

# Ensuring Security in Areas with Rich Mineral Resources: The Case of Small Scale Mining in Ghana

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## Introduction

Ghana is endowed with substantial mineral resources, the major ones being gold, diamonds, manganese, and bauxite. Gold is the predominant mineral produced in the country accounting for over 90 % of all mineral revenues annually over the past two decades. Small-scale mining of precious minerals continues to make significant contributions to the country's foreign exchange earnings. It is estimated that in 2018 more than 43 % of the total gold output, representing almost 2.13 million ounces of gold, came from artisanal and small-scale miners.<sup>1</sup> Artisanal and small-scale mining is estimated to support the livelihoods of some 4.5 million Ghanaians.

Ghana's artisanal and small-scale mining sector has grown significantly over the last four decades or so. The growth in the small-scale mining industry was propelled largely by the promulgation of the Minerals and Mining Law 1986 (PNDC Law 153). PNDC Law 153 represented a major policy shift in the mining industry in that for the first time since Ghana gained independence in 1957, the State officially recognised small-scale and artisanal mining.<sup>2</sup> However, the sector has witnessed a monumental increase in activities driven largely by the advent of the growth in mine support services. The mine support services sector is mainly dominated by foreigners who have made skills, machinery and money available to operations initially conceptualized as artisanal in nature. This has resulted in largely indiscriminate mining activities throughout small scale mining areas in Ghana.

The influx of money and machinery into the sector has meant that the sector has grown in size and sophistication beyond the capacity of existing regulatory structures. The complicity of politicians, security officers and opinion leaders in the sector have combined to make the work of the regulatory agencies much more difficult. Regulatory agencies in the mining sector have therefore struggled to keep up with ensuring that operators who have permits to operate, operate lawfully and operators who have no permit to operate do not operate.

The success of the mineral operations of artisanal and small-scale mining has attracted varied interest to a sector where regulation is poorly enforced. In this direction, there have

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1 Minerals Commission Ghana: Small Scale and Community Mining, Operational Manual, September 2021 page 4. Available at <https://www.mincom.gov.gh/wp-content/uploads/2021/11/Small-Scale-and-Community-Mining-Operational-Manual-Sep.-2021-1.pdf>. Last assessed on 15<sup>th</sup> January 2023.

2 Section 77 of PNDC Law 153 empowered the Secretary for Lands and Natural Resources to designate areas reserved for small-scale mining.

been an influx of Chinese migrants, Chinese money and Chinese machinery chasing after the lucrative small-scale mining sector. Foreign-owned mine support services have been trying to outdo each other for access to prospective mineral fields. Local businesspeople and their political conspirators have flooded villages and towns in search of mining opportunities. Chiefs, Family Heads and custodians of land have readily made land available for small-scale mining when they do not have the authority to grant mineral rights in Ghana. Farmers and local landowners have abandoned their farming activities and turned their lands over to small scale miners.

The result is a chaotic situation in mining communities across the country. The jostling for interest in the mining sector has meant a fast deterioration of security in mining communities in Ghana. The security concerns are not limited to personal security. There are also serious concerns with food security, threats of terrorism and armed conflicts. The security situation poses a strong challenge to the entire well-being of the country because of the relative importance of the mining industry. As stated above, the small-scale mining industry contributes significantly to the economy of Ghana in employment generation and the stimulation of local economies. In addition, a deterioration in the security situation consequently affects food security, water security and personal security of people in neighbourhoods and faraway places whose livelihoods depend on the mining industry. This paper, therefore, looks at the nature of the security situation in the small-scale mining industry. How does the nature of the small-scale industry affect security in mining areas, what are the causes of security deterioration, and what are the steps that can be taken to counteract the security situation?

### **Ownership of mineral resources in Ghana**

In order to better appreciate the security concerns in the mining communities, it is important to first understand the ownership architecture of minerals in Ghana. In Ghana, the law provides for the collective ownership of minerals by the citizens of Ghana. Under Article 257(6) of the 1992 Constitution of Ghana, *“Every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the Republic of Ghana and shall be vested in the President on behalf of, and in trust for the people of Ghana.”*<sup>3</sup> Thus, minerals in their natural state are not capable of being owned by an individual. However, mineral ownership is vested in the President who must ensure that the use of these minerals benefit the people of Ghana.

The President works through institutions of State to fulfil the constitutional functions imposed by the Constitution. Pursuant to those functions, the President then allocates different bundles of rights that give specific property rights to the holders of the mineral

3 The ownership of minerals in their natural state as stated in the Constitution is also repeated under section 1 of the Minerals and Mining Act, 2006 (Act 703) as amended.

rights. Article 269 of the Constitution provides for the creation of specialized commissions to provide advisory services to the President/State in the exercise of its functions over mineral resources. In this direction, the Parliament of Ghana enacted the Minerals Commission Act, 1993 (Act 450). The Minerals Commission Act has created the Minerals Commission which serves as the apex regulatory body for mineral resources and advises the President in the exercise of the President's power to allocate mineral rights. The State, in the exercise of its powers under the Minerals Commission Act, may decide for policy reasons to exempt certain areas from mineral operations. Thus, under section 4 of the Minerals and Mining Act 2006 (Act 703):

- (1) The Minister may, by Executive Instrument declare land, not being the subject of a mineral right, to be reserved from,
  - (a) becoming the subject of an application for a mineral right for a mineral, or
  - (b) becoming the subject of an application for a mineral right in respect of specified minerals or of all minerals except specified minerals.
- (2) An Executive Instrument issued shall be by the authority of the President.<sup>4</sup>

The State exercises this power to limit areas that are ecologically, culturally or religiously sensitive to the operations of mineral activities.

It is important to note that in the legal architecture around the ownership of minerals in Ghana, the law creates a clear distinction between the ownership of minerals and the ownership of land. This creates an interesting situation since most minerals in their natural state are found underneath the land. Thus, although minerals in their natural state and beneath the land are held in trust by the President of Ghana for the benefit of the people of Ghana, lands on which these minerals are located may be owned by different persons and different entities. In this way, on the authority of article 257(6) of the Constitution, a person who owns an interest in land has otherwise no right whatsoever to the minerals that may be found on the land. In many instances, therefore, the President in the exercise of his powers under the Constitution may grant an interest in minerals to a person who does not own the land or has no prior interest in the land. Under current legislation, the law prioritizes the ownership of minerals over an interest in land. Thus, when the State grants a mineral right to a person or an entity, that person or entity has a right to enter unto the land which is the subject matter of mineral rights and exercise the mineral rights so granted. The person who has prior interest in the land has no right to refuse entry unto the land. The right of the interest holder in the land in question is the right to be compensated for the disturbances of the surface rights of the land. Section 74 of the Minerals and Mining Act, 2006 (Act 703) provides for the rubrics of compensation.

