



## Extractives Hub Insight – March 2020: ‘Tainted minerals’ in the supply chain: Spotlight on Ghana

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### Summary

As part of its mandate, the Extractives Hub project facilitates and supports resource governance in the mining and energy sectors in Department for International Development (DFID) focus countries around the globe, of which Ghana is one of them. This Insight examines ‘tainted minerals’ in the supply chain of Ghana’s minerals development, recently viewed as a possible risk area. It draws inspiration from the work of the Extractives Hub Champion for Ghana, Ms Fafanyo Kukubor. In her policy brief, Ms Fafanyo had discussed “The Potential Impact of OECD Guidelines on Ghana’ Mining Sector”.

The focus of this Insight is on ‘tainted minerals’ in risk areas where rights abuse occurs in mining sites and how the Organisation for Economic Cooperation and Development (OECD) Guidelines could help in mainstreaming due diligence and responsible contracting in the supply chain process. Tainted minerals are minerals whose extraction is associated with child labour and human rights abuses, or minerals whose proceeds are used to sponsor war especially in conflict areas such as the Democratic Republic of Congo (DRC).<sup>2</sup> Areas, where these rights abuses and illicit trading occur, are regarded as risk areas. The author notes that responsible supply chain management ensures that minerals are risk-free and that the country where the resource comes from benefits from taxes on these minerals to boost national revenue as opposed to ‘tainted minerals’ which could impact on domestic income, facilitate rights abuse and fund crisis in areas that are prone to violence. Risk-free minerals also create an opportunity for economic growth and poverty reduction<sup>3</sup>, especially in developing resource-rich countries.

Data from the Ghana Chamber of Mines Revenue Authority (GRA) indicates that the mining sector has contributed immensely to the direct domestic revenue earning of Ghana, arising from the mining of gold and other minerals.<sup>4</sup> Due diligence in the supply chain of minerals is vital in the mining sector of Ghana to align with good global practices in the mining industry. Some amendment around the regulatory regime is necessary, especially as it relates to rules of origin for minerals. These amendments may help to stem the incidence of rights abuse in both legal and illegal mining sites.

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<sup>2</sup> Josh Loeb, ‘Human Rights and Precious Metals: Tracing the story of ‘tainted’ gold’, (Engineering and Technology, 12 March 2018) < <https://eandt.theiet.org/content/articles/2018/03/human-rights-and-precious-metal-tracing-the-story-of-tainted-gold/> > accessed 11 February 2020.

<sup>3</sup> Scott Pegg, ‘Mining and poverty reduction: Transforming rhetoric into reality’ (2006) 14 (3-) Journal of Cleaner Production 376-387.

<sup>4</sup> Kimathi Kuenyehia, Michael Edem Akafia and Sekafor Kuenyehia, ‘Mining in Ghana’ (*Lexology*, 4 July 2019) < <https://www.lexology.com/library/detail.aspx?g=986bcd9d-e6f9-499f-8850-7cb84e5ee0c7> > accessed 10 February 2020.

### ***Mining in Ghana and ‘tainted minerals’***

From a geological standpoint, Ghana has substantial gold deposits which drive mining investment in the country and plays a crucial role in its economic development.<sup>5</sup> In 2018, Ghana was the highest producer of gold in Africa and had other minerals such as manganese, bauxite, aluminium and iron, which stimulates direct and indirect employment opportunities for its citizens.<sup>6</sup> However, concerns about tainted minerals from Ghana raises the need for due diligence in the supply chain. Tainted minerals emanate from high-risk areas, and these areas have close links with human rights abuses, political repression and institutional challenges which raises global concern about how the minerals are extracted for use by all. Matters of rights abuse are related to child labour at mining sites.

The mining sector accounts for a substantial share of exports and GDP in some countries.<sup>7</sup> A country in point is Ghana whose fiscal revenue from mining activities in 2017 stood at GHC 2.16 billion, representing 16.30% of direct domestic earnings and accounting for 45.5% of gross minerals merchandise exports, thus, increasing its source of foreign earnings. But there have been reports about rights abuses in the form of child labour, thus raising the risk concern in Ghana’s mining sites.<sup>8</sup> With new guidelines introduced into the supply chain process to avoid ‘tainted minerals’, what implication(s) if any, does it portend for the economy of Ghana?

