

2023 LEGAL OPINION

*on Legal Status of Environmental Protection
(Mining in Forest Reserves) Regulation 2022
(L.I. 2462)*

The 2022 Environmental Protection Regulation in Ghana may conflict with the 1992 Constitution's duty to protect the environment, potentially hindering efforts to reduce deforestation, biodiversity loss, pollution, and climate change.



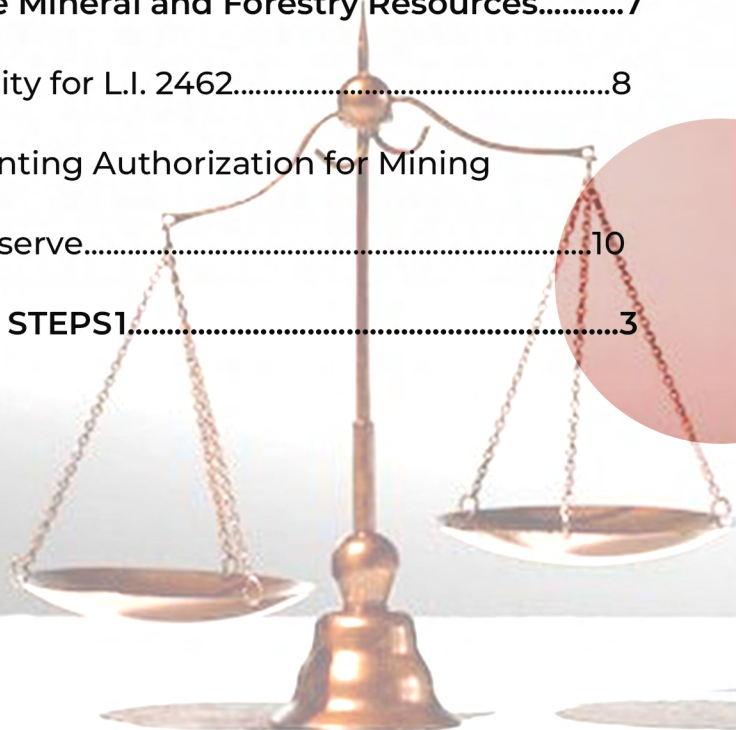
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Table of Contents

I. INTRODUCTION	3
II. BACKGROUND	3
III. LAWMAKING IN GHANA	4
Acts of Parliament	4
Subsidiary Legislation	5
IV. OVERVIEW OF ENVIRONMENTAL PROTECTION (MINING IN FOREST RESERVES) REGULATION 2022 (L.I. 2462).....	6
V. REVIEW OF ENVIRONMENTAL PROTECTION (MINING IN FOREST RESERVES) REGULATION 2022 (L.I. 2462).....	7
Capacity of EPA To Regulate Mineral and Forestry Resources.....	7
Illegitimate source of authority for L.I. 2462.....	8
L.I. 2462's Inadequacy in Granting Authorization for Mining Activities Within a Forest Reserve.....	10
VI. CONCLUSION AND NEXT STEPS.....	3



I. INTRODUCTION

1. TaylorCrabbe® has been instructed by the Nature & Development Foundation (NDF) to comprehensively review and assess the Environmental Protection (Mining in Forest Reserves) Regulation 2022 (L.I. 2462) and provide a legal opinion on potential grounds for amending or repealing the L.I. 2462.

II. BACKGROUND

2. The 1992 Constitution of Ghana imposes a duty on the government to take appropriate measures to protect and safeguard the national environment for posterity, thereby binding the government to ensure the preservation of the environment for Ghanaians and, more so, those unborn.¹ All Ghanaian citizens are similarly duty-bound to protect and safeguard the environment.² Regrettably, the constitution does not define the environment. However, it may be reasonably inferred that it should include forestry, water resources and wildlife that are essential for the survival of humankind.³
3. The Constitution also vests the ownership of minerals in their natural state in, under or within the territory and seas of Ghana in the President, who holds it in trust for the people of Ghana. This represents the general framework for Ghana's ownership and control of natural resources. Thus, much like minerals, forests throughout the country, unless privately owned, are vested in the president of Ghana on behalf of and in trust for the stool and community concerned.
4. To further the exploitation of mineral resources, mineral rights are granted through prospecting licenses, reconnaissance licenses and mining leases by the Ministry of Lands and Natural Resources in consultation with the Minerals Commission. Other institutions that significantly impact mining resources include the Environmental Protection Agency (EPA), responsible for ensuring compliance with environmental protection laws and the Forestry Commission, responsible for conserving Ghana's forest and wildlife resources.
5. The right to exploit natural resources, exercised by the President acting through Ministries and other government agencies, can potentially conflict with the constitutional duty to protect the environment. One such conflict manifests through the Environmental Protection (Mining in Forest Reserves) Regulation 2022 (L.I. 2462) enacted in November 2022. These regulations provide, among other things, statutory procedures for mining in forest reserves and the remedial actions for

