



EXTRACTIVES HUB POLICY BRIEF FOR GHANA

“The Potential of the OECD Guidelines on Ghana’s Mining Sector”

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Contents

1. INTRODUCTION..... 3

2. OVERVIEW OF THE DUE DILIGENCE GUIDANCE FOR RESPONSIBLE SUPPLY CHAINS OF MINERALS FROM
CONFLICT-AFFECTED AND HIGH-RISK AREAS 3

3. IMPLICATIONS OF THE OECD DUE DILIGENCE GUIDANCE ON LARGE-SCALE MINING IN GHANA..... 4

4. IMPLICATIONS OF THE OECD DUE DILIGENCE GUIDANCE ON SMALL-SCALE MINING IN GHANA 5

5. CONCLUSION..... 6

REFERENCES 7

1. Introduction

Mining and its related activities play a crucial role in the development of Ghana's economy. It has contributed significantly to the Ghana's effort to reduce poverty through the provision of fiscal resources to finance pro-poor Programme and creating direct as well as induced employment opportunities. Mining has generated important contributions to the economy in past and recent years with the country as the highest gold producer in Africa in 2018 (*World Bank, 2019*). Mining presents opportunities and potentials for economic growth, development and poverty reduction (*Minerals Commission Ghana and United Nations Development Program, 2017*). In addition to its revenue contributions, the sector provides both direct and indirect employment to millions of Ghanaians (*Minerals Commission Ghana, 2013*).

Data from the Ghana Revenue Authority (GRA) for instance indicates that in 2017, fiscal revenue from the Mining and Quarrying Sector amounted to Ghana Cedi (GH¢) 2.16 billion in representing 16.30% of Direct Domestic Revenue. Furthermore, data from the Bank of Ghana shows that the minerals sector accounted for 45.5% of Gross Merchandise Exports, making it Ghana's leading source of forex earnings (*Minerals Commission Ghana, 2019*). The sector has been described as one of the major drivers of growth in the economy. It is important to, thus, focus on ensuring that the benefits from mining are sustained and that mining meets international responsible sourcing standards.

To that end and in the light of renewed international concerns on "tainted minerals" and its potential impact on the national revenue, this policy brief examines the risks posed to the country's minerals sector by the Organization for Economic Co-operation and Development's (OECD) "Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas". It also proposes remedial measures to the identified challenges.

2. Overview of the Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

The OECD "Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas" provides a framework for detailed due diligence as a basis for responsible global supply chain management of minerals in conflict areas (*Organisation Economic Cooperation Development, 2016*). In this context, conflict areas refer to international, civil or inter-state wars or wars of liberation. On the other hand, high-risk areas could be described as regions with widespread human right abuses or violence, insecurity, political repression and institutional weakness .

The mining supply chain involves a complex system of actors, activities, services and technology that ranges from the extraction of the mineral to its consumption by end users (*Prendergast and Lezhnev, 2009; Fleury and Davies, 2012*). Each phase of the supply chain brings the mining company into a relationship with a vendor, which could put the former in a position to either contribute to poverty reduction or foster conflict. In the event of the latter, the company could be cited for war crime charges or violations of national laws on financing of wars or terrorism. A classic example is found in the class-action suit against Bougainville Copper Limited by the citizens of Bougainville in Papua New Guinea (*Lasslett, 2010*).

In order to avoid the “conflict trap”, the OECD Due Diligence Guidance framework requires mining companies to thoroughly assess the extent to which suppliers comply with local and international laws before making a commercial decision. The due diligence process involves five broad steps:

- Identify the factual circumstances involved in mining;
- Identify and assess any actual or potential risks;
- Prevent or mitigate the identified risks by adopting corrective measures
- Undertake third party audit of supply chain due diligence at identified points in the supply chain; and
- Report on supply chain due diligence.

In applying the above criteria to Ghana’s mining sector, this policy brief looks into the implications of the OECD Due Diligence Guidance on both large- and small-scale mining. Their implications are discussed separately because the factual circumstances and modus operandi of large-scale mining is markedly differently from small scale mining.

3. Implications of the OECD Due Diligence Guidance on Large-Scale Mining in Ghana

Ghana’s large-scale mining sector is one of the most heavily regulated sectors in the country. There are more than ten (10) regulators of the sector. Some of these regulators include the Ministry of Lands and Natural Resources, Ministry of Environment, Science, Technology and Innovation, Bank of Ghana, Minerals Commission, Environmental Protection Agency (EPA) as well as the Forestry Commission. To a large extent, the strict regulatory oversight ensures that the large-scale mines, which are predominantly multinational companies, adhere to the requisite international and local laws. Furthermore, the mining companies are also signatories to several international initiatives that enjoins them to uphold high standards in their operations. These include the United Nations Guiding Principles on Business and Human Rights, United Nations Global Compact, Voluntary Principles on Security and Human Rights, among others.

