

Experiences from Ghana on Mining and its Impact on Human Rights

Ghana is a very resource rich country that is yet to benefit from the natural resources that it is endowed with. These resources include gold, diamond, manganese and recently oil. Over a century of gold mining in Ghana has not transformed the Ghanaian economy. Poverty is still widespread. Mining communities still harbour most of the wretched of the earth in Ghanaian society. There is therefore an urgent need to protect the right to development of especially people living in mining communities across the country. Ghana is now an oil producing country. Ghana is therefore making frantic efforts to avoid the resource curse this time round. There is trepidation among Ghanaians because exploitation of gold in the past and other minerals did not ensure the development of the country.

Background

The Commission on Human Rights and Administrative Justice (CHRAJ), which has primary responsibility in the country to protect and promote the rights of all persons, after receiving many complaints on human rights violations from people living in mining communities across the country, conducted a nation-wide investigation to ascertain the state of rights in mining communities in the country.

The results of the study was published in 2008 amidst claims by community leaders in mining areas and civil society campaign groups in Ghana that large scale surface mining activities are responsible for widespread poverty, social and environmental degradation and demand urgent action and compensation.

A verification mission undertaken by a team of investigators from the Commission to some mining communities confirmed some of the reports of widespread violent abuses of human rights by mining company officials and their security contractors.

The causes of the violations of human rights appear systemic in nature. Based on the Commission's concern for the protection of basic human rights of all persons and in line with its mandate, the Commission undertook systematic investigation to determine the state of rights and fundamental freedoms of people living in mining communities in Ghana.

It appears most people living in mining communities in Ghana believe that the right to development remains an empty promise to them even though the UN General Assembly officially recognized this right in a Declaration over two decades ago.

The Declaration on the Right to Development recognises that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well being of the entire population and all individuals on the basis of their meaningful participation in development and in fair distribution of its benefits resulting.¹

Article 8 of the Declaration provides that: "States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices".

Claims of greater justice by people living in mining communities do indeed merit serious attention. The price of not addressing these concerns is the resulting tense relations between companies and communities that could make the communities drift into violence.²

The investigation sought to critically examine the broad trends of the human rights situation in mining communities and the underlying reasons for increasing reports of human rights violations in mining areas in the country.

The specific aims of the investigation were:

- To assess the human rights situation in the mining communities.
- To examine the extent of pollution of water bodies and causes of environmental degradation.
- To promote cordial relations between mining companies and mining communities.

A foremost aim of the investigation, in the long term, is to find solutions to the problem of allegations of abuses of the rights of people living in mining communities across the country.

Approach/Methods

The investigation was launched in December, 2006 at a Stakeholder's Forum on the *State of Human Rights in Mining Communities*.

¹ UN Resolution 41/128, December 4 1986

² For detailed analysis of CHRAJ's evaluation of the state of rights in mining communities see the Commission's report on the State of Human Rights in Mining Communities, 2008 pp 10-12

The investigation was not a fault finding one, however, it did not overlook the obligations and responsibility of any of the stakeholders as CHRAJ sought to explore ways of advancing human rights in places where mining take place in the country. All role-players had an opportunity to address the issues with the Commission in a co-operative manner.

Being a human rights monitoring exercise, the investigation employed human rights monitoring techniques and methods, namely focus group discussions, interviews, site inspections, documentation and observation, among others, to ensure high quality investigation.

The investigation was based on Focus Group Discussions with community leaders, local authorities, women and youth groups, consultations with local police service and mining companies, and interviews with complainants. These were done in a confidential manner in order to elicit the nature and causes of alleged violations with a view to exploring solutions with the various groups. Consultations with mining companies also allowed the companies to respond to issues raised by community representatives, and comment on the evidence gathered by the investigators.

In a validation workshop, before publication of the report, participants drawn from the mining communities and companies as well as the Regulatory Agencies had a unique opportunity to examine and comment on the Report. Representatives of the mining companies, regulatory bodies and community leaders commented extensively on the report.

Specific Issues Investigated

Allegations of violations of rights and fundamental freedoms of people living in mining communities include:

- Violent, illegal arrest and detention of community members.
- Torture of persons illegally arrested and detained.
- Assault and battery (sometimes involving the use of firearms and other deadly weapons) of youth accused of trespassing on mine property and illegal mining.
- Interference (often violent, involving the use firearms) against citizens engaged in public protests against activities of mining companies.

The results show that there is evidence of widespread violations of human rights of individual members of communities and communities' collective rights in some

mining areas in the country. Some of these identified violations have been profiled for possible thorough follow-up investigations.

