

# IM4DC

## Action Research Report

### SUMMARY

**Researchers:**

\*Dr Wazi Apoh, Joe Fardin, Wendy Treasure and Kirsty Wissing

**School/Centre:**

Centre for Mining, Energy and Natural Resources Law

\*Department of Archaeology and Heritage Studies

**University/Institutions:**

The University of Western Australia

\*The University of Ghana

**Key themes:**

Governance and Regulation

Community and Environmental Sustainability

Operational Effectiveness

**Key countries:**

Ghana, Australia

**Completion:**

May 2015

**Research aims:**

The aim of this research was to identify linkages between development outcomes for Indigenous communities and mining activities in Ghana, with a focus on heritage protection, as informed by Australian developments over the last two decades taking into account extant regulatory approaches.

The overall objective is to support Ghana to transform its extractive resource endowment to inclusive and sustainable economic growth and social development through improved governance and regulation, strengthened social outcomes and improved operational effectiveness.

**For further information on this action research:**

Joe Fardin [Joe.fardin@uwa.edu.au](mailto:Joe.fardin@uwa.edu.au)

## Customary Law and Mining: Comparing the Interaction between the Two in Ghana and Western Australia, with a Focus on Heritage

Engagement between mineral resource companies and customary landowners takes place everywhere the two cross paths; companies in pursuit of access and mineral rights, and customary landowners seeking to protect and uphold their customary interests in the land. The framework of laws and policies in a country shapes the nature and outcomes of this engagement. The skills, objectives, knowledge and will of both the company and the customary landowner group in each case are also important. All of these factors are increasing in importance as the social impacts of mining come to occupy a place alongside environmental and fiscal considerations as part of the broader global push towards increased sustainability in resource developments. The effect in general has been to increase the public scrutiny of deals between resource companies and customary landowners and consequently the effort put into them, with corresponding adjustments to the balance of regulatory and policy considerations applied by governments in each country.

This research examines two key aspects of company-customary landowner interaction in the mineral sector in Ghana and Western Australia: regulatory approaches – that is, what laws and policies the government has put in place – and the outcomes of the company-customary landowner interaction in practice. It firstly compares the regulatory and policy frameworks circumscribing the interaction between resource companies and customary landowner groups in the two countries. Secondly, it empirically examines the way in which the interactions carried out within this framework play out 'on the ground' in the two countries, with interviews carried out with members of mining impacted communities as well as industry and government stakeholders in both jurisdictions.

The research concludes by setting out the key learnings and some possible reform options based on the legal and empirical research.