¹ 1992 Constitution, article 36(9).

² 1992 Constitution, Article 41(k).

³ DL Johnson and others, 'Meanings of Environmental Terms' (1997) 26 *Journal of Environmental Quality* 581 <<http://doi.wiley.com/10.2134/jeq1997.00472425002600030002x>> accessed 16 September 2023.

mitigating the impacts of such actions. Forest reserves are, by law, created over forest areas with a primary objective to protect them from destruction.⁴ Mining over the surface of the land has adverse effects on the land as well as plants and animals that depend on the land for their survival. Thus, LI 2462 on its face, presents the opportunity for miners to destroy reserves which were specifically created to ensure the protection of the forest and wildlife therein.

6. The passage of L.I. 2462 was allegedly done without significant stakeholder consultation. Also, the rights that can be granted under the licencing regime contained in L.I 2462 can potentially render significant efforts made at reducing deforestation, biodiversity loss, pollution, and climate change nugatory. LI 2462 flies in direct contradistinction with previous government policy on mining in forest reserves as contained in the 2018 'Environmental Guidelines for Mining in Production Forest Reserves in Ghana' and the 2012 Forest and Wildlife Policy.
7. This opinion will comprehensively review the structure, institutions, rights created, offence regime of L.I. 2462 and its potential impact on the legal framework for mining in Ghana.

III. LAWMAKING IN GHANA

Acts of Parliament

8. Ghana's constitution empowers parliament to make laws. Once these laws are enacted, they attain the status of Acts of Parliament, taking precedence over all other sources of law in Ghana except the constitution. The process by which an Act of Parliament is passed involves several stages. First, a bill is presented before parliament along with an introductory memorandum, which may be done by a member of parliament or a minister of state.⁵ Next, the bill goes through the deliberations stage. During deliberations, the bill proceeds through various phases, including the first reading stage, where it is formally introduced before parliament. It then goes through detailed examination in the committee stage, debates in the second reading stage, amendment in the winnowing stage, and then through the consideration stage. Finally, it reaches the third reading stage, where final voting occurs. Once passed, the bill is sent to the president for assent within seven (7) days.⁶
9. If the president declines to assent, it may be referred to the Council of State for consideration within fourteen (14) days, or he may write to Parliament proposing

⁴ Section 2(d) of Forests Act, 1927 CAP 127.

⁵ 1992 Constitution, Article 106(2).

⁶ 1992 Constitution, Article 106(7).

changes to the bill.⁷ In some instances, parliament may override the President's rejection by a two-thirds majority resolution, compelling his assent within thirty (30) days.⁸ After obtaining the President's assent, the bill is passed and published in the gazette to become law.⁹ Finally, a date is specified for the law to become operational.

Subsidiary Legislation

10. The 1992 Constitution recognises various sources of law that exist in Ghana, from the Constitution to existing laws and common law. Subsidiary legislation is a source of law, inferior only to the Constitution and Acts of Parliament. Such legislation comes in the form of orders, rules and regulations made by any person or authority under a power conferred by the Constitution.¹⁰ They are usually in the form of constitutional and legislative instruments.

11. The 1992 Constitution states the procedure for enacting subsidiary legislation.¹¹ Generally, subsidiary legislation¹² is published in the Gazette on the day it is laid before the Parliament.¹³ Once in Parliament, the bill is submitted to the subsidiary Legislation Committee to review it. The Committee is not allowed to make alterations but must ensure that the proposed subsidiary legislation is in line with general objects of the Constitution and the Act under which it was made, whether there are any matters within which should be addressed by Parliament, or the imposition of taxes, or whether it bars the jurisdiction of courts. They also must check that the regulations do not cause a retrospective effect on existing laws and whether it would require funding from the consolidated fund or public revenue.

