

IM4DC

Action Research Report

SUMMARY

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School/Centre:

Law School

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University of Western Australia
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Key themes:

Governance and Regulation
Community and Environmental Sustainability

Key countries:

Ghana

Completion:

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Research aims:

This research project compared relevant Australian and Ghanaian regulation pertaining to mining impacts on water resources for the purpose of generating reform ideas for Ghana.

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Regulating Mining Water Use and Impacts in Ghana: Comparing Australian and Ghanaian Law for Reform Ideas

This report is the product of a collaborative and comparative study of the key materials that regulate mining industry use of and impacts on water resources in Australia and Ghana for the purpose of generating reform ideas for Ghana. It has sought to derive some key principles of the relevant Australian regulation (based mainly on Western Australian law) and to ask whether those principles may convey some useful ideas to assist in developing and reforming the regulatory relationship between mining and water in Ghana.

There are broad structural similarities between the regulatory regimes of the two countries; for example:

- The legislative and administrative separation of decision-making for granting mining tenure and water access rights, and for environmental approvals;
- The reliance on Environmental Impact Assessment (EIA) process and the resulting implementation conditions to provide the primary source of specific regulatory obligations on mining projects to protect environmental and water resource values; and
- The ultimate basis for EIA decision-making, although informed by objective technical standards, is essentially political and not confined by objective, legally binding limitations that would prevent the approval of a given proposal; rather both systems provide for general principles to be interpreted at the agency/department and Ministerial levels.

The key differences are that the Ghanaian system:

- Leaves more discretion to government and mining companies;
- Lacks a formalised means of community input into decision-making for granting mining tenure, compared to the Mining Warden and native title processes in Western Australia;
- Appears to make less provision for public participation in the standard EIA process, although the Ghanaian EIA process does provide for a public hearing in some circumstances; and
- Lacks a strong environmental offences regime as a foundation for the operation of EIA procedures and resource protection measures.

With the comparative framework now developed, suggestions are made for more focussed studies to enable the making of recommendations for law reform.