The holder of mineral rights usually negotiates and executes agreements to acquire land rights from private individuals or communities where the land is owned by individuals or communities. If there is a stalemate between the holder of mineral rights and the holder

4 Minerals and Mining Act 2006 (Act 703), s 4.

of land rights in the negotiations for the acquisition of the surface right, the State will usually step in to facilitate the negotiation. In situations where it is practically impossible for the holder of mineral rights to acquire the surface right from the holder of land rights, the last resort is to expropriate the land. In Ghana, the President may acquire or authorize the occupation and use of land required to secure the development and utilization of mineral resources. This is called Compulsory Acquisition. Article 20 of the Constitution and sections 233 to 267 of the Land Act 2020 (Act 1036) have elaborate provisions governing the compulsory acquisition of lands by the State.

### *Types of Mineral Operations*

Mineral operations can largely be divided into small-scale mining and large-scale mining. The distinction between small scale mining and large-scale mining is usually based on the characteristics and the size of the mineral operation. Thus, small-scale mining is often mining in a relatively smaller defined area of land. It is characterised by the use of simple implement as opposed to the use of sophisticated machinery and equipment. Small scale mining operations may be owned by an individual, a collection of individuals or a company. Whereas large scale mining is characterised by the use of heavy equipment and machinery. Large scale mining is dominated by foreign corporations and operate over large tracts of mineral concessions. In Ghana, the distinction between small-scale mining and large-scale mining is very important because of the different rights that are created for small-scale mining operations and large-scale mining operations. In addition, there are very distinctive regulatory requirements for the operations of small-scale mining and large-scale mining. Under section 111 of the Minerals and Mining Act, 2006 (Act 703) small-scale mining is defined to mean mining operation over an area of land in accordance with the number of blocks prescribed. By regulation 204(1)(d) of the Minerals and Mining (Licensing) Regulations, 2012 (L.I 2176), the number of blocks prescribed has been determined to be not more than 25 acres of land. It is important to note that the Minerals and Mining Act, 2006 (Act 703) does not draw a distinction between small-scale mining and large-scale mining. Rather, it provides for mining simpliciter and then small-scale mining. Thus, in reference to Ghanaian law, mineral operations are either small-scale or they are not. By practice, any mineral operation that is not small-scale is therefore deemed to be a large-scale mining operation.

Regulatory responses and prescriptions are largely driven by whether the mineral operation is small-scale or not. Under the Minerals and Mining Act, 2006 (Act 703) there is a three-stage approach to acquiring rights in minerals for mineral operations that are not deemed to be small-scale. In this direction, the mineral rights holder may acquire a reconnaissance license, prospecting license or a mining lease (production license). Each step is marked by different regulatory requirements before the company may acquire an operating permit. In addition, there are markedly different obligations that a holder of any of these rights must live by in order to operate lawfully. Each of the stages of the mineral

rights require a separate environmental permit with separate rights and obligations. Before large-scale mining operations commence production of minerals pursuant to a mining lease, they must first conduct an environmental impact assessment and generate an environmental impact statement as part of the environmental permitting process. The process often includes a public hearing in the areas which will be the subject of mineral operations<sup>5</sup>.

In the case of small-scale operations, the law does not make a distinction in the different rights that may be acquired. Thus, there is no distinction between the reconnaissance phase, prospecting phase and the production phase. Once the mineral rights are acquired, it covers all the three phases. In the same way, when an environmental permit is obtained, it covers the entire operation. In view of the fact that small-scale mining operations are deemed to be simple, informal and manual. The environmental permitting process usually does not include a full scale environmental impact assessment and environmental impact statement as part of the environmental permitting process. The environmental permitting process largely entails a desktop review of the application for the environmental permit. Although the Environmental Protection Agency has the right to order a public hearing as part of the environmental permitting process, it is mainly reserved as part of the process of environmental permitting for large-scale operations as opposed to small scale operations. Irrespective of the size of operations and whether the operations are small-scale or large scale-mining, the mineral industry is regulated by a number of institutions.

### **Stakeholders in the small scale mining industry**

There are myriad stakeholders that operate in the small scale mining industry in Ghana. These stakeholders affect the entire mining industry in Ghana. There are direct stakeholders whose activities directly affect the mining industry in Ghana. Other stakeholders, though not directly affecting the industry operate in ways that affect the small scale mining industry.

One of the important stakeholders in the mining industry is the Ministry of Lands and Natural Resources (MLNR). MLNR is the government agency through which the President exercises its powers under article 257(6) of the 1992 Constitution to allocate mineral rights. It is headed by a Minister of State appointed by the President to be the President's point person on mining industry in the area of policy formulation, market regulation and asset management. All rights and licenses in the mining industry are granted by MLNR. To support MLNR perform its functions are a number of government agencies.<sup>6</sup>

One of the important agencies of government that has a direct relation to the mining industry is the Minerals Commission. The Minerals Commission was set up on the authori-

5 See Environmental Assessment Regulation, 1999 (L.I. 1652).

6 Some of the agencies that support the Ministry of Lands and Natural Resources to discharge its duties are the Minerals Commission, Ghana Geological Survey Authority, Precious Minerals Marketing Company Limited, Minerals Development Fund Limited, Ghana Integrated Aluminum Development Corporation and Ghana Integrated Iron and Steel Development Corporation.

ty of article 269 of the 1992 Constitution. The Parliament of Ghana in the exercise of its constitutional mandate under the 1992 Constitution enacted the Minerals Commission Act, 1993 (Act 450) to create the Minerals Commission with clear functions and objectives. In practice, the Minerals Commission is the apex regulatory body in the mining industry. Rights including licenses that are issued by MLNR in the name of the President are issued with the advice of the Minerals Commission. In addition, in the exercise of its policy and advisory functions, MLNR relies heavily on the Minerals Commission.