12. The Regulations should not appear to make unusual or unexpected use of the powers of the Constitution or its empowering Act. The Committee also checks whether any parts of the regulations need further clarification. Where the Committee thinks any part of the Regulations should be annulled, or any matter should be brought before the Parliament, it reports its opinion and the grounds to Parliament. Once these have been complied with, the Regulations shall come into force at the expiration of twenty-one [Parliamentary] sitting days after being laid before Parliament. However, if Parliament, by the votes of not less than two-thirds of all the members of Parliament, decides to annul such Regulations before the expiration of the stipulated period, then the Regulations would be so annulled.¹⁴

⁷ 1992 Constitution, Article 106(8).

⁸ 1992 Constitution, Article 106(10).

⁹ 1992 Constitution, Article 106(11).

¹⁰ 1992 Constitution, Article 11(1)(c).

¹¹ 1992 Constitution, Article 11(7).

¹² Ibid.

¹³ Ibid.

¹⁴ Article 11(7)(c) of 1992 Constitution, Order 77(c) of 1995 Standing Orders of Parliament.

This procedure does not apply to Executive Instruments because they do not have a legislative character.¹⁵

13. In *Asare v Attorney General*¹⁶, the Supreme Court clarified the limitation of Parliament when introducing a subsidiary legislation bill. The Court explained that the publication process in parliament was to give awareness of the law intended to be passed. Once the bill is introduced into Parliament, Parliament has no authority to amend the bill. The only power Parliament has is to either pass or annul the bill. Any amendment must be referred to the originating body.

IV. OVERVIEW OF ENVIRONMENTAL PROTECTION (MINING IN FOREST RESERVES) REGULATION 2022 (L.I. 2462)

14. The Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462) was made on the 23rd of June 2022 in the exercise of the powers conferred on the Minister responsible for the Environment by Section 62(1) of the Environmental Protection Agency Act, 1994 (Act 490).¹⁷ The purpose of the L.I. is to provide for the environmental management of mining activities in forest reserves.¹⁸ In the Regulations, licences for mining activities cannot be granted in certain prohibited areas, examples include globally significant biodiversity areas, protected provenance areas and cultural sites with exception.¹⁹

15. Mineral rights from the Ministry of Lands and Natural Resources, Environmental Permits from the Environmental Protection Agency, Water Use Permits from the Water Resources Commission, Mining Operating Permits from the Inspectorate Division of the Minerals Commission and a Forestry Entry Permit from the Forestry Commission, are required to engage in mining activities in forest reserves.²⁰ To protect forest reserves, individuals with mineral licenses are to ensure that their activities do not cause unnecessary destruction.²¹ Excavation and drilling activities must be done in safe areas with proper safeguards.²² All ancillary facilities must be

¹⁵ Republic v Minister of Interior, Ex Parte Bombelli [1984-86] 1 GLR 204 – 219; Baffour Osei-Akoto vs. The Attorney-General [2012] DLSC 2686.

¹⁶ *Asare v. Attorney General and Another* (J1 1 of 2016) [2017] GHASC 25 (22 June 2017)

¹⁷ Preamble, Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

¹⁸ Regulation 2, Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462)

¹⁹ Regulation 3, Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

²⁰ Regulation 4 and First Schedule, Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

²¹ Regulation 6 and 7, Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

²² Regulation 8, Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

sited outside the forest reserve.²³ When exploration ends, the site must be rehabilitated according to plans submitted to the relevant authorities.²⁴

16. Measures must also be taken to mitigate environmental impacts throughout the mining process.²⁵ A mineral right holder must submit a reclamation and decommissioning plan, create a biodiversity offset area, and consider the end-use of the site. They can re-establish forest cover, create wildlife habitats, and preserve infrastructure.²⁶ The Regulations establish a Local Liaison Committee to ensure effective and efficient mining exploration in forest reserves. Each forest reserve has one.²⁷ A Liaison Group facilitates effective exploration and mining, and a Steering Committee supervises and approves their budget and ensures the implementation of exploration and mining policies in the reserve.²⁸ The Regulations outline the following offences whose breach results in a fine of Gh¢2400-3000 or a term of imprisonment of 6 months to a year;

- a) a grant of license in a prohibited area²⁹,
- b) acts done in contravention of exploration activities required by license-holders³⁰,
- c) construction of access routes, bridges, tracks, and drill pads without appropriate consultation³¹,
- d) contravention of drilling and excavation requirements³²,
- e) destruction of the flow of perennial water bodies³³,
- f) contravention of post-mining and exploration requirements³⁴, siting of ancillary facilities within the forest reserve³⁵ and the contravention of the Liaison Group guidelines³⁶.

