## ECOWAS Directive

- The ECOWAS Directive that stakeholders should be given adequate notification and financial support for effective participation in EIA and also companies should not contaminate rivers and water bodies.
- The directive neglect to acknowledge that when mining damage the environment, it undermines and impact the ability of women to provide food and clean water for their families and as such women be supported more to participate in the EIA process and also the data on EIA be disaggregated by sex.

# Gender Gaps

## ECOWAS Directive

- The provisions relating to the payment of compensation in the ECOWAS Directive failed to recognize the peculiar disadvantage that women face in dominant male environment and to make provisions that will protect women right to the payment of compensation for property destroyed.
- It is common knowledge that Women are not consulted when companies negotiate access to land, compensation or other benefits and compensation is often paid to men on behalf of their families, denying women access to these resources. Also resettlement of communities does not take into consideration gender issues e.g access to water , fire wood etc at new site.

# Gender Gaps

## ECOWAS Directive

- The Directive also require Member States to by law ensure effective distribution and transfer of mining incomes to local communities. But it failed to direct Member States to ensure that such distribution of and transfer of mining incomes to local communities take gender into consideration

# Gender Gaps

## ECOWAS Directive

- The Directive requires that companies obtain the free, prior, and informed consent of local communities and maintain consultations and negotiations on important decisions affecting local communities throughout the mining cycle.
- The Directive however, fall short of emphasizing the need to obtain the consent of women separately, and maintain consultation with women on issues affecting them throughout the mining cycle.



# Gender Gaps

## EMDP

- Article 1.5 of the EMDP identify challenges facing mineral development in the West African region. This list, in essence, is the roadmap of issues to be addressed by subsequent regional/national mining codes.
- This list neglects to identify the differential impacts of mining on gender as a challenge which has to be addressed by the regional and national mining codes/laws

# Gender Gaps

## EMDP

- Article 2.4 of the EMDP makes it key , building Institutional, Human, Technical and Financial capacities of citizens of Member States
- Just like the directive EMDP also fails to recognized the disproportionate balance in the capacities of men and women in the sub region to participate in the mining sector and does neglect to provide for the need for the building of the technical and financial capacity of more women to participate in the sector.
- For example , in the large-scale mining sector in Ghana female presence in the technical sector is less than 5% (Ofori-Sarpong, 2014).

# Gender Gaps

## EMDP

- Unlike the ECOWAS Directive where gender was mentioned in human rights provision , the EMDP provides only the most general of statements concerning human rights obligations.

Article 2.6.2(a) provides that Member States “will endeavor to incorporate compliance with Human Rights and local communities’ rights, as well as Corporate Social Responsibility (CSR) in all the stages of mining operations.” Elsewhere,

Article 1.3 states that the Policy is intended to “promote respect for human rights in all mineral development activities.”

- The policy failed to specifically identify and incorporate key human rights protections that are impacted by mining operations such as gender equality.

# Gender Gaps

## EMDP

- Article 2.6.2(c) encourages Member States to “promote adequate relief measures” for local communities that are displaced or otherwise affected by mining activities but fails to recognize and provide to address the disproportionate impacts mining related displacements on women

# Gender Gaps

## EMDP

- Article 2.8 provides for Member States to undertake to promote the development of Artisanal and Small-scale Mining in the sub region.
- But in outlining what Member States are to do to develop Artisanal and Small Scale mining sector, the policy neglect to include a provision on the need to encourage and develop and increase women participation in the ASM.
- A study of the artisanal and small scale gold and diamond mining industries in Ghana showed that women are actively involved constituting about 15% of the legalized small-scale miners, 6% of licensed buyers, 10% of concession holders and 15 - 20% of sponsors of work groups are women. (Hilson, 2001).

# Gender Gaps

## WAEMU

- No single provision on gender
- Like the other above it also failed to address the gender needs among its members countries mining sector.

# Gender Gaps

## National Laws /Regulations

- All the national laws in the sub region failed to take gender into consideration
- The Minerals and Mining Act 2006 (Act 703) of Ghana and all the Regulations enacted for implementation Act 703 are gender neutral and did take the issue of gender into consideration. There is no mention of the word gender or woman in Act 703.
- The minerals and mining Act 2007 of Nigeria also has no mention of the word gender or woman

# National Laws

There is unequal representation of women and men on decision making bodies governing mining

- The minerals Commission of Ghana is composed of a Chairman; the Chief Executive of the Commission; and seven other persons at least two of whom shall be women.
- Board of EPA of Ghana has one woman specifically mentioned to be appointed as a member out of thirteen.
- Mineral Advisory Board of Sierra Leone has one woman specifically mentioned under the Mines and Minerals Act of 2009 out of fifteen.
- There is no requirement that gender considerations should inform the appointments to regional and district offices in Ghana
- Under Act 2007 of Nigeria appointments to the Mining Cadastre Office, central, zonal Cadastre offices, the inspectorate department and mines environmental compliance department do require gender considerations.



- The EPA Act and the Environmental Assessment Regulations of Ghana, suffers from the same gender deficiency. Same as Nigeria and Sierra Leone .
- Also there is no requirement for gender disaggregated information and data on activities and the disaggregation of the potential impacts and the information on the possible health effects of a mining projects under the EIA provisions of Ghana, Nigeria and Sierra Leone .

# Gender Gaps

## Mining Policy Ghana

- The Ghana National Mining Policy(2014) has two provisions on gender as in its ‘guiding principles.’ The provision reads:
- *“13. Respect for employee, gender and human rights in mining, and the removal of obstacles to participation in the mining sector on the basis of gender, marital status or disability.”*
- *“14 encouraging a more pro-active role for women in decisions relating to minerals and mining at the national, local and firm level”*
- On the face they look like provisions that enhances women’s role in the mining industry, and creates a platform that can be built on by other legislations , but the provisions still suffers from broadness and vagueness and some level of generality. For example to what extent will women be involved in these decision making processes? Which decisions are these?



**□ THANK YOU**