The Water Resources Commission and the Forestry Commission, although not set up directly to deal with mineral resources are very important stakeholders in the mining industry. Under article 269 of the 1992 Constitution, the Water Resources Commission and the Forestry Commission were set up to regulate the water resources and the forest resources of Ghana, respectively. However, to the extent that mineral operations may affect water bodies as well as forest resources, these two agencies are very important stakeholders. For instance, under sections 17 and 18 of the Minerals and Mining Act of 2006, if mining activities will involve and/or affect water resources and forest resources, the holder of the mining right must first obtain a permit from the Water Resources Commission and the Forestry Commission as the case may be as part of the permits, before it can obtain an operating permit from the Minerals Commission to commence work.

The holder of mineral rights cannot exercise the right unless they obtain a valid environmental permit. The environmental permit is issued by the Environmental Protection Agency (EPA). Established in 1994, EPA has, among other things, been mandated to protect the environment. In this direction, EPA is responsible for issuing environmental permits for mineral operations. Under sections 12, 13 and 14 of the Environmental Protection Agency Act, 1994 (Act 490), EPA has the power to order any mining operation within Ghana to stop operations and rectify any environmental shortfall before resumption of work. It is a criminal offense to disobey the orders of EPA and convicts may be asked to pay a fine and/or serve a term of imprisonment.

Ghana is divided into districts which are the lowest political administrative units in the country. The District Assembly (DA) which superintends over the affairs of the district is the highest political authority in the district.<sup>7</sup> The functions of the DA among others include the formulation and execution of plans, programs, and strategies for the effective mobilization of the resources necessary for the overall development of the district.<sup>8</sup> Section 91(1) of the Local Governance Act, 2016 (Act 936) provides that a person shall not carry out a physical development in a district except with prior written approval in the form of a written permit issued by the District Planning Authority. Physical development is defined to include mining and its related activities.<sup>9</sup> Thus, a holder of a mining right cannot undertake

7 See Article 241(3) of 1992 Constitution & Section 3(2) of Local Governance Act.

8 Article 245 of 1992 Constitution.

9 Section 234 of Local Governance Act, 2016 (Act 936): “‘physical development’ means the carrying out of building, engineering, mining or other operations on, in, under or over land, or the material

mining activities without the necessary physical development permits from the relevant District Assembly. Since the District Planning Authority issues development permits, it presupposes that the District Planning Authority can withdraw the permit once the physical development is not in line with the terms of the permit.

In the consideration of an application for the grant of a mineral right, the Minister in charge of the Ministry of Lands and Natural Resources is mandated by law to give notice in writing to the District Assembly affected by the mineral right about the pendency of the application. The said notice must also be sent to the traditional ruler (Chief)<sup>10</sup> of the affected area or the landowner of the land which is the subject matter of the mineral right. Where EPA directs the holding of a public hearing as part of the conduct of environmental impact assessment in the environmental permitting process for mineral operations, the district participates in the said organization. In addition, the holder of a mineral right must at least thirty (30) days prior to the commencement of operation notify the affected district as well as the affected communities of the intended operations. When the mineral operations are coming to an end, the mining company in likewise fashion must inform the District Assembly accordingly before operations come to a halt<sup>11</sup>.

Apart from the government agencies outlined above, traditional leaders and opinion leaders also play an important role in the mining industry. The critical role of Chiefs is reflective of the land tenure system that exist in Ghana. The allodial ownership of land resides in Chiefs. Chiefs and Family Heads often serve as the custodian of lands for their tribes, clans and their families. They therefore play a critical role in the grant of surface rights to holders of mineral rights in the exercise of their mineral operations. Where lands are held directly by Chiefs and Family Heads, they negotiate directly with the holders of the mineral rights for the surface rights. In other cases, they play a mediating role between the holders of the mineral rights and the holders of surface rights. In addition, the Chiefs, Family Heads and Opinion Leaders in the communities play a facilitating role during public hearings as part of the environmental permitting process. Ultimately, Chiefs and Opinion Leaders serve as agents of peace and stability in their communities. In this regard, the Minerals and Mining Act, 2006 (Act 703) makes provision for the Minister for Land and Natural Resources to give written notice to the Chief or landowners before deciding on an application for the grant of a mineral right in respect of the said land.<sup>12</sup>

The above-named stakeholders are ultimately responsible for the grant and exercise of mineral rights in Ghana. It is the actions and inactions of these stakeholders that affect the security of communities where small-scale mining takes place. It is clear that when

change in the existing use of land or a building and includes the sub-division of land, the disposal of waste on land including the discharge of effluent into a body of still or running water and the erection of advertisement or other hoardings”.

10 Traditional rulers in the form of Chiefs or Family Heads are the custodian of stool or family lands.

11 Section 13 of the Minerals and Mining Act, 2006 (Act 703).

12 Supra.

these stakeholders work in isolation and at cross-purpose, it will threaten the security of the communities where there are small-scale mining activities. Although there are a number of instances where the lack of collaboration between government agencies have resulted in the breakdown of security, it was never intended for these agencies and institutions to work at cross purposes. In fact, in the case of *Centre for Public Interest Law and Another v Environmental Protection Agency and Others*,<sup>13</sup> the court made it amply clear that agencies that serve the same or similar industries must make it part of their hallmark to work in a collaborative way to achieve their collective goal.

### **A brief history of small-scale mining in Ghana**

Small-scale mining is as old as the mining industry in present-day Ghana. Before the advent of European mining concessionaires who mined large concessions with imported heavy equipment, indigenous artisanal miners were already engaged in alluvial mining recovering gold from shallow shafts and streams. Ghanaians preferred to work their small mines as opposed to being labourers at the mining concessions of the Europeans. The preference of Ghanaians to work in their own mines rather than work for the Europeans encouraged the then Colonial Office to pass the Mercury Ordinance of 1932. The Mercury Ordinance made it illegal for Ghanaians to use mercury for mining without the permission of the colonial government. This made it illegal for Ghanaians to engage in mining as mercury was an important amalgam for separating the mineral from the mineral laden ore. The Mercury Ordinance did not stop artisanal mining. It rather moved it to the fringes as there was no government regulation for the space. The artisanal small-scale mining was formally recognized in 1986 with the enactment of the Minerals and Mining Law, 1986 (PNDCL 153). Under section 77, “*Where the Secretary after consultation with the Minerals Commission considers that it is in the public interest to encourage prospecting and mining of minerals in any area of land by methods not involving substantial expenditure or the use of specialised technology, he may by notice in the Gazette, designate that area for small-scale mineral operation and prescribe the mineral to be mined.*” The effect of PNDCL 153 was to leave the operations of small-scale mining to the discretion of the government minister responsible for minerals.

