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# The Role of Indigenous Institutions in Small-Scale Mining Regulation in Ghana

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**A B S T R A C T**

*Mining has been ongoing in Ghana for hundreds of years now, and it has undergone different regulatory regimes. Mining regulation encompasses the ownership of minerals, the granting of mineral rights, supervision and monitoring of the operations of mineral rights holders, sanctioning of mineral rights holders for breach of laws and regulations, supervision of decommissioning and post-closure, among others. At present, mining is regulated by the State through regulatory agencies at different levels. The current statutory regime for the regulation of mining has excluded to a very large extent, the important roles of traditional institutions. That is what accounts for most of the problems in the mining sector. These problems in our mining sector at present are many, including; but not limited to, conflicts between mining communities and mining companies over land use, displacement and resettlement of mining communities, conflicts relating to the impact of mining activities on the socio-economic and cultural lives of mining communities, environmental problems arising from mining activities such as the destruction of vegetative cover, pollution of water bodies, destruction of farms and homes, increase in crimes and other social vices in mining communities, among many others. The recognition and incorporation of the important roles of indigenous institutions into our current mining regulatory regime is the solution to the several problems that have bedevilled our mining sector, especially in the small-scale mining industry. This paper argues that an increased involvement of indigenous institutions in Ghana's current mining regulatory regime is one of the significant interventions that are needed in solving the problems in the mining sector.*

KEYWORDS: Mining regulation, regulatory agencies, traditional institutions, indigenous institutions, problems in the mining sector.

## 1. Introduction

Our current legal framework for the regulation of mining dissects the mining industry into three-tier parts: large-scale mining, small-scale mining, and mining of industrial minerals [1]. Both small-scale mining and mining of industrial minerals are exclusively reserved for Ghanaians (citizens of Ghana) [2]. At present, the regulation of the mining sector in all three phases is in the hands of the State, and is carried out through various State agencies at different levels. In effect, the current regime of mining regulation has excluded to a greater extent, the key roles of indigenous institutions in all the three dimensions of mining, which is what accounts for many of the problems in the mining sector, especially conflicts between mining companies and mining communities. In pre-colonial times, mining was exclusively regulated by traditional authorities (rulers) and institutions, who granted mining rights and supervised the operations of the people involved in mining within their jurisdictional areas. During the colonial period, mining was still regulated by traditional authorities and institutions; but from the 1900s onwards, the colonizers enacted laws which proscribed the granting of concessions by the traditional authorities [4]. This was the regulatory set-up of the mining sector until the 1958s (post-independence) when the State through various laws, vested the ownership, management and regulation of minerals and mining in the President on behalf of and in trust for the people of Ghana [5]. That has remained the regulatory regime till now [6]. Within the period of the State's takeover of mineral resources and the regulation of the mining industry, the exploitation of Ghana's mineral resources has suffered abuse, misuse, overexploitation, ineffective regulation, and a depletion of minerals reserves at a faster pace. The overuse, misuse, and abuse of commonly owned resources is generally referred to as the tragedy of the commons. Our mining sector is currently wallowing in this tragedy [7]. The solution to this tragedy is to recognise and incorporate the important roles of indigenous institutions into Ghana's current mining regulatory regime. Indigenous institutions have the potential to offset the misuse and abuse of our mining industry, and to also deal with many other problems in the mining sector. The first section of this paper explores the current regulatory regime of Ghana's mining sector, the conflicts that exist between mining companies and local communities, and why traditional rulers should board the flight of the current regulatory regime of the mining sector. The second part of this paper advocates for an increased involvement of traditional rulers in Ghana's mining regulatory regime and the different roles these traditional rulers have the potential to play. The third part of the paper advances the need to build up or strengthen indigenous institutions to effectively participate in the mining regulatory processes. The last part of the paper is a summary and a conclusion.

## 2. Existing Issues: The Current Regulatory Framework of the Mining Sector in Ghana

The current architecture for the regulation of the mining sector in Ghana encompasses different stakeholders and statutory agencies. This section of the paper highlights the current lack of involvement of traditional institutions in various stages of mining regulation in Ghana, from entry and approval processes for the grant of a mineral right to supervision, monitoring, and sanctioning of mineral rights holders for non-compliance with relevant laws, regulations and the conditions in their mineral rights. But that can only be done after an assessment of the current regulatory regime of the mining sector, which would then pave the way for the highlighting of the poignant lack of involvement of traditional institutions in our mining regulation regime.

The first thing to note as regards the regulation of our mining sector is the vesting of all minerals in their natural state, throughout Ghana, in the President of Ghana, on behalf of and in trust, for the people of Ghana. Article 257(6) of the 1992 Constitution of Ghana and section 1 of the Minerals and Mining Act 2006 (Act 703), (hereinafter referred to as Act 703, throughout this paper), provides that every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone, any area covered by the territorial sea and the continental shelf is the property of the Republic of Ghana and is vested in the President, on behalf of and in trust, for the people of Ghana. The effect of these provisions is that the ownership, regulation, and control of all minerals in their natural state throughout Ghana, whether in or upon lands or water bodies, is vested in the State [the President], and the heretofore ownership and regulation of minerals and mining, respectively, by traditional rulers [before the 1958s] has now been taken over by the State. Thus, there is no private ownership of all minerals in their natural state in Ghana. Again, the ownership of land and water bodies in Ghana does not automatically mean ownership of the minerals in their natural state, because the mineral resources in their natural state belong to the Republic. In simple terms, all minerals in their natural state in or upon lands and water bodies in Ghana are the property of the State. To this end, the State has assumed the full ownership, management, control, and regulation of mineral resources in Ghana. This is not actually a novel provision in our current dispensation; it has been there since the 1958s, but I do not intend to delve into its history.

The ownership and regulation of mining further encompasses the power to do the following: (i) grant mineral rights, (ii) supervise and monitor the operations of mineral right holders, (iii) sanction mineral right holders for breach of laws and regulations, (iv) supervise the decommissioning and post-closure of mines, (v) enforce environmental laws relating to mining, (vi) spearhead the resettlement of displaced persons in mining communities, (vii) ensure compliance with all necessary standards relating to mining, among others. What this means is that before any person can lawfully carry out any activities relating to the exploration and exploitation of mineral resources, there is the need to obtain the requisite mineral rights and permits from the respective authorities.[8] The State performs its regulatory roles through various State institutions and agencies. At present, in Ghana, the relevant stakeholders and statutory bodies in the mining regulation regime are the following: the President of Ghana, the Minister of Mines, the Ministry of Lands and Natural Resources, the Minerals Commission, the Parliament, the Environmental Protection Agency, the Water Resources Commission, the Lands Commission, the Forestry Commission, and the Geological Survey Department. Their diverse roles in the regulation, supervision, monitoring, and control of the regulatory regime of mining are discussed seriatim. In respect of the collection of the royalties and revenues accruing from the mining sector, the Ghana Revenue Authority is the one charged with the right to collect such royalties and revenues, and to disburse them in accordance with the various statutory prescriptions.

### *2.1. The President*

To begin with, the President is the one in whom all minerals in their natural state throughout Ghana are vested, and he holds them in trust for the people of Ghana, as provided in Article 257(6) of the Constitution, and section 1 of Act 703. The President therefore stands in a trust relationship with Ghanaians in respect of minerals, and all mineral rights are granted on behalf of the President. What this means is that, his consent or assent is a necessary condition for the grant of a mineral right, and this consent or assent is given on behalf of the President by the Minister of Mines [9]. Impliedly, the President is deemed to have approved such grants of mineral rights through the Minister, because the Minister acts in the name of, and on behalf of the President who appointed him (as Minister). To this end, the President may reject an application for the grant of mineral righst, which he can do through the Minister [10]. In **Adjaye & Others v The Attorney-General** [11], the Court held that this trust relationship is one ("in the higher sense") in the nature of a governmental obligation, and would not be able to be enforced by the Courts. But the point here is, that the grant of mineral rights is done on behalf of the President because he holds all these minerals in trust, and impliedly, he may approve or reject an application for the grant of a mineral right (to be done through the Minister) [12]. Thus, the President bears the ultimate role in the regulation of the mining sector.

