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Questioning the Status Quo: Can Stakeholder Participation Improve Implementation of Small-Scale Mining Laws in Ghana?

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Abstract: Ghana's small-scale mining sector faces complex challenges, including environmental degradation and pollution, loss of life and increased health risks, despite several years of implementation of small-scale mining laws. These challenges, generally, are known to have escalated because of illegal small-scale mining, locally known as "*galamsey*". Despite the illegal status of this category of miners, this paper examines the extent to which stakeholder participation can improve implementation of mining regulations and also address the marginalization of these miners. This paper about stakeholder participation is timely because news reports in mid-2016 mentioned that the Government of Ghana, despite many years of disengagement, is now planning to engage with *galamsey* operators, in terms of registration, as part of measures to effectively regulate the activities of small-scale miners. Findings from fieldwork indicate that (1) chiefs are seldom consulted in the granting of mining licenses; (2) illegal miners do not participate in the implementation of small-scale mining laws; and (3) stakeholders, such as officers in district mining offices, feel distant from the implementation process. Against the backdrop of these findings, it remains useful to explore the extent to which effective stakeholder participation could help overcome the status quo—particularly its ramifications for both the implementation of ASM laws and the eradication of other underlying challenges the sector faces.

Keywords: galamsey; laws; implementation; Ghana; ASM; stakeholder participation; mining

1. Introduction

The artisanal and small-scale mining (ASM) sector has an international reputation as a poverty-driven activity. In sub-Saharan Africa, a vicious poverty cycle persists for ASM participants because "a large share do find it challenging to accumulate sufficient earnings to raise their living standard beyond a subsistence level" [1] (p. 183). As a result of this characterization, the sector maintains a peripheral position on the global or continental economic development agenda despite all the work that has been done over the past four decades to mainstream it and the economic opportunities the sector has provided for tens of millions of people [2–4]. Apart from low earning, the sector's challenges include low levels of technology, poor recovery/low productivity, environmental/health risks, unskilled labor—all of which culminate to further impoverish those engaged in the sector. This is in addition to the inappropriate policies and regulations and the lack of financial resources and support services in various countries that further marginalize small-scale miners [1]. A discourse around opportunism—the notion that people engage in such activities in order to "get rich quick"—has become an established explanation in policy circles for the proliferation of unlicensed or illegal small-scale

mining in Africa. Although this is no doubt one of the several reasons cited for people engaging in such activities, many participants are involved due to hardship and the general socio-economic deprivation they face despite the abundance of natural resources in their neighborhood [5].

In Ghana, ASM issues are as diverse as the reasons for which people are engaged in such activities. Chief among them is the legalities surrounding the sector. Despite the long history of small-scale mining in the country, it was only upon the promulgation of the Small-Scale Gold Mining Law (PNDC Law 218) in 1989 that the government began to regularize the sector [6]. This law was later incorporated mainly into sections 81 and 99 of the Minerals and Mining Law 2006 (Act 703). The hitherto PNDCL 218, in particular, resulted in two groups of operators, namely, those regularized and legal and those who are unregulated and thus considered “illegal” [7]. This apparent grouping or separation of artisanal miners is an underlying issue in the ASM sector. In fact, the illegal category of the sector, referred to as *galamsey* in Ghanaian parlance, faces the worst form of marginalization in comparison with other small-scale miners. Even though there appears to be a burgeoning consensus on the need to engage illegal small-scale miners in policy reforms in Ghana’s mining sector [8], the sector’s marginalization continues to interfere with efforts in obtaining the legal license for operation. Thus, after almost a decade of implementing Act 703, the ASM sector faces many endemic challenges and *galamsey* activities are even on the ascendency.

Several studies exist to explain the activities of actors in the sector. These studies have discussed various aspects of the subject such as the consequences of small-scale mining on the environment, the motivation for small-scale miners, and issues about land access among others (see [9–14]). What is missing, however, from the literature is a careful analysis of stakeholder participation in the implementation of small-scale mining laws in Ghana. There seems to be a fairly strong consensus in the policy literature that stakeholder participation is healthy for policy implementation [15]. For example, Pacherie [16] argues that stakeholder participation improves policy implementation as it allows actors to act in unison towards the attainment of a shared goal. The push for stakeholder participation in policy implementation is further strengthened by claims that it has the advantage of turning passive citizens into active citizens in decision making processes [17], and therefore likely to improve trust and openness which are key to implementation [18].

Of particular interest to this paper, then, is the extent to which the purported advantages of stakeholder participation can actually improve implementation of small-scale mining in Ghana given the complexity of the situation. This comes against the backdrop of a recent decision by the Minerals Commission in Ghana—a state agency responsible for the regulation and management of the utilization of mineral resources and the coordination of the policies related to them—to register all illegal miners in Ghana [19]. The timeliness of this study is further supported by findings from a current report by the International Institute for Environment and Development (IIED) on ASM in Ghana. The report claims that Ghana has also commenced prioritizing ASM as a major national policy issue and a developmental opportunity. It explains that ASM has a significant potential in unlocking enormous local, regional and national development gains for the country and its people. Approximately 1.1 million Ghanaians directly participate in ASM, while a further 4.4 million are considered to be dependent on ASM. The evidence is that ASM contributed to 34 percent of the Ghana’s gold production in 2014 and the government, as a result, is actively pursuing the re-categorization of its mineral licensing regime including ASM [20]. This move, arguably, resonates with the burgeoning discourse on the growing potential of stakeholder engagement and dialogue in mainstreaming the ASM sector in the context of national resource governance in Ghana [21].

