

# ***Gender Inequality and Criminality: Navigating Multiple Identities in Ghana's ASM***

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# Structure of Presentation

- General Overview of PhD
- Methodology and Methods
- Gender Equality in the context of Legally Plural Extractive Societies
- Leaving the women in ASM behind? Criminalised Identities and Gendered Inequalities
- Rethinking customary law and customary legal empowerment
- Conclusion

# PhD Research Summary of Objectives

- Unearthing the Law from the Pits: Legal Mapping of Customary and Living Laws as an alternative to ASM Formalisation in Ghana”
  - develop a participatory bottom-up legal framework that addresses the criminalisation of artisanal miners and the inequalities in access to land and mineral rights
  - How customary laws, traditional authorities, cultural knowledge systems and living laws can be mobilised in delivering a more sustainable and gender-inclusive ASM

# Methodology and Methods

Socio-Legal Anthropology	Doctrinal & comparative	Feminist Approach	
Decolonised Research Methods	Ethnographic Research: <ul style="list-style-type: none"><li>- Participant Observation</li><li>- Focus Group Discussions</li><li>- Elite Interviews</li></ul>	Legal Pluralism in Ghana's Mining Sector	Examples from French –speaking West African countries

## Leaving the criminalised ASM woman Behind?

- Is Ghana's outspoken posture on championing gender equality under the SDGs (SDG 5) inclusive of women in ASM?

“...the lack of participation and *disconnect from the experiences of miners and communities at the grassroots level* has resulted in ineffective and reactive policy that focuses on the negative 'expressions' of informality, rather than addressing its drivers. Miners, and the needs of women in ASM, must be embedded in the dialogue and at the heart of policy making.”

(McQuilken and Hilson 2016)

- Experiences and lived realities- Ehrlich's sociological formulation of the living law

“ every functioning subgroup in a society has its own legal system which is necessarily different in some respects from those of the other subgroups”(Pospisil 1971)

Moore's notion of the semiautonomous social field, a concept developed to describe multiple systems of ordering in complex societies.

“The semiautonomous social field is one that can generate rules and customs and symbols internally, but that is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded. The semiautonomous social field has rule-making capacities and the means to induce or coerce compliance, but it is simultaneously set in a larger social matrix which can and does affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance” (Moore 1973)

- Rethink the fixation on legal centralism and the capacity of law to influence social change
- Highlighting the often obscured reality of legal pluralism in Ghana's ASM laws
- Legal pluralism is generally defined as a situation in which two or more legal systems coexist in the same social field
- Classical legal pluralism: analysis of the intersection between European and indigenous laws- embedded in relations of unequal power

- Formal/ official state-centric laws
  - No explicit prohibition against the involvement of women in ASM
  - No gender specific provisions addressing the peculiar issues of women in ASM
  - Vestiges of colonial legacy –Emphasis on moulding a labour force to serve the colonial extractive establishments( Gold Mining Products Protection Ordinance(CAP 149) 1905 and the Mercury Ordinance 1932

#### Underlying legal framework of Formalisation

- Legalisation without decriminalisation(informality equals illegality)
- Patterned along capitalist ideals of property ownership and mineral rights
- Disregards of heterogeneity of women in ASM- those at the bottom of the production chain without the economic and social capital to gain access to concessions
- Does not consider the literacy levels, low social and financial capacity of women in the design of its formalisation measures

## Informal laws(Living laws and Customary Laws)

- Discriminatory cultural practices in access to lands
- Taboos and Rituals
- Traditional Patriarchal Values on the subservience of women
- Socio-cultural expectations of the stability of women in the households versus the transitory nature of ASM
- Negative perceptions about women in ASM
- Resolution of human rights violations along kinship ties
- Implications of colonial disruptions and commoditisation of land on matrilineal societies

**GENERAL FRAMED  
IDENTITIES OF  
ARTISANAL AND  
SMALL-SCALE MINERS**

- Criminals
- Menace
- Cancer
- Dirty
- Plague
- Environmentally irresponsible
- Marginalised and excluded from legal and policy discussions
- Excluded from access to mineralised lands
- Government's coercive measures (military raids and Shoot to kill approach)
- Recourse to customary and informal laws

**WOMEN IN ASM**

- 50% of labour force
- Marginalised and under-represented
- Generally confined to jobs at the bottom of the production chain
- Subject to discriminatory traditions and cultural

# Inequality on all fronts of the law?

- Limits to the capacity of imposed law to transform social life.
- Moore's model of the semiautonomous social field explains why new laws or other attempts to direct change do not always produce the anticipated results...This is partly because new laws are thrust upon going social arrangements in which there are complexes of binding obligations already in existence. Legislation is often passed with the intention of altering going social arrangements in specified ways. The social arrangements are often effectively stronger than the new laws(Merry 1988)

# Revisiting customary and living laws

-The lives of the poor majority in developing countries continue to be largely governed by customary norms and institutions, especially in the access to natural resources/ lands

Examining the extent to which prevailing formalisation measures absorb existing customary practices developed informally

- Customary laws not cast in stone

“the notion of an unchanging custom or even customary law is a myth”

- Highly negotiable

- Dynamic

- Relational

- Promote customary legal empowerment(improving the representation and participation of marginalised community members in customary justice systems and their ability to make use of these systems to uphold their rights and obtain outcomes that are fair and equitable (Ubink and van Rooij, 2011).

# Conclusion

- Socio-legal approach and the concept of legal pluralism brings new light to the inequalities of power and access in both formal and informal laws
- Decolonised approach to the study of customary law as an dynamic socio-legal construct
- Future research
  - Ethnographic research
  - Customary legal empowerment and gender
  - Decouple issues of children in ASM from women in ASM