Closely related to this role of the President is that he has the power to acquire land or authorise the occupation of land for use in the development and utilisation of a mineral which is the subject of a grant of a mineral right, as provided for in section 2 of the Act. This helps to provide efficiency and effectiveness in the conduct of mining operations as authorised in a mineral right.

The President further exercises indirect power in the regulation of the mining sector through his power of appointment of relevant officers of the relevant statutory regulatory bodies. For example, the President appoints the Minister of Lands and Natural resources [13], the officers of the Minerals Commission [14], those of the Lands Commission [15], the Environmental Protection Agency [16], the Water Resources Commission [17], the Forestry Commission [18], and the Commissioners of the GRA [19]. These statutory regulatory bodies are tasked with the regulation of the mining sector in different cadres, and by wielding the power of appointment of the officers of these bodies, the President indirectly determines which persons make up these bodies for the purposes of performing their functions of regulating the mining sector.

### *2.2 Parliament*

Parliament reserves the power to approve every mineral right before it can be effective, unless any particular mineral right is excluded by Parliament from the requirement of its approval [20]. Article 268(1) of the Constitution provides that any transaction, contract or undertaking involving the grant of a right or concession by or on behalf of any person including the Government of Ghana, to any other person or body of persons for the exploitation of any mineral, water or other natural resource of Ghana is subject to ratification by Parliament. Both the Constitution and Act 703 give power to Parliament to exclude certain mineral rights from the requirement of parliamentary approval. Under Article 268(2) of the Constitution, Parliament may, by resolution supported by the votes of not less than two-thirds of all the members of Parliament, exclude any particular class of transactions, contracts or undertakings from the requirement of parliamentary approval [21]. Also, stability agreements and development agreements entered into with the government in relation to a mineral right are subject to ratification by Parliament [22]. The point here is that Parliament exercises regulatory functions in the mining sector by approving mineral rights. It is thus within the power of Parliament to grant or refuse to grant a mineral right. However, Parliament considers the recommendations of the Minister of Lands and Natural Resources and that of the Minerals Commission in deciding whether or not to grant a mineral right [23].

### *2.3. The Minister of Lands and Natural Resources*

The Minister of Lands and Natural Resources ("the Minister") plays indispensable roles in the regulation of the mining sector, which include the following: First of all, it is the role of the Minister to negotiate and grant a mineral right upon receiving recommendations from the Minerals Commission in respect of the specified mineral right [24]. Here, the Minister receives a recommendation from the Commission on an application for the grant of a mineral right, and he then negotiates, approves and grants that mineral right, subject to Parliamentary approval [25]. If it is ratified by Parliament, the Minister can then go ahead and grant that mineral right clearly specifying the particular mineral which is the subject of the grant and the specified land in respect of that mineral to the applicant in accordance with section 13 of Act 703. Section 13(9) of the Act states clearly that a grant of a mineral right by the Minister is sufficient authority for the holder of the right to go to the land and conduct operations, as specified in that particular mineral right granted, and section 9 of Act 703 of the Act forbids conducting mining activities without a license or lease duly granted by the Minister, and it is irrelevant whether or not the person is the owner of the land wherein those minerals are found. From that, it is clear that the Minister is at the centre of the issues and the problems that we have in the mining sector. He may be described as the head or custodian of the regulatory regime of the mining sector. A mineral right granted by the Minister is sufficient authority for the holder over the land and entitles the holder to enter the land in respect of which the right is granted [26].

Apart from granting mineral rights, there are some vital incidental roles the Minister plays. Closely related to the role of the Minister in granting mineral rights is that an amendment of a mineral right to include other minerals not previously stated in that mineral right, is mandated to be approved by the Minister [27]. Here, the holder of an existing mineral right may apply to the Minister to amend same to include subsequent minerals discovered in the course of the operations, and it is the role of the Minister to consider such application and accordingly amend the existing mineral right to include the new minerals discovered, and without such approval, it is forbidden to conduct mining operations in respect of that other minerals later discovered in the course of the operations [28]. In this regard also, a transfer, an assignment, or a mortgage of a mineral right must be approved by the Minister before it becomes valid, as provided for in section 14 of Act 703. Renewals and mergers of mineral rights must also be approved by the Minister as provided in sections 44 & 47 of Act 703, respectively. It is the role of the Minister to grant a certificate of surrender to a holder of a mineral right where the holder of the mineral right applies to surrender his right as provided in section 67 of Act 703. All these rules exist to ensure that the Minister is abreast of all mineral operations in the country.

Again, it is within the power of the Minister, as part of the requirements for granting a mining lease, to enter into a stability agreement with the holder of the mining lease as required by section 48(1) of Act 703. This is done to ensure that for a period not exceeding fifteen years from the agreement date, the holder will not be adversely affected by new mining laws or changes that affect the scope of the right granted [29].

In respect of licenses for carrying out small-scale mining operations, they are required to be granted licenses by the Minister or persons authorised by the Minister, before mining operations can be conducted [30].

Aside from granting the mineral right, where there is an application for an extension of time of a mineral right, it is the role of the Minister to consider the application and approve the application if he is satisfied that the applicant has complied with the obligations imposed on him by the Act [31]. For example, under sections 33 and 35 of Act 703, the Minister may extend the term of a reconnaissance licence and a prospecting licence respectively. The Minister may suspend, revoke or cancel a mineral right as provided in section 5(1) of Act 703, on several grounds such as non-payment of due debts, insolvency, bankruptcy, misrepresentation, among others, as provided in section 68 of Act 703.

### *2.4. The Minerals Commission*

The Minerals Commission ("the Commission") is the apex regulatory body, and it is generally responsible for the regulation and management of the utilisation of minerals resources, formulating national policies on the exploration and exploitation of minerals, as well as advising the Minister on matters relating to minerals including monitoring other bodies with functions in relation to mineral operations [32]. The Commission plays very key roles in the mining sector regulation, including its roles relating to the granting of mineral rights and the supervision of the operations of mineral rights holders.

Section 1 of the Minerals Commission Act, 1993 ("Act 450") establishes the Minerals Commission. It is a body corporate with perpetual succession and capacity to acquire or dispose movable or immovable property, and enter into contracts and transactions, and it may sue or be sued in its corporate name [33]. Section 2 of Act 450 provides that the Commission is responsible for the regulation and management of the utilisation of mineral resources, and for the coordination of any policy in relation to them. To this end, the Commission is tasked with the responsibility to formulate recommendations of national policy for the exploration and exploitation of mineral resources, monitor the implementation of laid down government policies on minerals, monitor the operations of all bodies and establishments with responsibility for minerals, among others. The Commission also performs important roles in the granting of mineral rights.

Firstly, it is the role of the Minerals Commission to receive and process all applications for the grant of any type of mineral right [34]. This is the starting point of the procedure for the grant of a mineral right where the roles of the Commission are very vital. After receiving the applications, the Commission examines the status and qualifications of the applicant in respect of the financial and technical capabilities of the applicant, including the programme for carrying out the operations, and the employment and training of Ghanaians in the mining industry [35].

Secondly, it is the role of the Commission to check to ensure that an applicant possesses the necessary qualifications for a grant of the specified type of mineral right (in addition to all other environmental considerations that the Commission may consider), and the Commission then makes a recommendation to the Minister of natural resources for the grant of the specified mineral right if the Commission is satisfied that the applicant possesses the requisite qualifications [36]. Here again, the Commission may make a recommendation to the Minister to negotiate and grant a mineral right, or to reject an application for the grant of a mineral right where the applicant does not possess the requisite capabilities to operate that mineral right [37].