While interrogating the prospects of stakeholder participation, we are also cognizant of all the underlying issues that must be addressed in order for participation to yield expected outcomes. Some policy implementers perceive livelihoods in the ASM sector as undesirable and fear that engagement may perpetuate illegal or dangerous activities [22]. In arguing our position, we present insights from implementation of small-scale mining laws in the Western Region of Ghana, which is plagued with enormous challenges, given that illegal small-scale miners in particular do not feel part

of the implementation process and therefore have no obligation to support it. Despite the challenge in identifying and possibly involving all relevant stakeholders to achieve optimal outcomes, we simply do not know enough about whether or not such involvement or participation, as intended by the Minerals Commission, could make a positive difference. The rationale for this paper is therefore to contribute to filling this gap in knowledge. To advance the paper's objective, we begin with a brief review of the literature on stakeholder participation and small-scale mining, followed by an exposition on the methods used to gather and analyze primary data. The bulk of the paper discusses our findings where we highlight potential ways of boosting efforts towards implementation of ASM laws. Since the topic of participation cannot be taken for granted, we also critically reflect on our primary findings to illuminate some of the nuances that need to be considered in dealing with such a complex issue. This reflection is undertaken in the concluding section. The terms stakeholder participation and stakeholder engagement are used interchangeably in the paper. To us, these terms are synonymous at both analytical and practical levels.

2. Small-Scale Mining and Stakeholder Participation: A Brief Review

Despite being a worldwide phenomenon [23], small-scale mining lacks a universally acceptable definition. Consequently, attempts at arriving at a common definition have proven extremely difficult, if not impossible. Partly, this difficulty is exacerbated by the unique peculiarities characterizing the practice, such as “the magnitude of the capital investment, the size of the workforce, the volume of output, the size of the claim, the depth of the mine, and the level of sophistication of the mining equipment used” [24] (p. 118). In terms of its nature, small-scale mining “can be illegal or legal, formal or informal and can encompass everything from individual gold panners to medium-scale operation employing thousands of people” [25] (p. 427). This confusion about the definition and nature of small-scale mining presents policymakers and scholars with multiple conceptual difficulties in advancing inquiry into the practice; and it is probably one of the reasons why the topic of ASM remains peripheral to development policy discussions broadly [3].

Irrespective of the confusion surrounding the meaning and nature of the practice, it remains a source of employment for disadvantaged job-seekers in the labor market (AB and A, 2002 cited in [26]), who are usually characterized by extreme poverty and vulnerability [21]. Andrew [24] (p. 118) corroborates the poverty-alleviation role of small-scale mining by adding that “small-scale mining offers several potential benefits: it allows mining of otherwise uneconomic resources, since it is mobile, flexible, and requires little capital; it also reduces rural-to-urban migration as it creates rural employment; it tends to be locally owned, which retains capital in the community”. It is based on the poverty alleviating prospects of ASM and its potential to grow the local economy and create jobs that some scholars perceive ASM an important activity in many developing countries (Lei and Andrews, 2001 cited in [25]).

Yet, the potential of small-scale mining to significantly contribute to poverty reduction and become a sustainable livelihood for people is undermined by the extreme marginalization of the sector. An explanation for this marginalization is the widely held belief that the challenges of the sector are low on the priority list of policymakers [2,4]. This situation is believed to have negative ramifications for mainstreaming the sector, as it is believed to drive “many small-scale to producers in the resources sector operate informally and often this is the norm. Such informality dominates because of formidable barriers to formalization, where processes are overly complicated and bureaucratic, centrally determined and managed, reliant on the state for regulation and lacking social relevance” [22] (p. 6). Further, marginalization deepens governments' lack of political will to legalize the sector. This may be explored by personal interests related to corruption, money laundering, and similar illegal practices [23].

The extreme marginalization that the sector faces basically undermines the ability of government to tap its poverty reduction potentials, hence the need for effective stakeholder engagement in the sector [15,27]. Two important issues worth clarifying are: who is a stakeholder and what is stakeholder

participation? There is a difference of opinion over the exact meaning of who a stakeholder is (see [28]). Given this difference, our study adopts Freeman's [29] definition, which defines stakeholders as those who affect or are affected by a decision or action. Per our ASM focus, we define stakeholders as those affected by the implementation of small-scale mining laws, including illegal miners, traditional authorities and dwellers in local communities where such activities take place. Admittedly, implementation of ASM legislation could have implications for business people, traders, regulated ASM operations, and perhaps large-scale mining companies. But our emphasis on marginalization leads us to focus on some of the groups that are historically neglected in the policy circle.