In 1989, the Small-Scale Gold Mining Law (PNDCL 218) ushered in a regulatory regime for the small-scale mining industry in Ghana. Three pieces of legislation were passed: The Small-Scale Gold Mining Law (PNDCL 218), the Mercury Law (PNDCL 217) and the Precious Minerals Marketing Corporation Law (PNDC Law 219). These statutes were passed to regularise and streamline small-scale gold mining; regulate the use of mercury by small-scale gold miners; and provide official marketing channels for gold produced by

13 Center for Public Interest Law and Center for Environmental Law vrs. Environmental Protection Agency, Minerals Commission and Bonte Gold Mines. Suit No. A(EN) 1/2005. Fast Track High Court Accra, 27<sup>th</sup> March, 2009 Before Iris May Brown (JA) Sitting as an Additional High Court Judge. (Unreported).



The evolution of the regulation framework for small scale mining in Ghana has been influenced by consideration of equity and access to minerals by local citizens. Although the constitutional dispensation puts the ownership of minerals in the hands of the citizens of Ghana, citizens were historically kept away from participating in direct mineral operations until the reforms that started with the enactment of PNDC 153.<sup>14</sup> As stated above, the enactment of the Mercury Ordinance of 1932 tilted the balance of mineral operations in the favour of large-scale concessionaires. Large scale concessionaires were mainly foreigners who mined gold and other minerals for the benefit of their foreign shareholders. This trajectory did not change even with the advent of independence. The mining space has been predominantly dominated by foreign interests. Regulatory impediments and the huge capital outlay needed to embark on large scale mining operations have combined to keep citizens away from embarking on large-scale mining operations. Although circumstance kept citizens out of large-scale mining, mining by citizens never ceased. They existed on the fringes and the need to survive and thrive then compelled them to use methods that were not necessarily safe for their operations.

14 See generally, Gavin Hilson, A Contextual Review of the Ghanaian Small-scale Mining Industry, Mining, Minerals and Sustainable Report No. 76. <https://www.iied.org/sites/default/files/pdfs/migrate/G00722.pdf>. Last accessed on 6<sup>th</sup> January 2023.

mechanized their operations, the number of locals employed directly to engage in mining activities have also declined. The general perception has therefore been that foreigners have made millions of dollars in the mining industry whereas the citizens who own the minerals have been impoverished.

Part of the reform agenda was therefore to ensure parity in mineral operations and to allow citizens to equally engage in mining operations. The aims of the reforms, therefore, were partly to bring the small-scale mining operations out of the shadows and into the mainstream where sustained government policy will identify and support citizens to increase their footprint in the mining industry. In this regard, the small-scale mining industry has been specifically limited to Ghanaian citizens. Under section 83 of the Minerals and Mining Act, 2006 (Act 703) a license for small-scale mining operations shall not be granted to a person unless that person is a citizen of Ghana.

The Minerals and Mining Act contain clear provisions on the regulation of small-scale mining in Ghana. For instance, under section 82, a person cannot engage in small-scale mining unless a license has been duly issued for that purpose. The license must be over an area that has already been designated as an area for small-scale mining.<sup>15</sup> The license must indicate the duration of the mineral rights granted. It also indicates important terms such as grounds for revocation of the license as well as conditions for the transfer of the mineral interest acquired.<sup>16</sup> The law stipulates the relationship between the District Office of the Minerals Commission and the Small-Scale Mining Committee in the regulation of small-scale mining operations.<sup>17</sup> Under section 99 of the Minerals and Mining Act, any person that breaches the provisions of the law commits an offense which is punishable by a fine and/or up to a term of three (3) years imprisonment.

From the above, one can conclude that there is a suitable regulatory regime in place for the small-scale mining industry. If applied and enforced rightly, there should not be any major security concerns in the small-scale mining industry. However, years of neglect and lack of enforcement of the industry's regulatory regime have led to a near-chaotic industry that has significantly affected the security situation in the communities where small-scale mining operations take place. With land being owned and controlled by Chiefs and families, these controllers of land have made land available for mining operations without recourse to the institutional arrangement that has been put in place to regulate the space. Although these transactions have taken place in the full glare of the State, the State has neglected or failed to clamp down on the activities of these operators. In the ensuing disordered situation, even operators that originally had the requisite license to operate have operated outside the terms of their license thereby making their operations illegal. In view of the increasing number of illegal operators that operate without any regulatory oversight, it has rendered the cost of operating legally more expensive than the cost of operating

15 See section 89 of the Minerals and Mining Act, 2006 (Act 703).

16 See sections 85, 87 and 88 of the Minerals and Mining Act, 2006 (Act 703).

17 See sections 90 and 92 of the Minerals and Mining Act (Act 703).

illegally. This has led to a literally free for all operations that have severely affected the security situation in small-scale mining communities in Ghana.

Security<sup>18</sup> has become one of the major concerns in the mining industry in Ghana, especially in resource-rich communities where the activities of illegal mining have become endemic. Security has always been a basic human need long before it was articulated by Abraham Maslow in his seminal paper “*A Theory of Human Motivation*”.<sup>19</sup> In his typology of human needs as postulated in the framework *Maslow’s Hierarchy of Needs*, Maslow theorized that security and safety concerns are an important need for human existence. At any point in time, humans will strive to achieve security and safety in order to ensure that they thrive. The security that humans need to thrive then manifest as personal security such as personal safety and law and order. There is food security that ensures that there is enough and adequate food to eat for general well-being. There is also financial security that guarantees access to paid employment, the ability to put money away for future use and an efficient social welfare system. Underneath all these is the security of livelihood that ensures that one has the right to live in his community, among his kinsmen, till the land and be free from fear.

In many mining communities today, the security of the people is severely threatened because of the activities of illegal mining operations. In a developing country like Ghana, such security concerns are worrying in that the State is often found at the crossroads. The State is constantly faced with the difficult choice of balancing other competing needs in the society when it comes to allocating scarce resources. Investments in sectors such as education, healthcare, infrastructure often compete with investment in security.