The Commission found evidence to conclude that there has been widespread pollution of communities' water sources, deprivation and loss of livelihoods. Several examples of excesses by the security agencies and the security contractors of the mining companies were provided and documented. Some of these excesses had resulted in serious injuries and were sometimes fatal.

The findings include the following: inadequate compensation for destroyed properties; unacceptable alternative livelihood projects, absence of effective channels of communications/consultations between companies and communities; excesses against gamamseys; health problems attributed to mining, reckless spillage of cyanide, and unfulfilled promises of employment.

The study results showed that both mining companies and communities recognise the importance of effective channels of communication between them as an effective means of resolving differences and preventing the escalation of conflicts. It must however be noted that there have been commendable efforts by some mining companies to address some of the problems identified. Some mining companies have provided alternative sources of water for polluted or destroyed ones, established community relations departments to handle grievances of communities, particularly those concerning compensations for destroyed property and the planning of community development projects. Some companies have undertaken specific projects, such as malaria control programme, to address specific health concerns of communities.

The nature and degree of these rights abuses vary in scale based on a variety of considerations: the specific company operating in the area; the stage of mining activities, proximity of community to mining and processing facilities, the mining culture of local population; whether one is dealing with large scale or small-scale mining.

The most serious complaints of abuses came from communities within the operational areas of long history of mining and least in those at mine development phase. While issues of excess force against individuals and of deprivation of livelihoods are more endemic in large-scale mining areas, child labour is absent in these mines but very endemic in small-scale mining areas. Complaints of human rights violations were more prevalent in communities affected by AGA operations in Obuasi and Golden Star Resource operations in Prestea and Dumasi. In many of

these cases the violations were against alleged galamseys encroaching upon concessions of these companies.

The investigations also show that state institutions with regulatory and monitoring responsibility for the mining sector have not performed optimally due to capacity constraints.

Water and Water Sources

Access to water is a problem in many communities. Many rivers and streams, which hitherto, provided water for the communities have been destroyed, polluted or either dried up. Cyanide spillages into rivers and streams by mining companies were recorded. There was evidence that mercury was widely used in small-scale mining in the communities visited.

The companies provide alternative water supply to the communities: stand pipes, bore holes and pipe borne water, some of which were malfunctioning. Apart from some malfunctioning, communities complained that some provided water that was unsafe for drinking. District Assemblies also provided some potable water to some of the communities.

Tests of water sampled from water sources in 22 out of 28 mining communities show that, at least, two water quality parameters, with health implications, were present and in concentrations significantly higher than the World Health Organization (WHO) maximum allowable limits for drinking water.

Environment (Pollution and Blasting)

Widespread complaints about dust and noise pollution from mining activities resonated in many communities. It was evident that the companies did not take dust suppression measures seriously and often limited sprinkling to the areas where they were actively operating.

It was clear that some communities are bearing considerable negative brunt of the mining activities of some companies. In some cases some of these affected communities have appealed to the companies for resettlement or relocation. Communities such as Binsere, Dokyiwa, who feel threatened by the unacceptable stench from a cyanide pond located very close to these communities and Anwiam as well as Anyinam located within active mining areas demand resettlement.

Blasting activities of mining companies have caused cracks in several buildings in Obuasi and Prestea. Blasting and the consequent vibration of the ground result in

the shaking and cracking of buildings and the mosaic of underground workings aggravates the vibration from blasting. The communities visited in these areas contend that noise and dust from blasts, and the movement of large haulage trucks constitute major nuisance to the communities.

Health and Related Issues

Most mining communities visited attributed a variety of health problems prevalent in their environment to mining activities. At Obuasi medical officers at the Bryant Mission and Obuasi Government medical facilities acknowledged that some of the diseases prevalent in communities in the periphery of the mine are in part attributable to mining.

Common diseases suffered by community dwellers are skin diseases, chest diseases including TB, diarrhoea and malaria, as well as typhoid. Communities located very close to centres of mining activities like Anyinam claim air pollution makes them experience dizziness and headache.

Mining communities in Akatakyieso, Binsere and Dokyiwaa complained of the prevalence of mosquitoes in their communities due to stagnant water in abandoned pits and trenches dug by the mining company.

The communities claim that water borne diseases they suffer are caused by the bad quality of water after their rivers and streams were destroyed by large scale surface mining operations of the mining companies. For instance, the people of Abekoase in the Western region complained of episodes of cyanide spillage which polluted their main source of water and contaminated fish in the river.