The concept of stakeholder participation encapsulates notions of getting people involved or being allowed to become involved in a decision-making process or the delivery or evaluation of a service, even simply to become one of number of people consulted on an issue or matter [30]. More broadly, it refers to "persons, groups and organizations that must somehow be taken into account by leaders, managers and front-line staff" [27] (p. 24). The nature of such engagement should be "collaborative and it should incorporate not only citizens, but also organized interests, profit-making and non-profit organizations, planners and public administrators in a common framework where all are interacting and influencing one another and all reacting independently in the world as well" [31] (p. 422). The "push" for stakeholder engagement in the implementation of small-scale mining laws is against the backdrop of the widespread assumption that policy implementers may stand a better chance of effectively implementing small-scale mining laws if the concerns of stakeholders such as chiefs and illegal miners are given serious consideration.

The prospects of stakeholder engagement in improving the implementation of small-scale mining laws is further supported by Irvin and Stansbury's [32] study on how citizen participation has advantages such as education, political suasion, empowerment and breaking gridlock. These advantages provide the opportunity to improve policy implementation through active engagement with citizens, which is better than a passive citizenry [17]. Additionally, stakeholder participation builds trust and openness, both of which are key to successful implementation. Overall, a major advantage of stakeholder participation is that it ensures incorporation of local knowledge into plans, and therefore could contribute to learning and better plans as ideas flow back and forth between planners and affected interests (Innes, 1998 and Innes et al., 1994 cited in [33]). Also, participation provides planners with opportunity to educate stakeholders, especially those affected by the policy, about poorly understood problems and policy issues, which builds incentives and understanding for collaboration (Kaiser et al., 1995 cited in [33]). Clearly, there is ample evidence in the literature demonstrating that stakeholder participation may greatly enhance policy implementation.

What we do not know is the extent to which the participation of a historically marginalized group of stakeholders (i.e., *galamsey* operators) could make a significant positive difference not only for the implementation of existing laws but also for addressing the fundamental challenges that lead people to engage in illegal mining in the first place. The point here is that the normative arguments which favor stakeholder participation cannot merely downplay the complex web of significant challenges which confront stakeholder engagement in enforcing legal codes regulating natural resource management in Ghana. In the view of Grimble and Wellard [34], these challenges may include, but are not limited to, market failure, multiple objectives and concerns, poverty and under-representation. Kothari [35] adds that there is a huge potential for historically marginalized groups (i.e., *galamsey* operators) to have unexpected and potentially negative interactions in the existing power structures. Further, existing privileges and group dynamics may discourage minority perspectives from being expressed [36], creating "dysfunctional consensus" [37] (p. 19). From these insights, it remains to be seen how the bureaucratic apparatuses responsible for implementing small-scale mining laws in Ghana would navigate the challenges of stakeholder engagement which have been highlighted earlier.

An even more profound challenge is clarifying stakeholder participation and stakeholder engagement. The reason is that while a lot has been written on stakeholder participation or engagement, there is no clear attempt within the literature to define them in ways which markedly

differentiate them [29,38]. This probably suggest that while it might be theoretically appealing to distinguish between stakeholder participation or engagement, it may be practically irrelevant or difficult. What is important then is to focus on determining whether any so-called participation or engagement is done in ways that ultimately ensure achievement of desired objectives. In this regard, Reed [38] proposes a set of best practices to be considered in stakeholder engagement or participation. These include: that stakeholder participation needs to be underpinned by a philosophy that emphasizes empowerment, equity, trust and learning; that where relevant, stakeholder participation should be considered as early as possible and throughout the process; that relevant stakeholders need to be analyzed and represented systematically; that clear objectives for the participatory process need to be agreed among stakeholders at the outset; that methods should be selected and tailored to the decision-making context, considering the objectives, types of participants and appropriate level engagement; that highly skilled facilitation is essential; that local scientific knowledges should be integrated; and that participation needs to be institutionalized. This list suggests that a differentiation between participation and engagement may be unnecessary, provided there is more focus on ultimately achieving the set outcomes of such a process.

3. Methods

3.1. Study Design

This paper reflects on the extent to which stakeholder engagement can improve implementation of small-scale mining laws in the Western Region of Ghana. This comes against a recent government decision to register all illegal miners in the country and broaden stakeholder participation in the implementation process. The study used a qualitative methodology that allowed for in-depth exploration and description of issues [39,40], for knowledge co-production. The qualitative methodology also allowed data collection “in the form of impressions, words, sentences, photos, symbols and so forth” [41] (p. 85), for analysis.