V. REVIEW OF ENVIRONMENTAL PROTECTION (MINING IN FOREST RESERVES) REGULATION 2022 (L.I. 2462)

²³ Regulation 14, Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

²⁴ Regulation 16, Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

²⁵ Regulation 10, Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

²⁶ Regulation 16 and 17, Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

²⁷ Regulation 46, Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

²⁸ Regulations 19,20 and 21, Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

²⁹ Regulation 3(3), Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

³⁰ Regulation 6(2), Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

³¹ Regulation 7(5), Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

³² Regulation 8(3), Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

³³ Regulation 9(2), Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

³⁴ Regulation 10(3), Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

³⁵ Regulation 14(2), Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

³⁶ Regulation 52(2), Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I.2462).

Capacity of EPA To Regulate Mineral and Forestry Resources

17. The regulation of mining in forest reserves by the Environmental Protection Agency (EPA) through L.I. 2462 raises a serious constitutional concern. The 1992 Constitution of Ghana allocates the responsibility for regulating and managing natural resources and co-ordinating related policies to the Natural Resource Commissions established either by the Constitution or by the Parliament of Ghana.³⁷ The Environmental Protection Agency is not one of these Commissions. However, L.I. 2462 as it exists now effectively empowers the EPA to oversee and control the utilisation of mineral resources. This is an encroachment on the mandate of the Minerals Commission, and it is beyond the scope of the EPA's designated functions in its establishment legislation.
18. The EPA, as established by the Environmental Protection Agency Act, 1994 (Act 490), is not a natural resource commission. While the EPA has an extensive mandate, it does not encompass regulation and management of natural (specifically, forest or mineral) resources. This specific role is designated to the Forestry and Minerals Commissions, respectively. The passing of L.I. 2462 by the EPA represents a clear overreach on its part, effectively supplanting the legitimate functions of the Forestry and Minerals Commission and thereby violating the constitutional directives regarding managing natural resources in Ghana.
19. Additionally, L.I. 2462 introduces several provisions that constitute regulation and management of mineral resources. This includes provisions on granting mineral rights,³⁸ restrictions on mining in prohibited areas,³⁹ the President's discretionary authority to authorise mining in globally significant biodiversity areas, and the establishment of criminal offences to penalise violations. While these provisions may have their merits, the fundamental issue remains that they are being implemented by an agency, the EPA, that lacks the constitutional authority and mandate to manage natural resources.
20. The purported regulation of mining in forest reserves through L.I. 2462 by the EPA does not only contradicts the constitutional framework for managing natural resources in Ghana but also usurps the role of the Forestry and Minerals Commissions. This infringement on constitutional principles and established mandates is a basis for questioning the legitimacy of the L.I.

Illegitimate source of authority for L.I. 2462

21. L.I. 2462, purportedly enacted under the authority of the Environmental Protection Act, 1994 (Act 490), lacks legislative foundation, rendering it unconstitutional and an overreach of the Minister's authority. Upon close scrutiny, it becomes apparent that Act 490 fails to grant the Minister the necessary authority to regulate the specific activities outlined in L.I. 2462. As the name implies, a Legislative Instrument must find its legal foundation within legislation. The constitution or

³⁷ Article 269(1) of Constitution 1992, Ghana.

³⁸ Regulation 3(1) of Environmental Protection (Mining in Forest Reserves) Regulations 2022, L.I. 2462.

³⁹ *Ibid.*

statute must unequivocally grant the power to formulate regulations, a crucial prerequisite that L.I. 2462 lacks. Without such clear authorisation, any attempt by an administrative officer or body to craft regulations could be seen as an unconstitutional usurpation of the legislature's functions, thereby undermining the foundational principle of the separation of powers.