The security concerns in mining communities are attributable to both exogenous and endogenous factors. Communities that have prospective mineral fields are susceptible to conflicts in the wake of weak institutions. The more prospective the mineral fields are, the more attractive the community will be. Where the institutions of State are not strong and proactive to organize the space, it breeds insecurity because of the chaos occasioned by the unbridled competition to obtain minerals. The uncontrollable mining activities and the associated negative externalities also threaten the security of the community. In the mining space, perhaps, the many years of inequality in the access of mineral fields by local citizens have led the State to turn a blind eye to the problem by failing to empower the institutions to deal decisively with the issue. In many ways, it has also become politically expedient for the State to use a minimalist approach to deal with the problem of illegal mining. Although the large-scale mining industry accounts for about 80 % of the foreign exchange earned by the State, the small-scale mining industry is estimated to employ more than 80 % of all the workforce in the mining sector. The about one (1) million people who work directly in the

18 Security for the purposes of this paper is the definition as stated in the Cambridge Dictionary. Freedom from risk and the threat of change for the worse, freedom from danger; safety, the protection of people, organizations, countries, etc. against a possible attack or other crime. Available at <https://dictionary.cambridge.org/dictionary/english/security>. Last assessed on 14<sup>th</sup> October 2022.

19 Psychological Review. 50 (4) 1943: 370–396.

small-scale mining industry are said to support another four (4) million citizens who are mostly their dependents.

The manifestation of the security situation in mining communities is multi-faceted and may differ from community to community. However, a common thread is the need for miners to employ and deploy their own security personnel to provide security for their installations, their workers and their products. In view of the increasing activities of the mine support services industry, it has blurred the lines between what is legal small-scale mining and illegal small-scale mining. Historically, illegal small-scale mining has been viewed as mining without the requisite license from the Minister responsible for mining as well as permits from other government agencies that makes it possible to engage in mining. There is now also, small-scale miners who have the requisite permits to operate, however they operate in excess of the terms and conditions of the permits given. Thus, although they may possess all the requisite documents to operate, the nature of their operations make the operations illegal.

The advent of mine support services has exacerbated the security concerns in the small-scale mining industry. By law, the small-scale mining industry is the preserve of Ghanaian citizens and companies that are owned by Ghanaian citizens.<sup>20</sup> The mine support services industry has transformed the small-scale mining industry from an artisanal mining industry to an industrial mining by reasons of the tools available for operations. Ghanaian citizens operating with or without the requisite license engage the services of mine support services companies to improve their operations. The mine support companies which are often owned by foreigner nationals stockpile excavators, extractors and other heavy machinery and put them at the disposal of small-scale mining operations for a fee. In recent times, Ghanaian citizens enter into joint venture agreements with the mine support services companies for the mine support company to essentially operate the mine and share the proceeds with the Ghanaian citizen. Under section 96A<sup>21</sup> of the Minerals and Mining Act, 2006 (Act 703) as amended, a non-Ghanaian or a foreign company is prohibited from providing mining support services for a small-scale mining operation. However, this has not stopped the activities of the foreign owned mine support services.

The relative success of the small-scale mining operations under this arrangement has had the effect of increasing the competition at both ends. One, mine support service companies are racing to outdo each other to ensure that they are able to secure joint venture agreements over mineral fields. In the same way, citizens and their collaborators are also trying to outdo each other to secure land which will then be made available for operations by a mine support services company. The seeming competition between the parties then breeds insecurity in the mining communities. The institutions responsible for mining operations in Ghana are clearly overwhelmed by the situation and therefore lack the

20 Section 83 of the Minerals and Mining Act, 2006 (Act 703).

21 See section 2 of Minerals and Mining (Amendment) Act, 2019 (Act 995).

requisite capacity and resources to counter the situation. The involvement of politicians has rendered the regulatory institutions powerless. The result is that the regulatory institutions are virtually absent from these communities. This has led to the ensuing chaos which in turn has incentivized the parties to arm themselves to protect their operations. Community members have been cowed into submission. They are unable to protect their lands from being taken over by miners. They are also faced with negative externalities that emanate from the unbridled mining operations. The result is that in many communities where small-scale mining takes place, opinion leaders and community folks live in fear of violence from miners and their collaborators.

The operations of the small scale mining industry has adversely affected the environmental security of the communities where they operate. Although section 96 of the Minerals and Mining Act, 2006 (Act 703) provides for the dealing in mercury and the buying of mercury for mining purposes, in view of the fact that many small-scale mining operators operate outside the law, there is a growing black market for the sale of mercury as well as the increasing misuse of mercury<sup>22</sup>. The misuse of mercury and the associated effluent of the small scale mineral operations therefore leads to heavy pollution of the environment. There are also many instances where small scale mining operators fail to reclaim excavated lands after the topsoil has been stripped for purposes of mining. The result is a hotchpotch of contaminated pits which breeds mosquitoes and at the same time pose as a health hazard for community dwellers. The illegal operations of small scale mining then reduces the fertile lands that serve as farm lands for the local people.

The threat to environmental security in the small-scale mining communities are not surprising. In the first place, the regulatory authority did not envisage that the operations of the small-scale mining operator will involve the level of sophistication that they currently operate under. Thus, the environmental permitting process for even the legal small-scale mining operations often involves only an administrative desktop permitting process without requiring a full-scale environmental impact assessment. The result is a near environmental catastrophe as the small-scale mining industry has gulped up everything in its way. The operations of the small-scale mining industry have so affected water sources that turbidity levels have increased beyond the capacity of the Ghana Water Company Ltd to treat water for domestic and industrial use in many places. The Environmental Protection Agency could have issued an enforcement notice under section 13 of the Environmental Protection Agency Act, 1994 (Act 490) to halt the offending operations. However, political complicity has often paralyzed institutions to function effectively. Today, cyanide and mercury contamination have led to the death of water bodies and rendered farmlands not conducive for farming activities. In fact, the negative effect of small-scale mining on water pollution led

22 Barenblitt, A., Payton, A., Lagomasino, D., Fatoyinbo, L., Asare, K., Aidoo, K., Pigott, H., Som, C., Smeets, L., Seidu, O., and Wood. D. The large footprint of small-scale artisanal gold mining in Ghana, *Science of The Total Environment*, Volume 781, 2021.

to the formation of a media coalition against unregulated small-scale mining in 2017.<sup>23</sup> The media coalition was born when a number of media houses, media personalities, religious bodies and civil society groups came together to use the media to advocate for responsible mining as a way of eliminating the wanton destruction of farmlands and pollution of river and water bodies in mining communities in Ghana.<sup>24</sup> The small-scale mining industry over the years has significantly affected water supply downstream in urban areas where the supply of water is used for both domestic and industrial use. In the Western Region of Ghana, the Ghana Water Company reported in 2017 that the company was losing 5.3 million gallons of water daily due to illegal mining activities on the Pra River<sup>25</sup>.