3.2. Study Area

The study was conducted in three communities in the Western Region of Ghana, namely Aboso, Prestea and Bogoso. These communities are located in the Prestea Huni Valley District located in Southwestern Ghana. Recent available data from the Ghana Statistical Service indicate that the district has a population of 159,304. Out of this number, 80,493 are male and 78,811 are female. The district capital is located at Bogoso while the district police headquarters is located at Prestea. These communities were selected because of the predominance of illegal small-scale mining, making implementation particularly challenging. Under this circumstance, the communities were in the position to provide deep insights to enhance understanding of the research problem. In terms of infrastructure, the district has only one government hospital located at Prestea. The district has three Senior High Schools namely St. Augustines Senior High School, Prestea Secondary Technical School and Huni Valley Senior Secondary School. There is only one major road linking Aboso, Bogoso and Prestea which was in a deplorable state at the time of this study. The major occupation of people in the selected communities is farming and mining. For most people, farming is done on subsistence basis to support themselves. Yet, mining remains an important source of employment due to its long history in the district. Currently, the district is home to some of Ghana’s large scale mining companies such as Golden Star Resources and Sankofa Mines.

3.3. Data Collection Methods and Tools

Two main methods were used to collect primary data in this study, namely focus group discussion and in-depth semi-structured interview. The focus group discussion was conducted in all the three communities selected for the study, with a size between 5 and 6 individuals. In total, sixteen respondents participated in the focus group discussion in all three communities. Participants

for the focus group discussion in the cases of Bogoso and Aboso comprised both male and female, while that of Prestea were all male. The discussion took place at the sites where miners worked, and each participant was given the opportunity to contribute to any question before proceeding to other questions. On average, the discussion took between 50 and 60 min.

In all, fifteen in-depth interviews were conducted with miners and chiefs in the selected communities. The miners comprised both male and female who engage in mining. Male miners were generally youth and of school-going age, while most women miners were mothers. The chiefs who participated in the interview were a mix of paramount and sub-chiefs drawn from villages in the selected communities for the study. The rationale for selecting miners and chiefs as participants in the study was because they are directly affected by the implementation of the law.

Two main tools were used to collect data namely semi-structured questionnaire (for in-depth interview) and interview guide (for focus group discussion). The guides were designed in English but were administered in both English and the local language of respondents (in places where they were not well-versed in English). Specifically, the guides were administered in English with respondents who participated in the interview, namely miners and chiefs. In the case of the miners, the guides were translated into the local dialect of the respondents before it was administered. This process did not affect the accuracy of data collected as the researchers are proficient in the local language of the selected communities, and interacted fluently with respondents in their local dialect.

The focus group guides covered areas such as the difficulties involved in securing the small-scale mining license for operation, their motivation for engaging in small-scale mining license, and the changes they hope to see in the implementation process of small-scale mining legislation. The interview guides explored areas such as the nature of involvement of chiefs in the implementation of small-scale mining laws and the relationship between chiefs and state agencies responsible for implementing small-scale mining laws. The areas covered ensured that the relevant data were collected in order to answer the research questions.

3.4. Sampling of Participants

The study included both male and female many of whom are adult (above 18 years). These participants were selected using purposive sampling technique for both the focus group discussion and in-depth interview. This sampling strategy ensured that the participants selected were in the position to provide responses relevant to the research questions. For the focus group discussion, the miners were selected from the sites where mining occurred, most of whom had gathered in groups for work. So their natural posture at the field was conducive for a group discussion. The participants, in addition to mining, engaged in farming on a subsistence basis to support themselves. Most male miners were youth and were not married, while most female miners were married and had children with whom they went to the mining site. While most miners engaged in it on a full-time basis, others did so on a part-time basis to support themselves through school either on vacation or when school closed. For most of these miners, the fundamental reason for engaging in mining was employment and majority of miners did not have advanced formal education. The respondents for in-depth interview were also purposively selected. These comprised chiefs and miners from the selected communities for the study.

3.5. Data Treatment and Analysis

With permission from respondents, all focus group discussions and interviews were digitally recorded; the researchers also took field notes as back up. The data obtained were coded, anonymized and transcribed for analysis. This ensured that the identity of respondents were protected. The qualitative data were entered into a word processor (Microsoft Word) and categorized into relevant themes for analysis.

Against the backdrop of recent attempts by the Government of Ghana to engage illegal miners, this study was to explore the extent to which stakeholder participation could improve implementation

of small-scale mining laws in Ghana. The study is premised on the fact that while this move by government is laudable, there are deep-rooted issues affecting the sector that must be first dealt with before participation can produce the expected outcomes. Three main steps were used in data analysis, namely: familiarization with data, identification of themes, and interpretation.

Familiarization allowed us to gain the big picture of the responses of participants in this study. This was an iterative process done by carefully reading the transcribed data back-to-back. Through this process, we were able to match data to the research questions for subsequent analysis, and eliminate responses which did not directly help us to reach the objectives of the study.

The next step was identification and/or creation of themes. This was done by categorizing responses into relevant broad topics that emerged from data for discussion. To do this, we compared the data from all the three communities in which the study was conducted. This ensured that the data was logically organized for easy analysis and interpretation.

The last step in the analysis was data interpretation. To facilitate this, the data were compared with existing literature and discourse about small-scale mining and policy implementation. This ensured that the findings were properly contextualized in the current and previous discourse on the topic. The process was an iterative one, which focused on carefully making sense of the data, with the research questions in the background.