For example, under section 31 of Act 703, an application for the grant of a reconnaissance license is mandated to be submitted to the Commission. Thereafter the Commission examines the status and qualifications of the applicant as explained above in accordance with section 11, and then makes a recommendation to the Minister for the grant of that reconnaissance license if the Commission is satisfied that the applicant possesses all the statutory required capabilities. Similarly, under section 34, an application for the grant of a prospecting licence is required to be submitted to the Commission. Here, the role of the Commission is to examine the application in respect of the status and qualifications of the applicant, and then to make recommendations to the Minister for the grant of the prospecting license if the Commission is satisfied that the applicant possesses all the qualifications. With regards to applications for the grant of mining leases, the Act requires that all such applications be submitted to the Minerals Commission under section 39 of Act 703. The role of the Commission here is as well to examine the application and the applicant to ensure that the applicant possesses the necessary qualifications, and then to make recommendations to the Minister for the grant of that mining lease. The Commission performs a similar role for applications for small-scale mining licenses as provided in section 82 of Act 703. As to whether or not the Minister and Parliament should approve the recommendations of the Commission in respect of the granting of mineral rights is beyond the power of the Commission. The Commission plays its role by receiving the applications and making recommendations to the Minister.

One of the important roles that the Commission performs in granting a mining lease is to check out the programme for the inclusion of Ghanaians by way of employment and training of Ghanaians in the mining industry. Under section 50 of Act 703, it is a necessary condition for the grant of a mining lease. The Commission must be satisfied with the programme and make recommendations to the Minister before a mining lease would be granted. It can also make recommendations to the Minister to revoke, suspend or renew a mineral right as provided for by section 5(1) of Act 703. It can be seen from all these roles of the Commission in granting a mineral right that it remains an important indispensable statutory intermediary body when it comes to the grant of mineral rights. It should be noted that the detailed procedures for the application for mineral rights [licenses and leases] and the functions or roles of the Commission relating thereto, are provided in the Minerals and Mining (Licensing) Regulations, 2012 ("L.I. 2176").

### *2.5. The Ministry of Lands and Natural Resources*

The Ministry of Lands and Natural Resources is established in accordance with Section 11 of the Civil Service Law, 1993 (PNDCL 325). It is mandated to ensure the sustainable management and utilisation of the nation's lands, forests and wildlife resources as well as the efficient management of the mineral resources for socio-economic growth and development [38], and is therefore a regulatory agency in the mining sector. It is to ensure the efficient management of the nation's mineral resources and promote their judicious exploration, exploitation and processing with minimal harm to the environment, for optimum benefit to society. The Ministry performs its functions in accordance with the policy objectives of the Ghana Shared Growth and Development Agenda (GSGDA). These policy objectives are to promote sustainable extraction and use of mineral resources, ensure the restoration of degraded natural resources, build an institutional framework for sustainable extraction and management of natural resources, reduce the loss of biodiversity, reverse forest and land degradation, encourage appropriate land use and management, enhance community participation in environmental and natural resources management by creating awareness, enhance community participation in governance and decision-making, among others [39].

### *2.6. The Water Resources Commission*

The important role of the Water Resources Commission, as far as mining regulation is concerned, is that it is the body responsible for granting water rights, and for monitoring and supervising the management and utilisation of our water resources, including our water bodies [40]. Act 703 mandates a holder of a mineral right to obtain the required mineral right before carrying out mining operations [41]. Thus, as far as mining activities interact with our water resources in any way, it is the Water Resources Commission that is responsible for regulating and monitoring those mining activities [42]. The Water Resources Commission is also vested with the power to grant water rights [43]. Section 1 of the Water Resource Commission Act, 1996 ("Act

522") establishes the Water Resource Commission. It is a body corporate with perpetual succession and capacity to acquire or dispose movable or immovable property, and enter into contracts and transactions, and it may sue or be sued in its corporate name.

Section 2 of Act 522 provides that the Commission is responsible for the regulation and management of the utilisation of water resources, and for the coordination of any policy in relation to them. As part of performing its functions, the Commission is mandated to; (a) propose comprehensive plans for the utilisation, conservation, development and improvement of water resources, (b) initiate, control and coordinate activities connected with the development and utilisation of water resources, (c) grant water rights, (d) collect, collate, store and disseminate data or information on water resources in Ghana, (e) require water user agencies to undertake scientific investigations, experiments or research into water resources in Ghana, (f) monitor and evaluate programmes for the operation and maintenance of water resources, (g) advise the Government on any matter likely to have an adverse effect on the water resources of Ghana and (h) advise pollution control agencies in Ghana on matters concerning the management and control of pollution of water resources.

The Water Resource Commission is the body in which power is vested to grant water rights. Under section 16 of Act 522, an application for the grant of a water right is to be made to the Commission. The Commission is mandated to make the necessary investigations and consultations with the inhabitants of the area of the water resources concerned [44]. Where the Board of the Commission is satisfied that the water right be granted, it may so grant the water right, subject to ratification by Parliament [45]. Thus, Parliament must ratify a water right before it would be granted by the Board of the Commission. The Commission further has a right to vary or suspend a water right [46]. Section 19 of the Act provides that where it appears in the opinion of the Commission that the water resource in the area where a grant is made, is insufficient or likely to be insufficient as a result of the grant, the Commission may suspend or vary the right. Again, the Commission has power under section 20 of the Act to terminate or limit a water right for public purposes. Thus, as far as mining activities utilise water resources and as far as mining activities affect our water resources in any way, it is the Water Resources Commission that is mandated to monitor and supervise those activities, and ensure the efficient utilisation and management of our water resources [47].

### *2.7. The Lands Commission*

The Lands Commission is established by Article 258 of the 1992 Constitution and the Lands Commission Act, 2008 (Act 767) as a corporate body with perpetual succession, a common seal and may sue and be sued in its corporate name [48]. The objectives of the Commission are to (a) promote the judicious use of land by the society and ensure that land use is in accordance with sustainable management principles and the maintenance of a sound ecosystem, and (b) ensure that land development is effected in conformity with the nation's development goals [49]. The Lands Commission is tasked to; (a) on behalf of the government, manage public lands and any lands vested in the President by the Constitution or by any other law or any lands vested in the Commission, (b) advise the government, local authorities and traditional authorities on the policy framework for the development of particular areas of Ghana to ensure that the development of individual pieces of land is coordinated with the relevant development plan for the area concerned, (c) formulate and submit to the government recommendations on national policy with respect to land use and capability and (d) advise on, and assist in the execution of, a comprehensive programme for the registration of title to land throughout Ghana [50]. Its other functions include; ensuring sound and sustainable use of land, settling land boundaries disputes, promoting community participation and public awareness at all levels on sustainable land use and management, providing surveys and valuation services, among many others [51].

The previous four (4) agencies; the old Lands Commission, Land Valuation Board, Land Title Registry and Survey Department have been integrated into one Corporate Agency, the Lands Commission, and it now comprises four divisions; namely, The Survey and Mapping Division, The Public and Vested Lands Management Division, Land Valuation Division and the Land Registration Division [52].

The point here is that, as far as mining is concerned, the Lands Commission is tasked with the responsibility of ensuring the sound and sustainable use of our lands, and mining activities, to the extent that they affect lands, are regulated by the Lands Commission. The second point is that the Lands Commission performs survey and mapping functions, and as far as mining is concerned, the Lands Commission comes on board with regards to the delimitation and mapping out of blocks for mineral resource exploration and exploitation [53].