Within the last seven years or so, the government has made several attempts to arrest the situation. In early 2017, the government banned all forms of small-scale mining activities within Ghana. An Inter-Ministerial Committee on Illegal Small-Scale Mining (IMCIM) was created to oversee the ban and among others come up with alternatives to engage in responsible mining. A military-cum police task force named Operation Vanguard was launched to enforce the ban and dismantle illegal mining operations. However, like its predecessors such as Operation Cow Leg, Operation Galamstop and Operation Halt, Operation Vanguard failed to halt the activities of illegal small-scale mining. The IMCIM for its four years or so of existence was dogged with many allegations of political sabotage, corruption, inefficiency and ineffectiveness. In fact, there were allegations of the officials of the IMCIM being complicit in aiding small-scale mining operations to evade the operations of Operation Vanguard.<sup>26</sup> In the end, the government was forced to dismantle the IMCIM in 2021.

What seemed to have been the outcome of the IMCIM is the development and deployment of a community mining scheme. The community mining scheme was designed to encourage effective local participation in small-scale mining. The idea is to encourage locals to be involved in small-scale mining in their local areas and to ensure that they benefit directly from the small-scale mining activities in their localities. In the same way, the locals were to be held directly responsible for the negative externalities in the area. The scheme was designed to enhance equity, imbibe a sense of ownership and community and eventually drive out foreigners from an area that has been reserved for Ghanaians by law. However, the efforts of the government to clamp down on the activities of illegal

23 Lydia Osei et al, 'Government's Ban on Artisanal and Small-Scale Mining, Youth Livelihoods and Imagined Futures In Ghana', (2021) 71 Resources Policy <https://www.sciencedirect.com/science/article/abs/pii/S03014207211000258> <accessed 6<sup>th</sup> January 2023>.

24 Ibid.

25 Western Region loses 5.3m gallons of water daily to galamsey – Water Company, A Citi FM story attributed to Obremopong Ampofo. Available at <https://citifmonline.com/2017/03/western-region-loses-5-3-million-gallons-of-water-daily-to-galamsey-water-company/> accessed 6<sup>th</sup> January 2023

26 Safo, A. 'Can We Win the Battle against Illegal Mining?' (Business and Financial Times, 25 January 2021) <<https://thebftonline.com/2021/01/25/can-we-win-the-battle-against-illegal-mining/>> accessed 26<sup>th</sup> January 2023.

small scale mining does not seem to have worked even with the implementation of the community mining program. The menace has continued unabated. In September 2022, the Chief of Kyebi-Apapam in the Eastern Region who is the head of a local illegal small-scale mining task force in a joint operation with the local police clashed with illegal small scale mining operators in the Atiwa East District of the Eastern Region in Ghana.<sup>27</sup> About two weeks after the incident, a press conference was held in the same area where the miners claimed that they were not illegal small-scale miners, but rather members of the community mining scheme of the government.<sup>28</sup> What is interesting however is that the miners at the time of the incident in September 2022 were armed with assault weapons and engaged the local task police – cum police operations in a shot-out in broad day light. In fact, the implementation of the community mining scheme has been faced with many accusations of politicization and favoritism. There is also the belief that some illegal small-scale miners have already infiltrated the ranks of the operators in the community mining space.

What is interesting however is the fact that the community mining scheme is not too different from the already existing small-scale mining regime. The scheme is governed in the same way as small-scale mining as captured in the Minerals and Mining Act of 2006. It also follows the same tributer system as encapsulated under Regulations 493 to 506 of the Minerals and Mining (Health, Safety and Technical) Regulations, 2012 (L.I. 2182). The regulatory regime of the community mining scheme is the same as the regulatory regime of the small-scale mining operations. What is being touted as the difference is that the community mining scheme is supposed to be championed by the community members. This can hardly be said to be new as this was exactly the intendment of the small scale mining regime. In view of the fact that the constitution of Ghana guarantees the freedom of movement<sup>29</sup> for every system, a resident can easily relocate to a community that has mineral deposits to engage in small-scale mining. In the same way, a citizen can easily relocate to take part in community mining. In this regard, dressing small-scale mining and calling it a different name, community mining, without dealing with the fundamental issues will not solve the illegal small scale mining menace and its many security concerns. It is the same community members that turned over their lands to outsiders and foreigners to engage in illegal small-scale mining. It is the same community members that solicited finances and support from politicians, business people and security officers to engage in illegal small scale mining. What is needed rather is the political will to confront the root causes of the menace and address same accordingly.

27 Kojo Ansah, 'Chief, Others Injured as Anti-Galamsey Taskforce Clash with Illegal Miners' (Starfm, 30<sup>th</sup> September 2022) < <https://starrfm.com.gh/2022/09/chief-others-injured-as-anti-galamsey-taskforce-clash-with-illegal-miners/> > accessed 6<sup>th</sup> January 2023.

28 Haruna Yusif Wunpini, 'We're Engaged In Community Mining, Not Galamsey – Asamang Tamfoe Residents Claim' (Graphic Online, 6<sup>th</sup> October 2022) < <https://www.graphic.com.gh/news/general-news/we-re-engaged-in-community-mining-not-galamsey-asamang-tamfoe-residents-claim.html> > accessed 6<sup>th</sup> January 2023.

29 Article 21(1)(g) of the 1992 Constitution.

## **Dealing with security concerns in small scale mining communities**

From the foregoing, it is obvious that in order to tackle the myriad of security issues in small scale mining communities, the issue of illegal small-scale mining will have to be dealt with. The inability of the government over the years to deal with the activities of the illegal small-scale mining activities has worsened the security concerns in the small-scale mining communities.