22. The long title of L.I. 2462 provides the legislative basis for the L.I. in Section 62(1) of Act 490. A careful examination of this section reveals a limited scope of activities for which the Minister can make Regulations. Section 62(1) of Act 490 provides that

“The Minister may, on the advice of the Board, by legislative instrument, make Regulations for

- a) standards and code of practice relating to the protection, development and rehabilitation of the environment;*
- b) the category of undertakings, enterprises, constructions or developments in respect of which environmental impact assessment or environmental management plan is required by the Agency;*
- c) the type, quantity, conditions or concentration of substances that may be released into the environment;*
- d) the manufacture, importation, use, collection, storage, recycling, recovery or disposal of substances which may be hazardous to the environment;*
- e) the disposal of waste generally;*
- f) the protection of any particular species of fauna and flora;*
- g) matters in respect of which fees are payable and the amount payable;*
- h) matters for which permits are required under this Act and*
- i) generally for giving effect to this Act.”*

23. Regulation 2 of L.I. 2642 provides the *raison d'être* of the Regulations, which include managing mining in forest reserves; efficient use and protection of natural resources; effective stakeholder consultation and participation on issues relating to mining in forest reserves; effective and efficient administration and disbursement of mineral royalties; and maximisation of benefits to the local community from mining in forest reserves.

24. A conspicuous lack of harmony emerges from a rigorous analysis and comparison of the primary objectives outlined in L.I. 2642 with the delineated scope of activities permissible for regulation under the provisions of section 62(1). This discordance not only calls into question the legitimacy of section 62(1) as the legal foundation

for the promulgation of L.I. 2462 but also raises profound doubts about the instrument's overall validity.

25. In simpler terms, it is evident that L.I. 2462 cannot be comfortably situated within any of the permissible activities specified in section 62(1) of Act 490. Consequently, it becomes abundantly clear that L.I. 2462 cannot be considered a duly passed legislative instrument within the confines of the law. This inherent incongruity is a compelling argument against the instrument's legal standing.

26. Even under the broadest interpretation of Section 62(1) of Act 490, it remains exceedingly challenging to justify L.I. 2462's enactment under the provision. The inconsistency between the purpose and provisions of L.I. 2462 and the functions prescribed for the Environmental Protection Authority and its establishing Act 490 exacerbates this difficulty, making it nearly impossible to purposively interpret Section 62(1) to legitimise L.I. 2462.

27. If L.I. 2462 had primarily focused on setting environmental development and rehabilitation standards, it might have found some justification under Section 62(a) of Act 490. However, upon careful scrutiny, it becomes evident that the standard-setting aspect is secondary to the broader objectives of regulating mining, promoting stakeholder participation, and facilitating mineral royalty payments. In essence, L.I. 2462 attempts to achieve far more than what a standard-setting Regulation permitted under section 62(a) should encompass.

28. The inability to situate L.I. 2462 within the purview of Section 62(1) represents a critical deficiency that strips the Legislative Instrument of its legislative authority, rendering it legally invalid. This glaring absence of a robust legislative foundation provides substantial grounds for serious scrutiny regarding the instrument's legal standing.

29. In light of this glaring deficiency, it is entirely reasonable to anticipate that a court would question the validity of L.I. 2462. The absence of legislative backing significantly undermines the instrument's legal basis, raising considerable doubts about its legitimacy. Consequently, it is highly plausible that a court would rule in favour of nullifying L.I. 2462 due to its inherent lack of legislative support, thereby reaffirming the importance of adherence to established legal frameworks and principles.

L.I. 2462's Inadequacy in Granting Authorization for Mining Activities Within a Forest Reserve

30. In Ghana, forest reserves are created by the President through Executive Instruments.⁴⁰ Once created, a forest reserve shall be managed by the Forestry

⁴⁰ Section 16 of Forests Act, 1927 (CAP 157).