### *2.8. The Environmental Protection Agency*

The Environmental Protection Agency [EPA] is established by the EPA Act, 1994 ("Act 490") [54]. It is a body corporate with perpetual succession and capacity to acquire or dispose movable or immovable property, and enter into contracts and transactions, and it may sue or be sued in its corporate name. Its functions in the protection of the environment are broad, some of which include the following [55]. It is; (a) to secure in collaboration with relevant persons the control and prevention of discharge of waste into the environment and the protection and improvement of the quality of the environment, (b) to issue environmental permits and pollution abatement notices for controlling the volume, types, constituents and effects of waste discharges, emissions, deposits or other source of pollutants and of substances which are hazardous or potentially dangerous to the quality of the environment or any segment of the environment, (c) to issue notice in the form of directives, procedures or warnings to such bodies as it may determine for the purpose of controlling the volume, intensity and quality of noise in the environment, (d) to prescribe standards and guidelines relating to the pollution of air, water, land and other forms of environmental pollution including the discharge of wastes and the control of toxic substances, (e) to conduct investigations into environmental issues and advise the Minister on them and (f) to promote studies, research, surveys and analysis for the improvement and protection of the environment and the maintenance of sound ecological systems in Ghana, among others [56].

One of the important functions of the EPA is that it reserves the power to issue environmental permits for any proposed activity that may affect the environment [57]. Before that proposed activity is implemented, the Environmental Impact Assessment Regulations, 1999 ("L.I 1652") mandates the person to obtain an environmental permit from the EPA [58]. One of such activities is mining [59]. Before any person can lawfully undertake mining, the regulations mandate the person to carry out an environmental impact assessment and submit an environmental impact statement to the EPA for consideration, as part of the process of application for an environmental permit[60]. No mining can take place without an environmental permit issued to the mineral right holder [61]. The environmental impact assessment is meant to assess the likely impact of the proposed activity on the environment, and mitigating measures that may be adopted [62]. In effect, the assessment is meant to ensure that the likely impact of the proposed activity is mitigated and harm that can be avoided is accordingly avoided [63]. The EPA is the agency responsible for processing environmental impact statements to determine whether or not to issue an environmental permit [64]. If the EPA is satisfied with all the necessary measures contained in the environmental impact statement, then it may issue an environmental permit [65]. Apart from issuing an environmental permit, the EPA is further mandated to ensure compliance with the terms and conditions and the mitigating measures contained in the permit [66]. Thus, the EPA must monitor and ensure that the person to whom the permit is issued complies with the stipulations in the permit [67]. As stated, mining is one of the activities for which an environmental permit is necessary to obtain before operations can take place. The EPA is thus tasked to ensure that mineral right holders comply with the stipulations in the permit to protect the environment and mitigate the likely consequences of their operations [68]. This is one of the crucial roles of the EPA in mining regulation.

### *2.9. The Forestry Commission*

The Forestry Commission is established by the Forestry Commission Act, 1999 ("Act 571"). It is a body corporate with perpetual succession and capacity to acquire or dispose movable or immovable property, enter into contracts and transactions, and it may sue or be sued in its corporate name[69]. As far as the protection of our forests and wildlife is concerned, it is the Forestry Commission that is charged with that responsibility [70]. The holder of a mineral right is mandated to obtain the requisite permits from the Commission before any mining operations or activities can take place [71]. Thus, as far as mining activities affect our forests and vegetative cover, it is the Forestry Commission that is mandated to ensure that those activities are regulated in order to protect our forests and wildlife in accordance with the conditions of the permits it issues [72]. This is one of the roles of the Forestry Commission as far as mining regulation is concerned.

The case of ***Centre for Public Law Interest & Centre for Environmental Law v. The Environmental Protection Agency, the Minerals Commission & Bonte Gold Mines*** [73] details the regulatory functions of the EPA and the Minerals Commission in respect of mining. In this case, the plaintiffs sued the defendants to compel them to perform their statutory duties in respect of damage to the environment resulting from the mining activities of the 3rd defendant (Bonte Gold Mines). The facts were that Bonte Gold Mines conducted mining activities along the Bonte River at Bonteso in the Ashanti Region, before it went into liquidation. The result of the mining activities were ponds and large tracts of lands left open, including other forms of environmental degradation. It was admitted that due to the failure of the company to reclaim the lands after the mining activities, the works caused land degradation, public health and safety risks, and an increase in mosquito transmitted illnesses due to the prevalence of ponds in the area. It was further found that the company paid only $38,000 out of the $2 million that it was obligated to pay for reclamation, and some of its cheques for compensation to farmers were found worthless. Pictures that were taken on-site confirmed the reports of extensive degradation. What used to be farmlands were no longer useable as such. There were uncovered ponds posing dangers to children. River channels were blocked by sediment and a lot of local business activities dependent on the company had ground to a halt. The company had cleared vegetation, and stockpiled large quantities of sand gravel and stones resulting in the creation of ponds which had become breedings ground for mosquitoes and water-borne diseases. Farming land had been leached of all nutrients rendering them unsuitable for farming. The activities had had negative impact on the Esease and Jeni rivers from which the company drew its water for operations.

The company went into liquidation and the directors disappeared from the country. The plaintiffs therefore sued the defendants for a mandatory injunction to compel the company to remedy the environmental degradation it caused through its mining activities, and for a mandatory injunction to compel the EPA and the Minerals Commission to take appropriate administrative actions against the company to remedy the environmental degradation, and for the rehabilitation of the environment. The EPA accepted its statutory responsibility to ensure the protection of the environment, and to ensure that the company complies with the environmental rules and regulations, as well as monitoring the environmental compliance of the activities of the company. However, the Minerals Commission denied liability for ensuring the environmental compliance of the company, in effect arguing that it was not responsible for the co-ordination of environmental policies in respect of mineral resources. It argued that those were functions of the EPA. The Commission argued that all it does is to grant licenses and leases on the basis of environmental permits granted by the EPA, and in its opinion, the obligation to ensure compliance with the conditions of the permit is the responsibility of the EPA.

The Court relied on provisions of the EPA Act as well as the Environment Impact Assessment Regulations, and held that the EPA is the agency empowered to ensure compliance with strict statutory environmental protective measures before the commencement of any project, including mining activities, and it has the power to regulate that activity while it is being carried out by the imposition of punitive measures which included the imprisonment of any person or officers of a company found liable. The Court further held that the posting of a reclamation bond was to secure a deposit which can be used to repair any damage caused upon termination of the company's activities. In failing to prevent and/or control the operations of the company till it had paid the full amount needed to compensate persons likely to be affected, the EPA abysmally failed the nation, failed the residents, and reneged on its statutory responsibilities.

For the Commission, the Court held, relying on provisions of the Minerals Commission Act, that it is true that its functions and obligations overlap with those of various bodies including the EPA and other officials of the Ministry of Mines under the Minerals and Mining Act (Act 703). However, the Court

held that the Commission sits on various committees with the EPA to look at environmental impact statements, and it is the Commission which makes recommendations to the Minister for the granting of mining certificates. The Court held that it is ridiculous of the Commission to maintain that it merely issues permits on the recommendations of the EPA with no further obligations, and that inherent in the duty of licensing is that there are continuing conditions and obligations to be met which require continuing monitoring. The ultimate sanction where conditions are not met is the withdrawal or refusal of a mining licence.

On the whole, the Court held that the company was in breach of its statutory obligations to minimise the degradation of the environment, and also that the company was in breach of its statutory obligation to rehabilitate the affected areas upon causing its degradation during and upon termination of its operations and/or activities at Bonteso in Ghana. For the EPA and the Minerals Commission, the Court held that they are under a mandatory statutory obligation to monitor and control the activities of the company to ensure that, its mineral operations and/or business activities are carried on without breaching its statutory obligations. Lastly, the Court held that all the three (3) defendants were jointly and severally liable to the people adversely affected by the harm and damage caused to the environment and their properties as a result of the default of all the defendants.