3.6. Limitations

In reflecting on the limitations of our methodology, we concede that the small sample size limits the potential to generalize. Yet, the usefulness of the findings and insights in contributing to the broader discourse on stakeholder engagement is not insignificant. Also, our usage of “stakeholders” primarily refers to chiefs and *galamsey* operators. This is obviously limited since we could have included regularized small-scale miners, large-scale miners, peasants, social entrepreneurs and other actors who are active participants in the sector. But because this was a qualitative endeavor, our objective was to pick up on stakeholders and insights that are useful to advance the core theme of participation and engagement. Focusing on chiefs and *galamsey* operators, two important stakeholders who are often disengaged from the process of implementing ASM laws, allows for a careful assessment of the extent to which their involvement could make a difference in dealing with the many challenges the sector faces.

4. Insights from Findings

4.1. Evidence of Disengagement

A major challenge facing the African mining sector in general, particularly regarding its governance regime, is the inability to bring the aggregated stakeholder interests and incentives into a coherent unit [42]. Governance sometimes entails a top-down approach, which neglects the need to involve all the key stakeholders (see [43–45]). The situation is even more daunting in the ASM sector where there is little to no agreement between government authorities and local miners around what the interests and incentives are [5]. In the Ghanaian milieu, the rate and sophistication of *galamsey* activities are shown to have outpaced the institutional framework surrounding the ASM sector [46]. Therefore, the government’s quest to regularize such activities cannot effectively proceed without addressing the root causes of the problem. This is because even for the “formal” ASM sector, several implementation conundrums remain. Lahiri-Dutt [47] (p. 18) explains the ongoing regulatory issue in the sector as follows:

The regulatory system itself attributes the characteristic of illegality to these informal mining enterprises. Low profits and high costs of formality—complex, time-consuming and expensive regulations that tend to favor large companies—as well as lack of formal property rights are major impetus towards illegitimate mining in developing countries.

Data about the state of engagement with a chief suggest that there is a bigger task on the part of government to step-up efforts in engaging traditional leaders in the implementation of small-scale mining laws. One chief described his engagement in the process in these words:

I will say my relationship with the implementers is average; we do talk occasionally but not that often. Apart from me seeing them at conferences, seminars and also when a mining company is coming to work to here, I do not hear anything from them.

The comment from the chief reveals the need for policy implementers to improve engagement with traditional rulers in the implementation of small-scale mining laws beyond occasional talks and meetings at conferences. This conclusion comes against the backdrop that a mining company needs a social license from the traditional authority (and, in essence, the host community) in order to operate, even though the legal license may have been duly granted. This was revealed in another chief's comment saying,

Mining is done in this community, yet here is the case where the licensing and everything is issued by the Minerals Commission in Accra; after they have issued the license, they will tell the miner to go to the community for social license.

The statement of the chief reveals how bureaucratic machineries "*relegate*" traditional authorities to the background in the implementation of small-scale mining laws. For close industry observers, the chief's apparent lamentation mirrors Ghana's challenge of how to translate governance mechanisms and procedures on paper into effective practice, especially in the mining sector. This present obstacle is somewhat attributable to the duplication and lack of proper coordination that currently exist within the political system (see [48]).

While these comments from the chiefs are insightful, they need further careful analysis given widespread perceptions that they perpetuate ASM in Ghana. As a study by Hilson et al. [49] show, the recent spate of Chinese intrusion in Ghana's ASM sector is the "*expression*" of the sector's informality. According to this study, the lasting presence of Chinese in Ghana's ASM sector is attributable to a number of factors including heavy support from the country's traditional leaders. Using evidence from the Talensi-Nabdam District and Japa community, the authors explain that traditional leaders provide accommodation and provisions for Chinese miners in exchange for a share of gold winnings.

But the critical question at this juncture is: are the chiefs promoting this wheeling and dealing in Ghana's ASM sector in the majority or minority? Answers to this question would be an important tangent to the discourse on ASM in Ghana given that traditional leaders in policy fora on ASM in Ghana are quick to dismiss rumors of their involvement in promoting illegal small-scale mining. It remains unclear where the "*truth*" lies in this particular case. The other important concern is that given the embeddedness of traditional authorities at the local level, effective management of the ASM sector might remain elusive unless traditional leaders can fully and honestly support state efforts in dealing with the practice. One implication here is the need for more research to understand the motivations of traditional authorities in supporting ASM in order to properly mainstream their concerns into policy frameworks intended to tackle ASM issues in Ghana.

Perhaps the current state of affairs can be traced to Ekeh's [50] argument that Africa's colonial experience led to a unique configuration in modern postcolonial Africa—what he calls the "*two publics*" instead of one as it is in Western countries. He blames the dialectical relationship between these two publics for most of Africa's political problems. First, he makes a distinction between the private and the public realms, both of which are governed by "*a common moral foundation*" of what is good and bad [50] (p. 92 emphasis in original). Yet, there are two public realms—the primordial public (which is moral and based on primordial groupings, sentiments, and activities) and the civic public (which is amoral and not based on the "*generalized moral imperatives*" in both the private realm and in the primordial public). But the same political actors simultaneously operate in both publics,

and this causes the confusion, which is clearly manifested in the decentralized system of governance (see [51–53]).