‘Tainted minerals’ are minerals linked to human rights abuses and the funding of violent armed groups in conflict or high-risk areas. It also extends to minerals from politically repressive regimes, countries with a weak institutional framework and places where insecurity is prevalent.<sup>9</sup> Although older laws on conflict minerals have focused on DRC and surrounding territories, where they have facilitated decades of war, recent European rules take into account the “extreme risk” and rights abuses that tin, tungsten, tantalum and gold mined in countries like Colombia, Peru and Myanmar has caused, thus, qualifying them equally as ‘tainted minerals.’<sup>10</sup> The essence of the new guidelines is to forestall the inclusion of tainted minerals in the supply chain process.

The author notes that Ghana is not free in the tainted mineral saga as there are reported cases of rights abuses in the Ghana gold mines. In the light of the tainted minerals due diligence check, there may be implications for Ghana mineral earnings as the supply chain of its precious stones will be subjected to supply chain due diligence. This check may impact on Ghana’ gross minerals merchandise export if child labour is still prevalent in the

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<sup>5</sup> Benjamin N Aryee, ‘Ghana’s mining sector: Its contribution to the national economy’ (2001) 27(2) Resource Policy 61-75.

<sup>6</sup> David Whitehouse, ‘Ghana now Africa’s largest gold producer, but reforms await’ (*The Africa report*, 8 October 2019) < <https://www.theafricareport.com/18245/ghana-now-africas-largest-gold-producer-but-reforms-await/> > accessed 10 February 2020.

<sup>7</sup> Jane Korinek, ‘The mining global value chain’ (*OECD Trade and Policy Paper No. 235*, 14 January 2020) OECD Publishing, Paris < <https://www.oecd-ilibrary.org/docserver/2827283e-en.pdf?expires=1581550489&id=id&accname=guest&checksum=2AB72760ABAF2095F2B9D1EFC8468CFB> >

<sup>8</sup> Juliane Kippenberg, ‘Precious Metals, Cheap Labor: Child labor in and corporate social responsibility in Ghana’s Artisanal Gold Mines’ (*Human Rights Watch*, 10 June 2015) < <https://www.hrw.org/report/2015/06/10/precious-metal-cheap-labor/child-labor-and-corporate-responsibility-ghanas> > accessed 10 February 2020.

<sup>9</sup> OECD, *Due diligence guidance for responsible supply chain of minerals from conflict-affected and high-risk areas*. (OECD Publishing 2016).

<sup>10</sup> Kate Hodal, ‘Tech companies must do more to avoid using minerals tainted by rights abuses’ (*The Guardian*, 7 April 2017) < <https://www.theguardian.com/global-development/2017/apr/07/tech-companies-conflict-minerals-rights-abuses-verisk-maplecroft> > accessed 10 February 2020.

minerals processing stage. A report by the rights group Human Rights Watch (HRW) said that most mining in Ghana takes place in unlicensed, artisanal or small scale mines, where thousands of children have to carry heavy loads of ore, breathe in a lot of dust and as a result cough up blood, or develop other respiratory health problems.<sup>11</sup>

The rights group also notes that child miners are exposed to mercury poisoning because they must process the ore with the toxic substance, risking brain damage and permanent disability. Most of the children are aged between 15 and 17,<sup>12</sup> and child labour in Ghana's gold mines may have been encouraged by the inadequate checks along the supply line. The lead researcher for the HRW, Juliane Kippenberg, informed reporters about some of the threats the children face. She stated that:

*"There was a case about two years ago where a boy worked in such mines. He has been working for a while; he is an orphan, living with his aunt. Early one morning he went to work, and the walls of the pit caved in and buried him alive,"<sup>13</sup>*

Juliane further notes that child labour is fuelled by poverty and the inaction of Government; these facts a government official, Cypion Laryea, at the Ghanaian Labour Ministry concedes to. Cypion, however, stated that:

*"It is a challenge, it will change, but it has to do with resources, the government is challenged with resources,"<sup>14</sup>*

Most of the right abuses occur in illegal mines and Johannes Preuss, who received an Oscar for his film, "Galamsey," shot in Ghana, captured this illicit trade and rights abuse.<sup>15</sup> HRW found that five of the six international gold refiners acquiring gold from Ghana were "conducting significant due diligence steps" including on-site inspections. But HRW said it had found that these checks by several of the companies had weaknesses "such as a lack of systematic monitoring of child labour or a lack of transparency."<sup>16</sup>