It is a well-known fact that the involvement of politicians in the small-scale mining operations have thwarted every effort that successive governments have made to tackle the menace. Politicians right from national officers to local officers have been named as being involved in the illegal small scale mining industry. In 2019, the secretary of the Inter-Ministerial Committee on Illegal Mining was caught on video by an undercover journalist purportedly receiving bribes to aid illegal small-scale mining.<sup>30</sup> In addition, a Minister of State was named by his political party's Regional Vice-Chairman as being complicit in the sale of confiscated excavators for their personal again. Then there was the allegation that the IMCIM allowed apparatchiks of the ruling political party to engage in illegal small-scale mining in order to fund their political activities.<sup>31</sup> There are Regional Ministers who have also been implicated in the illegal small scale mining industry.

Many District Chief Executives (DCE) have also been named as being heavily involved in the illegal small scale mining industry,<sup>32</sup> What makes this phenomenon particularly worrying is the fact that at the communities where illegal small-scale mining takes place, the DCEs are the highest political authorities. The DCE heads the District Security Council. The involvement of the DCE therefore compromises the ability of the other agencies within the district to function. At the national level, in view of the highly centralized political authority, the involvement of national politicians in the illegal small scale mining operations literally cripples all the other institutions from discharging their obligations effectively. In spite of the involvement of politicians from all levels of national life, not a single politician has been successfully prosecuted for their involvement in the illegal small -scale mining industry.

Thus, one of the surest ways to deal with illegal small-scale mining and thereby deal with the security issues is the political will to get politicians out of mineral operations in

30 Enoch Darfah Frimong, 'Anas' Expose: Bissue Steps Aside as Secretary to Ministerial Committee on Illegal Mining' (Graphic Online, 1<sup>st</sup> March 2019) < <https://www.graphic.com.gh/news/general-news/ghana-news-anas-expose-bissue-steps-aside-as-secretary-to-ministerial-committee.html>> accessed 6<sup>th</sup> January 2023.

31 'Galamsey Fight Grand Scheme to Enrich NPP Officials – NDC' (Class FM, 6<sup>th</sup> February 2020) < <https://www.classfonline.com/news/politics/Galamsey-fight-grand-scheme-to-enrich-NPP-officials-NDC-10517>> accessed 6<sup>th</sup> January 2023.

32 'Bosome Freho DCE Suspended over "Galamsey Activities' (Ghana News Agency, 15<sup>th</sup> October 2022) <<https://gna.org.gh/2022/10/bosome-freho-dce-suspended-over-galamsey-activities/>> accessed 6 January 2023.



the first place. Per the constitutional and legislative architecture, the mining industry is a highly regulated industry. In a unitary political system with a strong executive presidency, the regulatory power is exercised by the president and his appointees. This system puts politicians who operate even in the legal small-scale mining industry in a conflict of interest position. In as much as engaging in politics in and of itself should not be a bar to engage in business, for a problem as intractable as illegal small scale mining in Ghana, it is necessary to use every measure possible to reduce the influence of politicians in an otherwise robust regulatory regime. After all, politics is not a compulsory occupation. All over the world, politics is deemed as public service. Public service is meant to be sacrificial and anybody who is willing to engage in public service in Ghana should stay away completely from any direct or indirect involvement in the small-scale mining industry.

The current legislative and institutional arrangement for the regulation of small-scale mining operations for the most part is very clear, succinct and adequate. From the legislative point of view, there are copious provisions on ownership, eligibility and right to engage in small-scale mining operations.<sup>33</sup> The rights of the small-scale miners have been clearly spelt out in law. The steps that must be taken to acquire the rights and the terms by which those rights must be exercised have been clearly spelt out in law.<sup>34</sup> What is lacking is the strategies and the will to enforce the law to the letter. Local communities have been emasculated in the fight against illegal small-scale mining. In September 2022, the DCE of Ellembele in the Western Region and the District and Regional Police commander clashed on the whereabouts of excavators allegedly confiscated from illegal small-scale mining<sup>35</sup>. These developments often compromise the efforts of well-meaning citizens, technocrats and opinion leaders.

Closely linked to the involvement of the politicians is the involvement of security forces in the small scale industry. Security forces both in the national level and the local level have also been linked to the operations of illegal small scale mining in Ghana<sup>36</sup>. The involvement of the security officers has compromised the strict enforcement of the

33 Sections 81 – 91 of the Minerals and Mining Act, 2006 (Act 703).

34 Ibid. Also, regulations 201 – 256 of the Minerals and Mining (Licensing) Regulations, 2012.

35 Police found missing excavator: Ellembele DCE, three others arrested for obstruction. News article reported by Ghana News Agency. 7<sup>th</sup> September, 2022. Available at <https://gna.org.gh/2022/09/police-found-missing-excavator-ellembele-dce-three-others-arrested-for-obstruction/>. last assessed on 18 January 2023

36 Alhassan, O and Asante, R. (2022) Addressing Conflicts over Resource Use in Ghana: The Case of Operations Vanguard and Cow Leg. *Contemporary Journal of African Studies* Vol. 9 No. 1, pp. 53–65; Military officers protect illegal miners in Manso forest despite government's caution. News article published on Myjoyonline.com. 18<sup>th</sup> January 2021. Available at <https://www.myjoyonline.com/military-officers-protect-illegal-miners-in-manso-forest-despite-governments-caution/>. last assessed on 18<sup>th</sup> January 2023.; Ghana's soldiers prefer protecting galamsey sites to peace-keeping missions – Odi ke fires. News article published by Modern Ghana, 14<sup>th</sup> September 2022. Available at <https://www.modernghana.com/news/1183220/ghanas-soldiers-prefer-protecting-galamsey-site-s.html> last assessed on 18<sup>th</sup> January 2023.; Politicians, Police officers deeply involved in galamsey – Former MP. News article at Citifm.com 5<sup>th</sup> April 2017. Available at <https://citifmonline.com/20>

regulatory regime around the small scale mining industry. The involvement of the security forces come in the way of offering security in exchange for money to protect illegal miners, both local and foreigners to transport their products from the mine site to the capital city, Accra where they are processed and sold.

The custodians of lands, Chiefs and Family Heads as well as opinion leaders within the small scale mining communities are complicit in the illegal small scale mining industry. Chiefs and Family Heads occupy a place of pride within the local communities. They are the fulcrum around which local communities are organized. They are revered and their place and position is elevated above the usual party politics that often divide communities. The involvement of these people therefore do not only desecrate the institution that they represent, but it also encourages and embolden others to brazenly engage in illegal small scale mining. In view of the fact that the Chiefs and Family Heads have over the years been emasculated when it comes to the illegal small scale mining operations by forces much more powerful than them, they have perhaps followed the old cliché that “if you cannot beat them, join them”. The involvement of Chiefs and Family Heads mean that the last line of defense for the people when it comes security has been equally broken.