### *2.10. The Geological Survey Department and the Survey and Mapping Division of the Lands Commission.*

These agencies also play key roles in the regulation of the mining sector. The Geological Survey Department is responsible for preparing maps and reports that are relevant to land use and management. It is also responsible for advising the government through the Sector Ministers on matters in respect of the development of natural resources. There is the Geological Survey Authority which was established by the Geological Survey Authority Act, 2016 (Act 928), and it is to inter alia, advise, promote and research on geoscientific issues concerning mineral resources, groundwater, the environment, geohazards and land use planning to support sustainable economic development. The Survey and Mapping Division of the Lands Commission is also tasked to; (a) supervise, regulate and control the survey and demarcation of land for the purposes of land use and land registration, (b) take custody of and preserve records that relate to the survey of any parcel of land, (c) direct and supervise the conduct of trigonometric, hydrographic, topographic and engineering, (d) survey, map and maintain the national territorial boundaries including maritime boundaries and (e) supervise and regulate operations that relate to survey of any parcel of land, among others [74].

### *2.11. Metropolitan, Municipal and District Assemblies, Ministry of Finance, GRA, etc*

Metropolitan, Municipal and District Assemblies play diverse roles in the regulation of our mining sector. A person who intends to engage in mining operations must obtain prior written approval, in the form of a written permit, from the District Planning Authority [75]. The District Assembly must consult public agencies and local communities in the determination of an application for a permit prior to the adoption of an approved District Development Plan [76]. The Ministry of Finance, the Ghana Revenue Authority and the Bank of Ghana in collaboration with the Minerals Commission are the regulators of the fiscal aspects of mining.

Other regulatory bodies in the mining sector are the Ministry of Local Government and Rural Development, the Ministry of Environment, Science and Technology, the Ministry of Finance, the National Planning Development Commission, the Precious Minerals Marketing Company Ltd, the Office of the Administrator of Stool Lands, the Bank of Ghana, the Ghana Revenue Authority, the Ghana Chamber of Mines, and Non-Governmental Organizations/Civil Society Organizations [77]. I would however not examine their roles here.

The point I have sought to canvass so far is that, there is a statutory regime for mining regulation for all the three dimensions of mining in this country. Right from the start, when an applicant decides to apply for a mineral right, to the carrying on of the mineral operations, down to decommissioning and post closure, there are statutory agencies playing difficult roles. In terms of applying for a mineral right, processing of applications for mineral rights, granting of mineral rights, supervision, monitoring and compliance processes etc; all are regulated by different statutory bodies/agencies as set out above, and as seen in the **Bonte Mines case,** *supra*. What I have done above is to set out the various State stakeholders and agencies with their different roles in our mining regulation. Next, I would consider briefly, certain aspects of our mining regulation that involve indigenous institutions and traditional leaders.

From the above exposition, it can be seen that right from the stage when an applicant applies for a mineral right through to the enforcement of compliance with ground rules of operation, to decommissioning and post closure, statutory stakeholders and agencies are the entities responsible for the entire regulation of the mining sector, to the exclusion of traditional authorities and indigenous institutions to a very large extent. This regulatory regime is applicable to all three kinds of mining: large-scale mining, small-scale mining, and mining of industrial minerals. However, there are few instances where recognition is given to traditional authorities in mining regulation under our current statutory regime. Those instances are discussed below.

## 3.0. The extent of the participation of indigenous institutions in mining regulation under the current statutory regime

The first legal instrument I would consider that calls for the participation of indigenous institutions and traditional leaders in mining regulation is Ghana's Minerals and Mining Policy. This Policy calls for the involvement of indigenous institutions in certain areas of mining regulation, and the collaboration of mining companies with mining communities -- to act together as partners regarding the development of the rural mining communities [78]. The Policy further calls for the maximisation of benefits accruing to mining communities in respect of the mining activities undertaken in those communities, and it thus urges mining companies to support the development of health care, education, water and sanitation in mining communities [79]. The Policy tasks

local authorities to, in conjunction with relevant governmental agencies, establish policies and procedures for the full engagement of local representatives and other relevant stakeholders in planning and supervising local community development [80].

The Policy further recognises the role of traditional leaders in the mining sector. It acknowledges that traditional rulers are in most cases the overlords of lands on which mineral rights are acquired, and are expected to provide their input on the grant of mineral rights, galvanise community members to be the local watchdog of the mining operations which they host and to ensure that such operations are carried out in conformity with the country's laws and regulations [81]. In addition to this, the Policy notes that, as beneficiaries of the government's mineral royalty revenues, traditional rulers are expected to apply such funds to undertake social infrastructure and to raise the dignity of their high office. For mining communities, the Policy states that they have a responsibility to themselves and the nation to ensure that mining operations are carried out legally and in consonance with the country's environmental regulations [82].

The Minerals and Mining Act also provides certain roles to be played by chiefs. Firstly, the Act mandates the Minister of Mines to give notice in writing of a pending application for the grant of a mineral right in respect of land to the chief or allodial owner of that land, before the Minister would approve and grant the mineral right [83]. The notice is to contain the boundaries of the land to which the mineral right applies [84]. Now, the Act does not specify what the chief is to do with that notice, but it is my opinion that the notice is given to the chief for his consideration, so that he (the chief) may notify the Minister of any relevant points of consideration. In respect of small-scale mining committees, the Act mandates that one person from the relevant traditional council of the designated area be part of the committee as a member [85].

For the purposes of Compensation and resettlement as provided in the Minerals and Mining (Compensation and Resettlement) Regulations, 2012 (L.I 2175), the regulations direct the holder of a mining lease to engage in prior consultations with the chiefs and the inhabitants to be resettled regarding the impending resettlement or mining activities [86]. These regulations mandate the mining lease holder to develop a resettlement plan. After developing it, the regulations direct the mining lease holder to produce a draft baseline report and present the report for discussion at a public forum of key stakeholders which include the traditional authorities in the district and the inhabitants to be displaced for their consideration [87]. A resettlement plan is not to be approved by a district planning authority if the district planning authority is not satisfied with the evidence of consultation and participation of the chiefs and inhabitants of the community to be resettled [88]. Lastly, where the operations of a mining lease holder involves the displacement of inhabitants, the Regulations mandate that a Resettlement Monitoring Committee be established to oversee the resettlement [89]. Among the members of this Committee is the most senior chief of the area of the mining lease [90].

Traditional leaders also play roles under the licensing regime of the mining sector, as provided in the Minerals and Mining (Licensing) Regulations, 2012 (L.I 2176). These regulations mandate that after an application for a reconnaissance licence is determined by the Minerals Commission to satisfy the relevant requirements and is listed on the priority list, the Commission must give a notice of the pending application to the relevant chief, traditional authority or land owner to whose land the licence relates [91]. Notice of a mining lease which the Minerals Commission approves is also to be given to the relevant chief, traditional authority or land owner to whose land the lease relates [92]. The same requirement is applicable to a prospecting licence [93], and a small-scale mining licence [94] approved by the Commission. Lastly, the Commission is mandated to send a copy of the duly stamped and registered license to the relevant Traditional Council of the area affected by the particular licence [95].

From the above, it can be seen that indigenous institutions or traditional authorities are given a level of recognition and some roles, by Ghana's current statutory regime on mining regulation. However, the problem is that the major decision-making process of granting mineral rights down to the supervision and monitoring of mining operations rests with the statutory stakeholders and agencies as discussed above. Without the statutory architecture, Ghana's mining regulation would fail, and woefully so! So, to maintain it, we must. This paper does NOT call for an overhauling or annihilation of the statutory architecture for mining regulation in this country. What this paper calls for is an inclusion to a much greater extent, the roles of indigenous institutions and traditional leaders in all stages of the mining sector regulation, especially in the regulation of small-scale mining; from the processing of applications for mineral rights, to approval, monitoring, supervision, decommissioning and post-closure. Before making proposals for the inclusion of traditional institutions into the mining regulation architecture, let me consider some very serious issues regarding the causes and sources of conflicts between mining companies and mining communities, to pave the way for the proposals.