Safety and Security

Mining companies maintain private security personnel to protect their concessions and property from encroachers/trespassers. Apart from the private security of the companies, all the mining companies, with the assistance of the Government (various REGSECs) deploy state security personnel (especially police and military) to protect their property/concessions.

In the case of large-scale concessionaires there is evidence that galamseys are harassed, and inhumanely treated often with the help of state security. The study found evidence to show that AGA Obuasi had engaged state security and used guard dogs in its fight against the encroachment of galamseys. The worse affected communities are (Sansu, Dokyiwa, Binsere, Akatakyieso), where the investigation team received individual complaints.

Almost all the companies operating in the communities visited, including AGA, AGL, CGML, CAGGL and BGL have established permanent posts in their concessions for the military, the police or both. The Military/Police operate from these posts thus established by the companies on rotation bases.

Incidents of police and military excesses occur in mining communities. There were periodic exercises carried out by the Police/military code named "Operation Flush Out", during which excesses occurred.

Royalty

The study established that communities impacted by mining activities do not directly benefit from mining royalties. In most cases most communities did not even know of the existence of the facility. In communities where people expressed knowledge of the facility, they said the chief was the main beneficiary of these funds.

Compensation and Resettlement

Most communities were highly dissatisfied with compensation paid by mining companies for affected property. These complaints were pervasive throughout large scale mining sites but were more topical in areas operated by AGA, Obuasi and Newmont Ahafo and Akyem. Community members complained that they received highly inadequate compensation from the companies for destroyed farms and crops.

Problems relating to compensation and resettlement would seem to be some of the key challenges in the communities affected by mining activities in Ghana.

Livelihood and Employment

There was high discontent among communities with the inability of mining companies in their area to employ the youth of the communities. The communities are highly dissatisfied with the number of their members in companies' employment. One of the constraining factors why communities do not benefit much from employment is the apparent lack of skills required by the mines in some of these communities.

Communities have complained of appropriation of their land by mining companies without compensation and thereby depriving them of their sources of livelihood.

Artisanal mining and the illegal form, generally known as galamsey is pervasive in almost all the mining areas visited. Galamsey is bolstered by lack of viable employment or livelihood alternatives. However, their activities provoked mixed reactions from the various stakeholders consulted. It is regarded by most

communities visited as a legitimate livelihood endeavour; in some communities they are seen as a nuisance and accused of destroying farms and polluting water bodies. In areas where they operate in concessions of large-scale and registered small scale concessions, they are regarded as criminal encroachers.

The study showed that mining companies have provided a variety of projects such as schools, boreholes, community centres and electricity. They have built and renovated existing facilities in some of the communities in their operational areas. In some cases communities have expressed appreciation for these facilities. However, some of the communities felt they were not consulted and would prefer other facilities. To make these projects more meaningful to the beneficiary communities, it is recommended that companies adequately consult communities on the selection, design and implementation of these projects.

Artisanal and Small Scale Mining & Illegal Mining

The study assessed the state of human rights in the artisanal small-scale mining areas of Yale and Kadema, in the Upper East Region as case studies. The artisanal and small scale mining sector has a complex structure. The existence of simmering conflicts was observed among some of the actors. The involvement of children in artisanal and small scale mining is worrying. Despite efforts by government to regularize the sector, illegal mining is still pervasive, and poses a big challenge to both registered miners and the Minerals Commission.

Implementation of Recommendations

The Committee set up by the Government under the auspices of the Ministry of Environment, Science and Technology (MEST) in July, 2009, found the views and sentiments expressed by people in the mining communities captured in the CHRAJ report to be accurate. The Committee, among other things, noted that the: 'Mining communities feel let down. Some communities blame the degradation of the environment and the destruction of their source of water on the weak implementation of existing regulations and regulatory bodies. They argue, for instance, that section 17 of the Minerals and Mining Act, 2006 (Act 703) does not offer protection to mining communities'.

The Committee held that huge concessions deprive communities of farmland for very long periods. It therefore advised that land appropriation for large scale surface mining should be governed by a new regulation that makes it obligatory for mining companies to relinquish 50% of their acquisitions within 25 years of the acquisition for a fifty year period.

A common complaint from the mining communities is the pollution of their water sources, including rivers, lakes and streams were being polluted with cyanide used in the mining process.

The International Cyanide Management Code for the Gold Mining Industry has been subscribed to by major companies operating in Ghana, namely; AngloGold Ashanti, Gold Fields Company and Newmont Gold USA. The parent companies, having subscribed to the code, obligate their local offshoots to do the same if they have not done so already.

CHRAJ recommends that a final step should be taken to make the code that guides the use of cyanide widely applicable. It must strictly be adhered to by all mining companies operating in the country.