Commission on behalf of the government. The President's power to declare land as ceasing to exist as a forest reserve is exercised through an Executive Instrument.⁴¹

31. The key implication of this regulatory framework is that it is solely the President, through an Executive Instrument, who possesses the authority to alter the rights and characteristics associated with a forest reserve. Consequently, in the absence of an Act of Parliament, only an Executive Instrument can modify the rights associated with a forest reserve. Put differently, without an act of parliament or an executive instrument, the legal protections granted to land classified as a forest reserve cannot be overridden.
32. It's important to note that L.I. 2462 is a Legislative Instrument promulgated by an administrative body (EPA), and it does not carry the legislative legitimacy required to override the protections granted to forest reserves through an Executive Instrument. While there may not be a specific judicial ruling or statutory provision addressing the conflict between an Executive Instrument and a Legislative Instrument, existing case law and legal principles make it abundantly clear that an L.I. cannot implicitly repeal an E.I.
33. The distinction between an Executive Instrument and a Legislative Instrument is crucial. Legislative Instruments, even when initiated by an executive body, are fundamentally legislative in nature as they regulate conduct and must be presented before Parliament for approval before taking effect.⁴² On the contrary, an Executive Instrument does not undergo parliamentary scrutiny or require parliamentary approval to become law. By design, they represent an exercise of executive authority. Given this fundamental difference, the presumption of *leges posteriores priores abrogant*⁴³, which applies to conflicts between subsequent and prior legislation, does not pertain to conflicts between an E.I. and an L.I.
34. Furthermore, due to the distinct nature of these competing forms of subsidiary legislation (E.I. representing executive power and L.I. representing legislative power), the doctrine of the separation of powers dictates that an L.I. cannot be employed to amend an E.I. in the absence of explicit constitutional provisions, as it would be a usurpation of executive power.
35. The preceding arguments make it evident that the rules of statutory interpretation that might allow L.I. 2462 to implicitly repeal an Executive Instrument creating a forest reserve do not apply. Consequently, L.I. 2462 cannot diminish the protections afforded to land classified as a forest reserve through an Executive

⁴¹ Section 19 of CAP 157.

⁴² Republic v Minister of Interior, Ex Parte Bombelli [1984-86] 1 GLR 204 – 219.

⁴³ This is also referred to as the doctrine of implied repeal which is a concept that a later statute which is repugnant to an earlier statute is deemed to abrogate the earlier one when both of them are on the same subject matter. In other words, where the provisions of a later document are contrary to those of an earlier, the earliest must be considered as repealed.

Instrument. If L.I. 2462 cannot undermine these protections, it logically follows that it cannot sanction mining activities within forest reserves, as such actions would be inconsistent with the intended purpose and nature of these reserves.