Chiefs and Family Heads have complained that they are often powerless in that the mineral rights are granted in Accra, the capital city of Ghana, by the Ministry in charge of mines without their involvement. Thus, people show up in their communities claiming to have obtained a mining right over lands which falls under their jurisdiction. The present regulatory regime priorities mineral rights over land rights in the sense that the holder of a mineral right has the right to enter onto the land which is the subject matter of mineral rights. The only recourse of the land rights holder is the right to be compensated for the disturbance of that surface right by the holder of the mineral right. In this regard, the local Chief or Family Head has no legitimate means of stopping the entry onto the land by the holder of mineral right. It is interesting to note however that under section 13(2) of the Minerals and Mining Act, 2006 (Act 703) the Minister responsible for mining must notify the Chief or allodial title holder of land about the pendency of an application for a mining lease before the lease is granted. The right of the Chief is only a right to be notified and not a right to object to the grant of the mineral rights. In this regards, Chiefs have stated that they are powerless in the grant of mineral rights and often times are not privy to the terms by which the rights were granted.

In view of the fact that mining operations take place in local communities, perhaps it will be useful for the application process to start from the bottom as opposed to the top. In this regard, a person interested in small scale mining operations must first submit an application to the Small Scale Mining Committee of which the local Chief is an integral part. Once the application clears the Small Scale Mining Committee, the application can then make it way through the chain to the Minister responsible for mining. In this way, the

17/04/politicians-police-officers-deeply-involved-in-galamsey-former-mp/. Last assessed on 18<sup>th</sup> January 2023.

Chiefs are empowered to participate meaningfully in the process. They are able to identify the mineral rights holders as well as the terms by which they must operate. They can easily identify illegal operators and then collaborate with security forces as well as other agencies to get rid of them.

Closely linked to the above is the adoption of a bottom-up approach to deal with the illegal small scale mining operations and the security concerns associated with it. Current efforts have largely been top-down. The special operations against illegal small-scale mining have all been from the capital city, Accra. These operations are usually initiated, formulated and implemented by officials who are unfamiliar with the local contexts within which illegal small-scale mining operates. The operations do not have the buy-in or support of local Chiefs and opinion leaders at the formulation and implementation stages<sup>37</sup>. The result is that the operations are unsustainable, they soon lose momentum and eventually fizzles out. Any approach to tackling the illegal small scale mining menace and its security challenges must leverage the local knowledge as well as the position of the Chiefs and opinion leaders. It must also integrate the strengths of the local Chiefs to strengthen the current legal architecture at the local level. District Assemblies, District Mining Offices and Small-Scale Mining Committees should be empowered to play their role in the regulatory chain to ensure compliance of small scale mining operations. The District Security Council should be directly in-charge of security operations within the district to deal with illegal mining and the associated security concerns. The involvement of the regional or national security forces must as much as possible be on the invitation as well as the terms of the District Security Council. The president can always determine the effectiveness of the District Security Council by using his power of appointment to determine who the District Chief Executive is at any point in time. In this way, local communities will be incentivized to take ownership of the local problems in a much more sustainable way.

The District Security Council can drive the participation of the local Chiefs, opinion leaders and community folks in the fight against illegal mining. However, community participation is likely to be guaranteed when community members benefit directly from the dividends of resources extracted within their communities. It is in this direction that the community mining scheme is a laudable idea. However, to ensure the success of the community mining scheme, it must be linked to the overall reforms to deal with the issue of illegal small scale mining.

It has already been noted above the havoc that the mine support services industry has caused. It has succeeded into turning an industry that regulators envisaged to be artisanal to an industry that is heavily reliant on industrial scale machinery. In order to deal with the security situation therefore, the mine support services industry will have to be properly regulated. First, there needs to be the realization that the nature of small scale mining has

37 Asori, M., Mpobi, R.K.J., Morgan, A.K. et al. Is illegal mining socio-politically entrenched? An opinion piece of the interaction between formal politics and chief dominance in mineral governance, and its influence on fighting Galamsey in Ghana. *GeoJournal* (2022). <https://doi.org/10.1007/s10708-022-10725-1>.

changed forever. It will no longer be artisanal in nature. In the current global dispensation where capital can be easily sourced from around the world, it will always be a difficult challenge for regulators to keep big money and big machinery out of small scale mining. What is needed therefore is a complete overhaul in the categorization of small scale mining. In this direction, the current system of classifying small scale mining based primarily on the size of the mining concession should be phased out. Instead, there should be different layers of categories based not only on the size of the concession, but also on the location of the concession, the equipment used, the methods applied, the amount of investment and the output of the operations. The regulatory design can then be modified to respond to each of the categories of the operations.

## **Conclusion**

This small mining industry is too important to allow it to breed security concerns in small scale mining communities. Apart from its contribution to the economy of Ghana, it also represents a symbol of diversification in the mining industry. The large scale mining industry is dominated by foreign interests where government control is limited in terms of the level of investments and where dividends are spent. The small scale mining industry ensures equity as it allows citizens a front seat in the mining industry. In addition, the revenue that accrues from the sector can shore up government revenue in times where revenue from the large scale mining industry dwindles. The association of the small scale mining industry to insecurity in small scale mining communities therefore puts the small scale mining industry at real risk of decline.

The insecurity in small scale mining communities poses a risk to all the inhabitants of the small scale mining communities. In view of the threat of terrorism, organized crime and armed robbery, there is a real risk that if the security situation is not properly handled, it will spread to other far flanged communities and cities where no mining activities take place. Although there is the need for some reforms in the regulatory regime, for the most part the existing regime is well enough to sanitize the sector if the regulatory agencies are empowered to perform their functions for which they have been set up. The key to the efficient and effective performance of the regulatory agencies is the political space to operate. Politicians at all levels must commit to exit the small scale industry. In this direction, it is the president and the high echelons of power that must lead the way. Politics and public service is service to the people. It is meant to be selfless and sacrificial. It is not compulsory. The president must use his enormous powers under the constitution to ensure that politicians and public servants stay away from any direct or indirect involvement in small scale mining operations. It is when the sector is free of all political influence that the regulatory agencies will have the room and space to operate. Regulators will then galvanize the support of the community to deal decisively with illegal small scale mining and the security issues associated thereof.