## 4.0. Conflicts Between Large-Scale Mining Companies and Local Communities

This part of the paper is very crucial, and as such, the points are discussed in extenso. From the onset, it ought to be pointed out that there are real conflicts between large-scale mining companies and local communities in most of the communities where these companies have their concessions. Concession areas granted to large-scale mining companies have been described as "battlefields" due to the numerous never-ending conflicts in those areas [96]. The conflicts between mining companies and the local communities come in three main ways: between the companies (usually with the government on their side) and the local people who are directly affected by the mining activities; thus, those whose lands and property fall within the concession areas granted to the companies; between the companies and the local people who are engaged in illegal artisanal small-scale mining (known as *galamsey* miners); and between the companies and ordinary members of the community who see the mining activities of the companies as affecting the environment of the community, and thus, affecting their livelihood [97]. Large-scale mining companies have duly acknowledged that they need a social license to operate, which in effect, means that they need the co-operation of the local communities to be able to conduct their activities successfully [98]. This requires that mining companies reconcile their business interests with the interests of the local communities, and devise means to achieve them [99]. The need for community cooperation is part of the effective implementation of the corporate social responsibility of the company and it helps to ensure sustainable

development [100]. I would rely on existing findings from research conducted in local communities to draw out the major sources, causes and impacts of conflicts between large-scale mining companies and local communities in Ghana, with a view to proposing solutions.

The main sources and causes of conflicts between large-scale mining companies and local communities are in respect of land use and land ownership, the environmental impact of mining activities, land degradation and water pollution in local communities, destruction of farmlands, inequity and inequality in resource distribution, depletion of resources, competition for mineral rich parcels of lands, participation in decision-making, compensation and resettlement, poverty and underdevelopment of the local communities, among others [101].

Land use and land ownership are major sources of conflicts in mining communities in Ghana. Research conducted in the Prestea mining community found that land use disputes are a major cause of the conflicts between the mining companies and the local communities in that area [102]. The point here is that competing and inconsistent land use interests between the mining companies and the local people are a major source of conflict. For example, the local communities use their lands for farming (agriculture), housing or accommodation, planting of tree crops etc, and these are competing and inconsistent interests with the mining interests of the company [103]. The local communities therefore resort to violent clashes with mining companies over their competing and inconsistent land use interests. Local communities who have, hitherto, used their lands for various socio-economic activities such (as farming) resort to violent clashes with mining companies whose concessions affect their lands in question, especially in situations where there is no alternative livelihood and/or adequate compensation [104]. The local communities believe that their lands belong to them, that they have in many cases inherited them from their ancestors and that their entire livelihood depends on the land use, be it for small-scale subsistence or large-scale commercial purposes [105]Violent conflicts also erupt between small-scale miners and large-scale mining companies over land use due to the fluidity in land ownership, control and rights attached thereto.

Competition for mineral resources in mineral rich parcels of land in mining communities is a major cause of conflicts between the local communities and the mining companies [106].This is a very serious issue! The competition for minerals in mineral rich parcels of lands between mining companies and local communities results in violent clashes between the two groups in mining communities [107]. Usually, the large concessions granted to companies cover much of the mineral rich areas in the communities, and while the companies are mining in their concession areas, the local people are also mining in various parts of those same concession areas. This issue can be viewed this way: local communities believe that they are entitled to mine the minerals in their lands because the lands are theirs, and they own the lands. Their forefathers have been mining on those lands from time immemorial, and they believe they are also entitled to mine for the minerals. Their livelihood therefore heavily depends on their mining of those resources, and they do not care that the mineral resources are vested in the State. On the other hand, mining companies also feel entitled to mine their concessions because they have legally obtained those concessions from the government, and have paid or continue to pay royalties. The companies therefore do not see why the local communities should encroach on those concessions areas. A tangential aspect of the conflict is that the local communities do not see why they should be on their own lands and "strangers" would come for their resources, without them (the local communities) benefiting from those resources. This issue angers local communities and they resort to violent clashes with the mining companies over the minerals in the areas which are rich in minerals [108].

I would like to cull some responses from local people in research conducted in the Prestea mining community regarding the causes of the conflicts and the violent clashes between the local people and a mining company in respect of the mining activities of the company in that community. At the time of the research, the company operating in the community was Golden Star Resource Limited (GSR), and is referred to as GSR in the responses [109].

**Response 1**: *''You cannot go to a fishing community and ask them to stop fishing because of the operation of large-scale fishing companies in the community. This is ridiculous and this is not done anywhere.* ***You should know that, we were born and raised up in this occupation. We have nowhere to go. There will always be clashes so far as the government and GSR doesn't change its policy towards us''***. [Emphasis is mine].

**Response 2:** *''We have nowhere to go, this is our land and we have wives and children we care for.* ***We are going to fight them with our last blood whenever they come here to stop us from working***. *They believe they are powerful because the police is on their side''***.** [Emphasis is mine].

**Response 3**: ***''If they leave us in peace to do our work, there will be no violent clashes. We'll also not stop their machines from working***. *I think everybody should mind his own business.* ***It is not our fault that, we were born into this area; we have no place to go and man needs to survive at all cost. They should just get this straight and stop both the physical and the media war*****"**. [Emphasis is mine].

**Response 4:** ***''They (GSR) should know that, if they contend all the good parcel of land are part of their concessions, there is no way we will understand because this is where we come from. We will mine with all the force we have to make ends meet and they can bring in soldiers and that would not stop us from mining here***. *They don't respect us since the government support GSR with the police to crush us.''***.** [Emphasis is mine]

**Response 5:** ***''We also met them with aggression and sometimes we conquer them and sometimes they conquer us. You see there can never be a winner in this fight, if they win today, we will prepare and win tomorrow***. *Even with this present location, there is a problem here. We have been on peaceful demonstrations on so many occasions''***.** [Emphasis is mine. Indeed, there can never be a winner in the fight!!]

**Response 6:** ***''Conflict is not a good idea but we have no option but to fight on, otherwise we will lose our source of livelihood.*** *Conflicts in this community is costly to us because sometimes security personnel come here to seize our equipment. We bought all those equipment with money even though locally made.* ***We get injured sometimes and we spend money to go to the hospital''.*** [Emphasis is mine]

Closely related to the competition for minerals in mineral rich parcels of lands as a cause of conflicts, is the depletion of the mineral reserves in the local communities without any commensurate growth or transformational development. This is one of the irritating areas for the local people, because they do not see why there is a continuous depletion of the mineral reserves in their lands for decades by the mining companies, yet there is nothing to show for it

in the community by way of an improvement and a transformation in the socio-economic lives of the people. The local people believe that if nothing is done about it, they would lose their resources, together with their fertile lands in the near future, and their entire livelihoods would be lost. Thus, whatever is the means to avert this must be employed, including violent confrontations with mining companies.