The mining supply chain is a complex matrix, involving several participants and activities from extraction through to the consumption stage by the end-users. It connects mining companies and vendors, and the absence of due diligence could foster right abuse or facilitate conflict. This complex web of activities informs the introduction of the OECD guidelines to ensure due diligence in the supply chain of minerals to avoid the inclusion of tainted minerals. The OECD guidelines involve broad steps which include:

1. Identify the factual circumstances involved in mining
2. Identify and assess any actual or potential risks
3. Prevent or mitigate the identified risks by adopting corrective measures
4. Undertake a third-party audit of the supply chain due diligence at designated points in the value chain
5. Report on supply chain due diligence<sup>17</sup>

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<sup>11</sup> Isaac Kaledzi, 'Ghanaian gold tarnished by child labor' (DW 11 June 2015) < <https://www.dw.com/en/ghanaian-gold-tarnished-by-child-labor/a-18511753> > accessed 10 February 2020.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Sabine Oelze, 'How a young German director documented illegal gold mining in Ghana' (DW, 16 October 2017) < <https://www.dw.com/en/how-a-young-german-director-documented-illegal-gold-mining-in-ghana/a-40969514> > accessed 10 February 2020.

<sup>16</sup> Isaac Kaledzi, 'Ghanaian gold tarnished by child labor' (n 11).

<sup>17</sup> OECD, (n 9)

To boost its regulatory regime,<sup>18</sup> attract investment and address the possible challenges in the mining sector, Ghana has introduced strict regulatory oversight for large-scale mining. Some of the regulators include the Ministry of Environment, Ministry of Science, Technology and Innovation, the Environmental Protection Agency, etc. These agencies and ministries ensure that operators obey local and international laws and mining regulations. Major mining companies in Ghana are now required to sign up to good international practices such as the Voluntary Principles on Security and Human Rights and the United Nations Guiding Principles on Business and Human Rights which promotes, respects and protect human rights.

While these efforts are in place to check tainted minerals, there appears to still be some lapses in the supply chain, especially in the relationship between operators and suppliers, thus exposing the latter to the ‘conflict trap’. An identified gap is in the inexhaustive due diligence check in the permitting process of service providers, which creates room for tainted minerals to enter the supply chain. Another case in point is where large-scale mining companies purchase tailings from small-scale miners. The former is unable to know if the production process involves child labour, or whether the required taxes were paid in the past.

On small-scale mining, the author notes that Ghana needs to do more as there is no regulatory provision on rules of origin. Miners are presumed under the law to be in lawful possession of minerals until the contrary is proven.<sup>19</sup> This regulatory gap may encourage the inclusion of tainted minerals in the supply chain and will exist contrary to the OECD guidelines on rules of origin. Albeit, the regulation could be amended to allow due diligence on the source of minerals. Additionally, there is no mechanism in place to differentiate minerals from legal or illegal mines. Hence, tainted minerals could make it to the supply chain, leaving room for international sanction. There is also no mechanism for reconciling mineral production with exports in the section; thus, production could be understated, and others smuggled. In this regard, real-time data analysis could be helpful to facilitate due diligence in the supply chain.

For Ghana to continue to benefit from its resources and attract international investment, it would have to amend its laws to reflect good international practices especially as it relates to due diligence and responsible contracting in the mineral value chain. It must develop robust laws to tackle child labour which occur mostly in small-scale mines in the country. It must ensure, through its regulatory mechanism, that international mining companies are operating according to the standard practices acceptable for mining exploration. To achieve these steps, the government could require companies to identify risks in their supply chain, comply with due diligence obligation, adopt a compliant supply chain policy for risk areas, communicate the supply chain policy to suppliers and the public, meet with risk management obligations, and disclose audit reports to their designated member state authority.<sup>20</sup>

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<sup>18</sup> See the Minerals and Mining Act 2006 (Act 703) of Ghana, for details on mining regulation in Ghana.

<sup>19</sup> Ibid, s.97(2).

<sup>20</sup> Osborne Clarke, ‘Transparency in supply chains: The Conflict Minerals Regulation’ (Insights, 6 July 2017) <<https://www.osborneclarke.com/insights/transparency-in-supply-chains-the-conflict-minerals-regulation/>> accessed 11 February 2020. See also Hannes Hofman, Martin C Schleper and Constantin Blome, ‘Conflict Minerals and Supply Chain Due diligence: An exploratory study of multitier supplier chains’ (2018) 147 *Journal of Business Ethics* 115-141