According to Botchway [54] (p. 509), “the medley of custom, colonial, and postcolonial legislation has, if anything, worsened the uncertainty surrounding the ownership of mining land in Ghana”. Traditionally, a customary authority such as a chief granted and regulated the transfer of land [55]. Even though Ghana’s first President (Dr. Kwame Nkrumah) tried to reduce the power of chiefs, they still hold substantial traditional authority to date despite modern trends [56]. While the promulgation of Act 703 entrusts the President of Ghana with control over lands and all minerals in them on behalf of the people of Ghana, the reality is that rural lands in Ghana are still mainly controlled by chiefs and traditional leaders [57]. Under such arrangements, large-scale mining companies that claim ownership of or the legal “right” to use the land for mining purposes (because they have obtained license from government) often encounter significant opposition from traditional authorities [58]. In addition to the feeling of a natural entitlement to lands, it is also possible that the local authorities are not adequately aware that the 1992 Constitution grants the President the power to oversee all natural resources on behalf of the people of Ghana. This contradiction is a reflection of why “illegal” artisanal miners do not consider their operations to be necessarily illegal. For the majority, there is a natural entitlement that remains even when the constitution of the country pronounces otherwise, especially when the parcels of land either belonged to their ancestors and/or have been acquired from the appropriate local leader(s). This dilemma has been and continues to be a major source of contention in the ASM sector [59]. The dilemma results in the further disengagement of these miners, amidst the bureaucratic challenges encountered when one intends to legalize one’s operations. In a focus group discussion with illegal miners at Prestea, a participant indirectly noted the absence of their involvement in the implementation process. He explained that,

If government were to interact with us well and proper measures are put in place, Ghana will do well with small-scale mining. . . these government officials come here only before elections; when you go for license they will toss you about.

Artisanal mining in Africa is already known to be widely associated with marginalization [43]. According to Fisher [44] (p. 206), some miners “are incorporated in ways that leave them insecure, with few rights and entitlements, and exposed to exploitative labor relations, terrible working conditions, and the likelihood of further social exclusion”. Even though the formal ASM has its own problems, the most marginalized group in the sector is the *galamsey* operators. While the case for legalization has been made so many times, most operators see no specific returns in subscribing to this notion. To many, they would rather pay money to a local landowner to mine on his/her property, which has measureable returns than to register and pay annual fees to the government. One man, self-identified as a *galamsey* manager in an interview at Aboso, asked rhetorically;

Why would we register? For what? ...If the person registers who will they pay dues to? Once you are registered it will be compulsory for you to pay that money every year. You may have to pay that money to government, but where will you be going to work to get that money for government?

These questions do reinforce the ongoing regulatory and enforcement dilemma in Ghana’s ASM sector [7]. At the very least, the quote suggests that some artisanal miners simply do not trust that they will see returns for their money, particularly in terms of actual engagement and support services from the government, even if they were to register their operations. There are some who argue that the disengagement with *galamsey* operators and ongoing criminalization of their work reveals trends of desolation, and the activity itself is in fact a form of resistance to state mining policy and foreign companies [60]. Whether this characterization of the situation is viable or not, there is evidence to suggest that this group of miners could benefit more from a state that is interested in understanding the underlying rationale for the burgeoning of this sector, particularly with the goal of bridging the engagement gap.

Although mainstream knowledge suggests that people engaged in such activities may be doing so out of selfishness, a get-rich-quick attitude, or the sheer lack of environmental consciousness, we also know that for several people it is a safer escape from abject poverty in the absence of formal sector employment opportunities [5,60]. Some of the *galamsey* operators interviewed suggested they would be willing to explore alternative sources of employment if such opportunities existed. These insights go beyond the modest case for implementation of existing laws. Rather, it does show that proper engagement with the key stakeholders is bound to lead to the identification of ways to deal with the endemic problems that have plagued the ASM sector in Ghana for many years.

4.2. How Disengagement Hurts Implementation of ASM Laws and Some Ways Out

Consequent to the inadequate engagement or disengagement of stakeholders in the implementation of small-scale mining laws, enormous challenges obstruct smooth implementation of the law. Under these circumstances it appears “easy” for illegal miners to pursue their narrow interest by continuing to mine despite calls to stop. For instance, a participant in a focus group discussion at Bogoso mentioned that, “*galamsey* is our profession; hence, there is no way government can stop us”. Such a “defiant” position suggests that some miners will continue their operations irrespective of State efforts to enforce legal requirements such as acquiring the license to operate. Evidence from both the extant literature and field research reveal that the conventional method by which the State has enforced the law is through military force. This was indirectly revealed in the interview with a chief who said,

... when the military come for operation they should not beat them; if it is arrest they want to do, they should arrest them and that is all. They should not be shooting. Sometimes when they come, the community members resist them and they start shooting, which results in deaths.