Despite the measures taken by mining companies to mitigate potential adverse impacts associated with its operations, their relationship with suppliers exposes them to the “conflict trap”. Section 59 of the Minerals and Mining Act, 2006 (Act 703) requires the suppliers of mine support services to be permitted by the Minerals Commission before engaging in a commercial relationship with the mining companies. The permitting process is expected to involve exhaustive background checks on the company’s profile and directors by the Inspectorate Division of Minerals Commission. Despite rigid due diligence audits, recent developments in the mining industry suggests that it is still possible for a mine support service provider to engage in “conflict trap” undetected. In March 2016, the Director of a registered drilling company in Ghana, Mr. David Mcdermott, was incarcerated by the British government for offenses related to drug trafficking (*The Statesman Newspaper, 2016*). Apart from providing drilling services to a major mining company, the facts of the case also suggest that he was also involved in money laundering. This shows that the mining industry can easily and inadvertently be engaged in the illicit drug trade. It is worth stating that the mining company terminated its commercial relationship with Vision Exploration Company due to this information. A corporate decision worthy of commendation.

In order to remedy such due diligence gaps, mine support service providers should be required to submit due diligence reports undertaken by accredited external agencies on a yearly basis. In addition, companies should also undertake due diligence on third party contractors to complement the efforts of Regulators. These measures will mitigate the likelihood that the relationship between mining companies and service providers would contribute to conflict.

The purchase of tailings by large-scale mines from small-scale miners to supplement mineral production or as the main material for processing raises several issues. Firstly, there is no mechanism for distinguishing between the output of legal small-scale mines and illegal concessions. Moreover, since the tailings would have changed hands severally before reaching the mine gate, the ultimate buyer is unable to determine the methods and type of labour that was used in production. As well, the mining company is unable to ensure the payment of required taxes by the small-scale mines since they are not required to deduct any fiscal liabilities at source. These are major challenges that could result in sanctions from the international community.

While it is difficult to comprehensively address this exposure, mining companies can deepen their due diligence on suppliers by critically reviewing the chain of supply. The outcome will then inform the decision to continue or abrogate the business relationship.

4. Implications of the OECD Due Diligence Guidance on Small-Scale Mining in Ghana

The small-scale mining sub-sector's importance in mineral production and job creation has expanded over the years. The growth in the sub-sector's output has unfortunately been accompanied by major breaches in national and international laws, with ramifications for the continuous export of the country's minerals.

First and foremost, there are no statutory provisions on rules of origin. Indeed, section 97(2) of the Minerals and Mining Act, 2006 (Act 703) which states that "*a person is presumed to be lawfully in possession of minerals until the contrary is proven*" implicitly discourages due diligence on the source of minerals in the possession of any person. However, this contradicts the OECD Due Diligence Guidance on rules of origin. The OECD requires refineries to purchase minerals from only legitimate entities. Against this backdrop, refineries may be forced to cease purchasing minerals from the sub-sector. This issue can be remedied by amending the relevant provisions in the Minerals and Mining Act, 2006 (Act 703) to allow due diligence on origin of minerals.

Moreover, there is no system for differentiating mineral production from legal and illicit sources (*Loeb, 2018*). Thus, mineral exports from the sub-sector could include "tainted minerals"; a development which is usually associated with international sanctions. In addition, there is no mechanism for reconciling mineral production with exports in the sub-sector. This is so because data on the sub-sector's minerals is only collected at the point of sale to a licensed buyer or the ports. It therefore implies that production from the sub-sector could be understated if a fraction of the output is consumed locally or smuggled. Likewise, it could be overstated if minerals from other neighboring countries are imported illegally. Faced with a similar situation in Mali, Partnership Africa Canada recommended measures that may result in international boycott of minerals (*Business & Financial Times, 2017*).

The proven method of addressing such challenges is the use of a tracking and certification system which facilitates the identification of the concession from which a mineral is produced. Such systems have been implemented in Rwanda and DR Congo with remarkable success. Rwanda's mining sector for instance, even though dominated by small-scale miners, has no challenge with "tainted minerals" (*Ryumugabe, 2016*).

Conclusion

It is timely to focus on ensuring that mining remains relevant in the growth and development of Ghana's economy. Although Ghana has adopted the due diligence guidelines, it is evident that it is still in its introductory phase. Responsible sourcing standards must constantly be brought to the attention of mining companies. The successful implementation of the guidelines will hugely depend on a collective effort from all stakeholders who benefit from mining. The sentiment of not losing out of the benefits of mining must be shared by shareholders of mining companies, mining investors, employees, communities and Ghana as a whole. To conclude, localization of the due diligence guidelines to fit into the Ghanaian mining context to ensure that mining companies do not inadvertently contribute to conflict and human right abuses is highly recommended.

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