Closely related to land use issues are land degradation, water pollution, outbreak of diseases from mining activities and destruction of farmlands, and these are real sources of conflicts in mining communities [110]. Land degradation, water pollution, outbreak of diseases, air pollution resulting from dust from mining activities and destruction of farmlands come under the environmental impact of the mining activities of the companies [111]. In many of the mining communities in Ghana or the lands affected by mining activities, clearing of the vegetative cover, forests, digging of large trenches of holes usually left open after mining, destruction of existing farms, and pollution of water bodies such as rivers etc, constitute a major cause of conflicts in mining communities [112]. Here, local communities perceive large-scale mining by the mining companies in this manner as a threat to their environment and a threat to their livelihood. An example of this scenario is the Bonte Mines case, discussed *supra*, in which the company destroyed many lands and farms with ponds, holes etc and left, without reclaiming the lands. There have also been instances where fishing ponds have been destroyed due to those lands affected by concessions [113]. Again, evidence is available on a disease outbreak in the Amansie-West District mining community resulting from open pit mines left uncovered, abandoned mines, and air pollution in the Tarkwa mining communities by chemicals from the mining activities of the companies [114]. The destruction of farms, fertile top soil, and other farmlands is the order of the day in respect of the mining activities of large-scale mining companies. There have been instances of destruction of existing water bodies such as rivers, pollution of water bodies with sand and chemicals from the activities of mining companies etc [115]. The deeper aspect of these environmental impacts is that they are long lasting and local communities see these impacts as effectively destroying their environment and means of livelihood. The outcome is that, local communities resort to violent clashes with mining companies to protest against the environmental impacts of the mining activities of the companies.

Another major source of conflicts in mining communities in Ghana is the marginalisation of the local people by the mining companies because of the poverty and the underdevelopment that plague the local communities. In **Nana Kofi Karikari & 44 Others v Ghanaian Australian Goldfields** [116], the plaintiffs were members of a community called Nkwantakrom in the Ashanti region. This community was part of a mining concession granted to the defendant company by the government of Ghana. The company went to the land and destroyed the houses of the community members. The affected members therefore took an action against the company for compensation. The Court, holding on whether or not the community existed before the concession was granted, had this to say:

*"The production of these documents would have sealed the issue whether or not Nkwantakrom had been in existence before the defendant obtained their concession.* ***This would have avoided this litigation which has been pending in this Court over a decade between the poor rural dwellers and the giant Mining Company****.* ***It appears from the attitude shown by the defendant right from the day of the invasion that the defendant thinks of the plaintiffs as weak and voiceless who would never be able to litigate them and that they should therefore keep quiet if a wealthy and influential multinational company demolishes their place of abode and uses their land in the way it likes against the wishes of the poverty-stricken rural dwellers".*** [Emphasis is mine]

We see, sometimes, that what occasions the conflicts between the local people and the mining companies is the marginalisation that the local people suffer in the hands of the companies in the destruction of their lands, farms, and houses. The local people may have no option but to resort to violent clashes with mining companies to register their protests. In the case of **Emelia Amoateng and 34 others vs Ghana Australia Goldfields**, the Defendants somewhere in 2001 dumped rock waste on the Plaintiffs' farms and in the process destroyed food and economic crops such as oil palm, cocoa, coconut, cassava, pineapple, cocoyam etc [117].The company offered some form of compensation based on the acreage system to some of the farmers, but other farmers refused the compensation offered and insisted on the head count system of enumerating their crops for compensation which they considered will be fair and adequate compensation for their destroyed crops. This fomented conflicts and the matter was eventually sent to court through the public interest litigation intervention of the Centre for Public Interest Law (CEPIL).

Conflicts also arise between local communities and mining companies in respect of resettlement and payment of compensation [118]. At present, the Minerals and Mining Act, 2006 (Act 703), and the Minerals and Mining (Compensation and Resettlement) Regulations, 2012 (L.I 2175) govern issues of compensation and resettlement of people and communities affected by mining activities, who have to be resettled and/or compensated, depending on how the mining activities affect them. These laws provide the principles for compensation and resettlement, but what I want to point out here is that disagreements regarding the payments of compensation and relocation or resettlement of displaced persons constitute a major cause of conflicts in mining communities. Issues such as those entitled to compensation, the quantum of compensation, the kind of affected property for which compensation should be paid, where to be resettled, new accommodation for resettlement, delay in the payment of compensation etc, are all issues that cause conflicts between the local people and the mining companies [119]. In ***Nana Kofi Karikari & Others v Ghanaian Australian Goldfields***, supra, the company disputed the claims of the affected community members for compensation, and had it not been for the intervention of the Court (the case was in Court for 10 years), the local people would never have been paid compensation at all. Their homes and farms were destroyed by the company, yet no compensation was paid to them. In **Nicholas Affenyi & 76 Ors v Abosso Goldfields Ltd** [120], the company asked the local people to vacate the villages where the company carried on its operations. When they vacated the village, the company refused to pay them compensation for the destruction of their houses and the resettlement, arguing that the village was not within the concession area granted to the company. It took the intervention of the Supreme Court to interpret the provisions of the Act relating to the payment of compensation, wherein the Court held that as far as the local people were affected by the operations of the company: the destruction of their houses, lands, and their relocation, they were entitled to be paid compensation. Once again, had it not been for the intervention of the Court, no compensation would have been paid. **In Ebenezer Obeng Dompreh v AngloGold Ashanti Ghana Ltd**, *supra*, the plaintiff's (a local person) fish ponds were destroyed by the mining activities of the defendant company. He made claims for compensation but the

company disputed the heads and amounts of the compensation claimed by the plaintiff. It took the intervention of the Court through a court order for the company to pay the plaintiff an amount which the Court determined, was a reasonable estimation of all losses suffered by the plaintiff. Once again, the Court had to intervene before the plaintiff obtained justice. Compensation issues and resettlement issues are a major cause of conflicts in mining communities.

Participation in community decision-making regarding the mining activities of the mining companies is also a source of conflict in mining communities between the local people and the mining companies [121]. Decision-making on many subjects such as the employment of the local people by the mining companies, the salaries of the local people as compared to their foreign counterparts, issues on land use and land ownership, issues on encroachment of concession areas by local people, payment of compensation and resettlement, participating in decision-making regarding the corporate social responsibility of the mining companies in undertaking developmental projects in the mining communities, etc are all sources of disputes and conflicts between the local people and the mining companies. For decision-making, the local people perceive themselves as less represented on important committees, and those even represented have less impact on the outcome of the deliberations because their input are always not regarded, and the local people see the companies as strangers out to milk their resources to their [the local people] detriment. They therefore resort to violent confrontations to register their protests.

In the words of Apostle John, "There were many miracles that the Lord Jesus did, which if all were to be recorded, the whole world would not be able to contain the books!" Similarly, there are myriads of the causes of conflicts between local communities and mining companies which cannot all be exhausted in this paper. But like Apostle John said in the same scripture, these are written for you to believe that there are real conflicts in mining communities, and we must find a way to resolve same.

### *4.1. The Impact of the conflicts between local communities and large-scale mining companies*

There are real conflicts, fights and violent confrontations between local communities and mining companies with far reaching effects or impacts on the local communities themselves, and the mining companies.

The conflicts between local communities and mining companies leading to violent clashes result in the destruction of the machinery or equipment of the mining companies [122]. Sometimes, their mining equipments are burnt to ashes by the local people during a clash, and sometimes the homes or residence of the company's employees are vandalised by the local people. Most of the time, it takes the intervention of the police and the military to restore order in those communities. The effect is that the company would have to incur cost to buy new equipment, or repair those destroyed, depending on the extent of the damage caused; and all these are capital intensive for the company. The company also has to rebuild or refurbish the residence that has been vandalised. In a research by Adonteng-Kissi, a member of the GSR management had this to say on the impact of the conflicts on the Prestea community:

*''We lose millions of dollars when the indigenes storm our site and stop our machines and workers from working. Sometimes, they (indigenes) cause damage to our equipment and other assets that runs into a lot of money. I don't think violence is the way to go if all sides want peace in this community.''*[123]

Violent confrontations between mining companies and local communities result in loss of life and injuries to both those actively involved in the clashes and innocent people. From the responses I quoted above (2-6), it is clear that these violent confrontations, which most of the time involve the police and the military, lead to injuries and sometimes death. But the intriguing thing is that, the local communities are prepared to fight with their last blood! As indicated in the 5th response, there can never be a winner in the fight, which means that the fights would continue, and as they continue, people would continue getting injured and losing their lives.