This position could be interpreted as a direct consequence of non-engagement because most miners are *convinced* that they are entitled to land, including those lands that have mineral deposits. The conviction of the miners that they are entitled to the land of their ancestors finds expression in the question of land ownership, which is the result of the two publics existing in developing countries ([50]; see also [48]). Ultimately the inadequate involvement of chiefs, the non-involvement of illegal miners and the use of military force breed hostility and fuels suspicion and apathy in the implementation process. A chief indicated that using military force to drive illegal miners away seems counter-productive because miners eventually return to the site when the military leaves. He mentioned that,

... if the military or the police sacks the small-scale miners from let's say Prestea, I will say that is a good move but they cannot carry on the operation every day because it is not sustainable; they will by all means stop. So you just give about two or three weeks, and the miners will be back.

From the discussion so far, it can be concluded that implementation of small-scale mining laws in the Western Region of Ghana is a complex challenge to implementers, as non-involvement and military crackdown have undermined implementation. Among other things, this study intended to identify avenues, from the perspective of stakeholders, to improve implementation. Based on the interviews and focus group discussions, the following measures are proposed to potentially increase stakeholder engagement.

Firstly, policy implementers must work closely with chiefs in order to win the trust and cooperation of illegal small-scale miners. The reason is that community inhabitants appear to give greater recognition to traditional authorities [56,57]. An interview with a chief revealed that illegal small-scale miners appear to be open to peaceful talks and negotiation any time a chief steps in. The chief emphasized that “each time miners hear of military or police crackdown they will come

to the chief to speak with them so that they themselves will leave in peace". The fact that the chief's intervention is enough for miners to peacefully leave a mining site offers a glimpse of hope. The point is that chiefs can be very useful to the implementation of small-scale mining laws if they were mainstreamed into the process.

Secondly, apart from the implementation difficulties that emanate from the non-involvement of stakeholders, the nature of the bureaucratic set up involved in acquiring license discourages miners. Both miners and the chiefs expressed dissatisfaction about the cumbersome nature of license acquisition and proposed measures for improvement. A participant in the focus group discussion at Bogoso suggested that,

since we have a local government here they should be able to help with the processing instead of us going to the Minerals Commission, which is full of bureaucracy. Government policy should make it easier for us to acquire the license and tax our operations to generate revenue while we also make money to cater for our family and build hospitals in the town.

A chief corroborated the suggestion of this participant by indicating that,

... preferably, a one-stop office where you can complete all the processes there rather than moving from one place to another; the district offices should be given more powers to operate. Even if there is the need to go to Accra, it will just be for signing.

Empowering district mining offices to grant licenses could prevent the ping-pong encounter many miners face even when they actually want to register. Imagine someone travelling for several hours from Bogoso to Accra, which is about 302 Kilometers, only to be asked to return the next day or two. The bureaucratic red tape, among other things, frustrates many miners who may want to register. Even though it is not stated explicitly in the law, the District Chief Executive (DCE) of the designated district where the mining is scheduled to take place is mandated to sign the application form before it is forwarded to the Minister for consideration. The requirement that the Minister of Lands and Forestry and the DCE all have a part to play in the license acquisition process possibly injects checks and balances between the Minister and DCE to ensure accountability in granting mining rights. Having a trusted officer at the district level to issue these licenses, even if they may have to get it verified later on at the Ministry (in Accra), could remove miners from the marginalized position of illegality to perhaps an "acceptable" domain.

Thirdly, the so-called illegal miners should simply be accounted for instead of being further sidelined. The work of the District Office is to be supported by a Small-Scale Mining Committee to effectively monitor, promote and develop mining operations in the designated mining area. According to section 92 of Act 703, the composition of the Small-Scale Mining Committee shall include the DCE or the representative of the DCE who shall be the chairman, the District Officer appointed under section 90 (2), one person nominated by the relevant Traditional Council, an officer from the Inspectorate Division of the Minerals Commission, and an officer from the Environmental Protection Agency. This provision for the membership of the Committee leaves out the police and civil society organizations that play a vital role in the implementation of small-scale mining laws. But more importantly, it makes no mention of small-scale miners themselves whose inclusion in this Committee could provide a first-hand insight in terms of prevailing concerns and how best to address them.

Additionally, the fact that the members of the Committee are appointed by the Minister according to section 92 (4) of the law and shall hold office for a period and on terms and conditions determined by the Minister raises issues of accountability. Even though the relevant agent or agency other than the Minister nominates the Committee members, the entire process raises questions regarding whom the appointed officials should be accountable to. Even if the Minister should remain at the helm of affairs, it is our suggestion that the composition of the Committee be changed to incorporate at least one member of the small-scale mining community (possibly a *galamsey* operator) in order to properly and adequately engage with the plethora of implementation challenges the sectors is currently facing.

Overall, these insights from the field are instructive as they shed light on practical measures that can be adopted by policy implementers to improve implementation. The usefulness of these proposals is that policy makers could replicate them in similar regions of the country where the implementation of small-scale mining laws has become a tough challenge.