Compensation

Issues related to compensation for people living in mining communities engender the most heated debate whenever discussed. The Committee recommended that methods of compensation assessment should be urgently reviewed and standardized with a view to protecting livelihoods of people living in mining communities.

Taking cognizance of the obligation to fulfil, respect and protect the rights of all persons in the country, chiefs and community leaders should not be left without technical support from the government when negotiating with the mining companies that are known to have a more clout than village communities.

Resettlement and Livelihoods

The Ministerial Committee recommends that the Minerals Commission should provide detailed guidelines for resettlement to ensure uniform application by all companies.

In the view of the Commission, alternative land must be provided as part of the resettlement package by the State and companies in line with the requirements of Article 20 of the 1992 Constitution of Ghana.

The Commission further endorses the Committee's recommendation that land in the concession areas, including reclaimed areas not utilised by mining companies, should be given back to the communities for farming purposes to generate more employment in the mining communities.

Royalty

Government has already increased the percentage of royalties paid by the mining communities to 6% from the 3 % rate paid by all companies until 2009.

Owing to existence stabilization clauses in agreements with the major mining companies in the country, these companies have not been affected by the increase in payment of royalties.

The Commission calls upon the government to review stabilization clauses in agreements with the mining companies to ensure that Ghana derives maximum benefit from the extractive sector.

It is hoped that the Minerals Development Fund Bill, if it is passed into law, will give a great boost to development of infrastructure in mining communities. The Bill further aims to prescribe guidelines for corporate responsibility projects, set health and safety standards, tackle environmental issues and resolve issues relating to blasting activities of mining companies.³ These were, also, some of the serious issues raised by the Commission in its investigations.

The Commission reiterates its guiding recommendation that urges the government to set up an independent committee to undertake a cost benefit analysis on the mining industry to the economy with a view to guiding the nation to position the mining industry to make a more realistic contribution to national development vis a vis the agricultural sector if mining proves useful as it is widely believed.

Artisanal Small Scale Mining and Illegal Mining (Galamsey)

The Committee found that the galamsey activities were widespread. This confirms findings made by CHRAJ. It further confirmed the Commission's findings that illegal miners (galamseymers) carried out their activities on company concessions. They also polluted the environment.

The Commission endorses the recommendations made by the Committee that Artisanal Small Scale Mining (ASM) must be supported to improve their gold recovery processes and rapidly eliminate the use of mercury entirely. Back filling of holes, and storing the top soil to be replaced over mined surface should be undertaken to re-generate the eco-system after mining. The Minerals Commission should streamline licensing of artisanal small scale miners and strictly monitor their activities as a way of checking activities of illegal miners in affected communities.

Legislative Framework

The time is opportune to entirely review the Minerals and Mining Act 2006 (Act 703), and also introduce the relevant legislative Instrument for effective implementation of a Mining Act that would, among other things, ensure that mining communities realize the right to development.

³ See Daily Graphic May, 23, 2012 p. 53.

To this end the proposals by the Committee to amend Section: 17, 25, 27, 30, 41, 42, 48, 50, 72 (2), 73, and 74 of the existing Mining Law are recommended for urgent action to be taken on them.

Oil production and Pollution

Oil production at Ghana's offshore Jubilee field began in mid- December, 2010.

In December 2009 and March 2010 two oil rigs operating under the purview of Kosmos Energy Ghana HC spilled drilling fluids into the waters of Ghana, offshore at the Jubilee Field off Cape Three Points. The rigs involved were the ABAN ABRAHAM and the ATWOOD HUNTER. The first spill by the ABAN ABRAHAM was said to have occurred during the transfer of the fluid from the rig to a support vessel, and involved some 584 barrels of drilling fluid. The second spill by the ATWOOD HUNTER occurred as result of the failure of the upper packer system during drilling operations.

Concerned about the effect of the spills on the marine environment and the fact that the two spills had occurred within such a short interval of time, the Minister of Environment, Science and Technology (MEST) on 27 April 2010 set up a Committee to investigate the two incidents.

Findings

The first spill occurred on 26 December 2009. The incident occurred when the oil rig ABAN ABRAHAM was transferring drilling fluid (Low Toxicity Oil Based Mud (LTOBM) to the support vessel VIKING SURF. During the transfer, a valve was left open that caused the spillage. It is estimated that about 584 barrels of drilling fluid (LTOBM) were spilled in the incident.

The second spill occurred on 23 March 2010. This spill was a result of the failure of the Upper (Primary) Packer system and rupture of the hose.

The Committee recommended payment of compensation in line with it terms of reference.