Whenever there is a violent confrontation between the company and the local communities, the operations of the company are grounded to a halt, until the violence ceases. Thus, depending on the nature of the fight, the company's operations can be halted for days into weeks and months, which means that the company would not be able to produce anything for all that period. This in effect, slows down the output of the company and affects its overall productivity. Once the company's operations are interrupted and it is not able to produce as it should, it means that it would not make the expected profits to enable it to pay the expected revenues to the government.

The conflicts between local communities and mining companies also have impact on the socio-economic lives of the local people in different shades including the destruction of their farms and homes. Also, the conflicts slow down the development of these communities in terms of infrastructural development. The violent clashes affect the companies' ability to provide socio-economic development in the communities in fulfilment of their corporate social responsibility. The violent confrontations also disrupt the existing decision-making bodies in the mining communities regarding relevant issues connected with the mining activities such as developmental projects in the performance of the corporate social responsibility of the company.

It is eye opening to know that because of the many problems between mining companies and local communities, some traditional authorities passively allow the local people to engage in illegal mining activities within the jurisdictions of those authorities, though the traditional authorities do not expressly give their consent to those illegal operators. Research conducted in Asutifi North District in the Ahafo Region showed that some of the chiefs in certain areas knew of the activities of illegal miners on their lands, but they nevertheless took no action to stop them [124]. Several reasons were found for this state of affairs, one of such was that the local people who were stealing and going on demonstration against the mining company had no means of survival other than to resort to illegal mining [125]. So even though the chiefs did not consent to the illegal mining activities, they nevertheless allowed the local people to engage in it because that was their only source of survival [126]. The point here is that, the conflicts with mining companies drive the local

people to engage more in illegal mining activities, leading to the destruction of the environment. Once again, the impacts of these conflicts are many, but these are a few of them.

It has thus become necessary to involve all relevant stakeholders to come to board to address these issues. One way of dealing with these issues is to include traditional rulers and indigenous institutions in all stages of the mining sector regulation. That is the focus of the next section of this paper. However, in making this call for the inclusion of indigenous institutions in our mining regulation regime, particular attention would be given to the roles that these indigenous institutions can play in the regulation of small-scale mining, and a call is theretofore made for their inclusion in the regulation of small-scale mining.

## 5.0. Strengthening Indigenous Institutions to participate in Mining Regulation in Ghana

There is the need to empower indigenous institutions in mining regulation, which ipso facto means that indigenous institutions need to be incorporated into and given more active role, in the various stages of our mining sector regulation, especially in respect of granting mineral rights and the supervision or monitoring of the activities of mining companies. Indigenous institutions are also relevant in the resolution of the conflicts in mining communities especially those relating to land rights, land use, compensation and resettlement. For example, in Akyem and Wassa mining communities, traditional leaders are very influential in resolving the conflicts with mining companies in those areas [127]. Companies now undertake some developmental projects in mining communities where they operate as part of their corporate social responsibility, and this is an area that indigenous authorities should be part of the decision-making process, and the implementation of such projects [128] Thus, there is the need to build the capacity of indigenous institutions in the mining regulation sector.

The involvement of indigenous institutions in granting mineral rights is crucial as they are the custodians of the lands to be mined. First, indigenous institutions should be included in the consultation processes for the grant of a mineral right. This would potentially resolve the issues relating to land rights, land use, compensation and resettlement. In 2004, Australian mining company, Azumah Resources Ltd, was granted a license to prospect for minerals in Tanchara (a community within Nandom, in the Upper West Region of Ghana) and its surrounding environs. The chiefs and local authorities were not consulted in the process leading to the grant of the license. In May and June 2011, Centre for Indigenous Knowledge and Organization Development (CIKOD), in partnership with the leaders and community members of Tanchara, organised several meetings, which in effect, were meant to voice out the land ownership rights of the Tanchara people. Several meetings were organised with the Tingadems (the local traditional spiritual leaders), the chiefs, queen mothers, the executive director and the regional coordinator for the Upper West Region, and the community members of Tanchara, to campaign against the operations of the company. They also used radio broadcasts to voice out their concerns. Several issues were discussed in those meetings such as land ownership rights, the likely environmental impact of the operations of the company, resettlement of those to be affected etc. As a result of those massive campaigns, the operations of the company were brought to a halt, and it is reported that as of 2017, the company has not continued its operations. This is an instance of the involvement of indigenous institutions in mining regulation, which is in line with the Policy directives contained in the Minerals and Mining Policy [129].

The Minerals and Mining Act, 2006 (Act 703) and the Minerals and Mining (Licensing) Regulations have recognised the need to involve traditional authorities in the grant of mineral rights, and they call for notice to be given to the relevant traditional authorities on the approval of mineral rights [130]. The Minerals and Mining (Compensation and Resettlement) Regulations also call for consultations with traditional authorities in respect of issues on the payment of compensation and resettlement [131]. These are existing areas where traditional authorities are involved to some extent. There is a need to strengthen the roles of traditional authorities in these areas especially with regards to the grant of mineral rights. All that the Act mandates to be done is that notice be given to the relevant traditional authorities on an approval of a mineral right. The Act does not specifically direct that traditional authorities be part of the consultation process leading to the approval of the mineral right. What needs to be done to effectively incorporate traditional authorities in the grant of mineral rights is that, it must be mandatory for traditional authorities to be consulted and their recommendations be taken into account before a mineral right would be granted. Regarding the payment of compensation to the local people who are affected by mining activities, traditional authorities could serve as communication channels who represent their people in the decision-making process.

Lastly, there is the need to empower indigenous institutions in regulating the mining operations of mining companies so that companies comply with the stipulations in their environmental permits. This is a crucial area where our current statutory regime has neglected the roles of indigenous institutions. There are several reasons for which indigenous institutions should actively be involved in regulating the operations of mining companies. First, local communities are proximate to the operations of mining companies and witness the daily operations of mining companies. They are therefore able to witness and report the operation of the companies that destroy the environment without any reclamation. Secondly, the local people are directly affected by the environmental impacts of the operations of mining companies (the destruction of their farms, homes, drying up of their water bodies etc), and are therefore more passionate about the protection of their environment. Because of that, they are more inclined to take proactive measures against mining companies for the protection of the environment. Thirdly, local communities bear the brunt of the health consequences of the negligent and/or wilful misconduct of mining operations. For example, there is available evidence of air pollution by chemicals by a mining company that led to a disease outbreak in the mining community [132]. There is, therefore, the need to incorporate indigenous institutions in regulating the environmental impacts or consequences of mining companies. One way to do that is to use the watchdog groups or committees of the various communities to monitor and report on the operations of the companies that are environmentally unsound. This is in tandem with the policy directives of the Ghana Shared Growth and Development Agenda (GSGDA), which calls for community participation in environmental and natural resources management, and community participation in governance and decision-making relating to natural resource governance and the protection of the environment.

## 6.0. Conclusion

The regulation of the mining sector is crucial in maximising the benefits accruing therefrom, and for ensuring that mining operations are done in a way that is environmentally sound. At present, the mining sector is regulated to a very large extent by statutory stakeholders and agencies to the neglect of the important roles that indigenous institutions ought to perform in regulating Ghana's mining sector. The failure to adequately incorporate indigenous institutions in key areas of the mining sector regulation is one of the major reasons for the prolonged existence of conflicts in mining communities. There are three main areas in our mining sector regulation that there is the need to actively involve traditional authorities: (a) in the grant of mineral rights (b) in regulating the environmental impacts of the operations of mining companies (c) in decision-making on the payment of compensation to, and/or resettlement of the local people and communities affected by the mining operations of the mining companies. For indigenous institutions to be effective in these three areas of the mining sector regulation, there is the need to build the capacity and competencies of these institutions, resource them, statutorily recognise and prescribe key roles they are to discharge or perform, and allow them to play active roles in the mining regulation.

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