5. Conclusion: Critical Reflection on Findings

This paper has explored the extent to which stakeholder engagement with chiefs and illegal miners could improve implementation of small-scale laws in the Western Region of Ghana. Based on the responses, the paper concludes that chiefs are not mainstreamed into the implementation process and illegal miners are totally disengaged from the process as well. This has compounded implementation challenges, as these actors do not feel obliged to support the process and sometimes act in ways that subvert the formal mechanisms established by the central government. On the basis of this conclusion, we have argued that (1) chiefs should be mainstreamed in the implementation process; (2) district mining offices should be empowered to grant mining license; and (3) engagement with illegal miners should be seriously considered.

It has already been noted that chiefs tend to be the “middle powers” between the central government and the local governmental authorities, as local populations look up to them for redress whenever there is conflict, even though they have little to no power when it comes to oversight responsibility in the implementation of small-scale mining laws. Although they are not the originators of these rules, the evidence presented above indicate that “illegal” miners might give more regard to these regulations if their local authorities (particularly in cases where they are duly respected) are tasked with their implementation. They could have a more prominent role than just being one of the voices on the table because they still possess a substantial amount of traditional authority. Having said that, there are a few issues that make this matter more complex—requiring a more nuanced assessment than merely the insights provided by our research participants. We cover some of them briefly by posing two critical questions.

The first question is, what if the problem is not the implementation of the law per se, but the flawed nature of the law itself? This question may be considered as “the elephant in the room”, so to speak. While our focus has been on implementation, we admit that if the basis of the law is flawed from the start, it makes implementation an onerous endeavor, if not impossible. Act 703, which is the substantive law governing both large and small-scale mining, has a few limitations worth pointing out. Apart from those we have alluded to above, there is not enough basis for effective engagement of relevant stakeholders in the sector. For instance, section 92 of the Minerals and Mining Act 703, 2006, which specifies the composition of the Small-Scale Mining Committee, completely leaves out representation of small-scale miners. This means that even if small-scale miners were to be part of these committees by way of practice, there is no specific guarantee due to the lack of legislative backing. Yet this committee, among others, is primarily charged with monitoring and promoting mining in a designated area. The top-down nature of policy implementation therefore implies that those who are either affected by or beneficiaries of such efforts are often left out of the process.

The division of small-scale miners into regularized and unlicensed under the PNDC Law 218 in the late 1980s was an endeavor that did not envisage impacts such as the further marginalization of the latter group, and the proliferation of *galamey* activities as a result of growing socio-economic challenges in mining communities. As revealed by Campbell [61], we now know that such legislation was introduced as part of the first generation of mining codes in Ghana in order to liberalize the mineral economy and advance the neoliberal agenda that was in vogue at the time (i.e., structural adjustment programs or SAPs). In hindsight, it has become clear that these policies were not sensitive to the socio-economic advancement of purported beneficiary countries ([62]; see also [12]). If anything, the SAPs-informed legislation in the context of Ghana created a new status quo that ostracized indigenous miners. Yet, the government has advanced this agenda instead of ascertaining the reasons why the activity has even outpaced existing regulatory framework in terms of rate and

sophistication [46]. For Act 703 to have been built on such a legacy, one can question its potential to address some of the fundamental challenges for which it was created.

The second critical question is, can participation necessarily resolve the challenges in the ASM sector, both around implementation of the law and the plethora of reasons for which people are operating illegally? This paper about participation is timely because the Government of Ghana has recently announced plans to engage with *galamsey*, as part of measures to curb that activity. Time will tell the impact of this undertaking but in the meantime it is useful to reflect on the kind of participation that might yield expected outcomes. Despite the known constraints, many scholars believe that public participation improves decision-making in the area of natural resource management and governance (see [15]; also, [63,64]). However, it is not just any participation that matters. Rather, it should be one that ensures the concerns of vulnerable and marginalized groups are fully incorporated into both the negotiation and implementation of decisions that inevitably affect the lives of these groups. Due to power asymmetries that exist among various stakeholders, one cannot take participation for granted. However, we can expect that it could lead to the gradual rebuilding of “broken bridges” even if it is unable to completely restore trust in the process.

The two questions raised above almost deflate what may have been read as an optimistic paper. While we still see great potential for inclusion through effective engagement and participation of relevant stakeholders, these questions help to underscore the complexity of the matter. In sum, the exclusion of *galamsey* operators is because their activities are marginal to the law and therefore do not have the legal rights to claim anything in particular. This is one of the driving forces of the sort of poverty cycle they operate in. Any future review of the existing law should involve representatives of these operators in a manner that, instead of criminalizing them, tries to better understand their varying circumstances. As concluded by Andrews [5], in addition to the need to properly involve as many stakeholders as possible, underlying drivers such as socio-economic deprivation, power asymmetries and regulatory deficits need to be addressed in order to possibly eradicate *galamsey* work. Thus, any form of engagement with these miners should best begin by identifying the several issues for which they operating illegally with the goal of providing useful operator-informed remedies. There is no guarantee that any of these would happen because the history of criminalization has resulted in some distrust among various stakeholders. Our conclusion is that until the status quo is disrupted, effective stakeholder participation will be far-fetched. But unless such engagement occurs, little headway would be made in terms regularizing the activities or addressing the fundamental drivers of illegal ASM in Ghana.

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