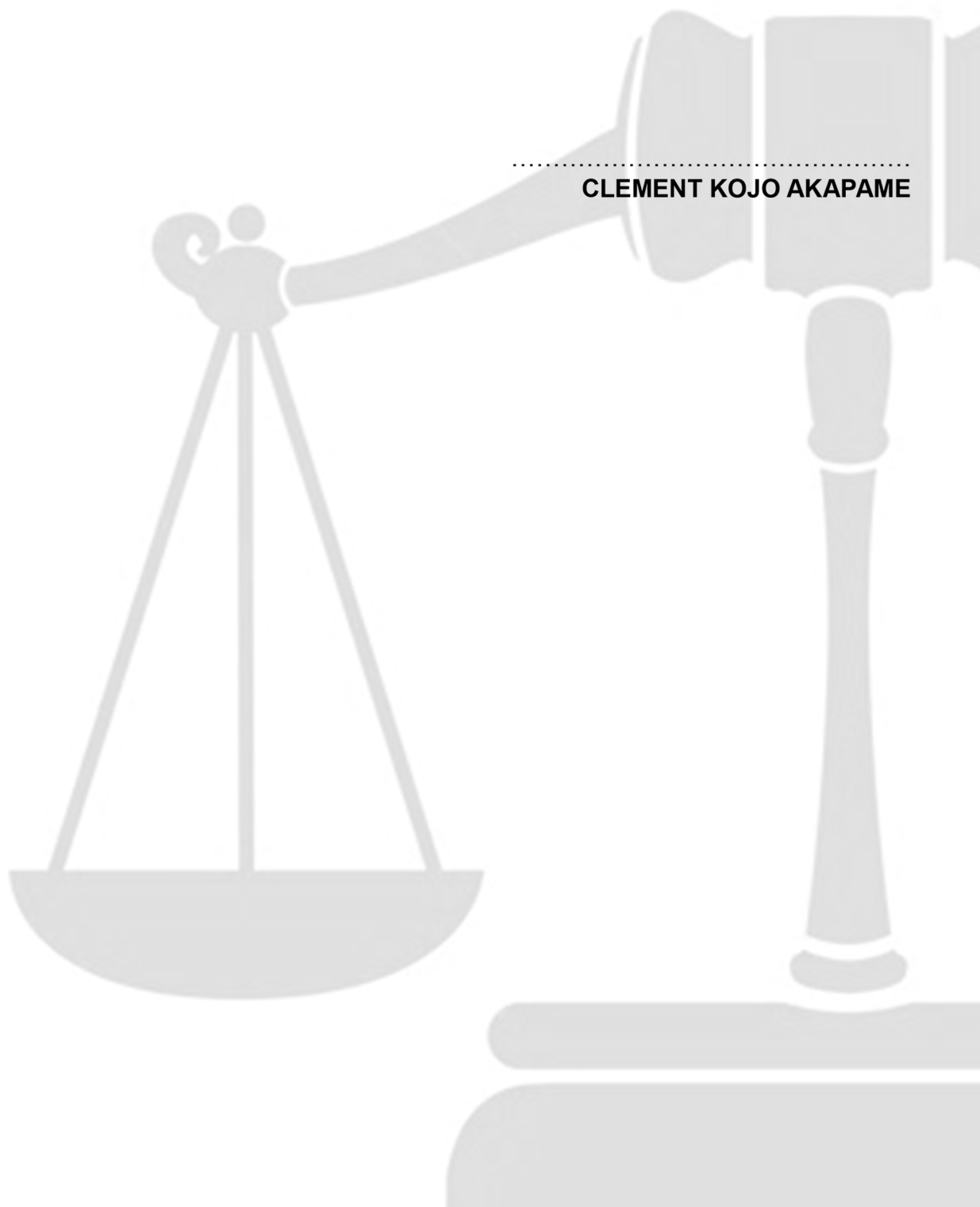
36. Furthermore, even *assuming arguendo* that the analysis of the relationship between C.I. and L.I. is disregarded, L.I. 2462 still lacks the authority to undermine the statutory safeguards provided for forest reserves. This is because, although an E.I. establishes the forest reserve, the protections and the associated offences and penalties are defined in acts of parliament. The Forests Act, 1927 (CAP 127) and Forests Protection Act, 1974 (NRCD 273), outline the regulatory framework that safeguards land designated as a forest reserve. The restrictions, including the penalty system, are enshrined in these parliamentary Acts.
37. In Ghana, as per the legal hierarchy, an act of parliament holds a higher status than subsidiary legislation. Therefore, it is essential to emphasise that L.I. 2462 cannot implicitly revoke the safeguards for land designated as a forest reserve, primarily because these protections are rooted in legislative acts.
38. In conclusion, L.I. 2462 cannot authorise mining in forest reserves because the L.I. lacks the legislative legitimacy to erode the protections conferred on land that is classified as a forest reserve.
39. L.I. 2462 faces many challenges that extend well beyond its legal frailties. These encompass drafting, political, and diversity obstacles that collectively undermine its effectiveness as a law aimed at safeguarding our precious forest ecosystems.
40. To begin with, the weakness of the sanctions regime within L.I. 2462 is a glaring concern. This regulation governs mining activities within forest reserves and delineates prohibited actions crucial for preserving the delicate balance of flora and fauna. Given the dire consequences of failing to adhere to these prohibitions, one would logically expect stringent punitive measures for transgressors. However, L.I. 2462 falls short in this regard. Its most severe penalty for a breach is a mere one-year imprisonment term and a fine of 250 penalty units (3000ghc). This feeble stance becomes even more evident compared to similar regulations like the Timber Resource Management and Legality Licensing Regulations, 2017, which prescribes a range from 250 to 1000 penalty units and a potential imprisonment term of up to two (2) years.
41. The underlying reason for this insubstantial sanctions regime in L.I. 2462 can be traced back to the constraints imposed by the EPA Act on the Minister's authority to enact sanctions through regulations. Given the gravity of issues such as biodiversity loss, irreversible environmental destruction, and the substantial economic incentives associated with mining, it is imperative to establish a robust sanctions framework that can act as a formidable deterrent against prohibited activities.

42. The inherent inability of L.I. 2462 to ensure effective compliance with its prohibitions underscores the inadequacy of a legislative instrument like L.I. 2462 in regulating mining activities within forest reserves. It becomes increasingly evident that a more comprehensive and robust approach is essential to protect these critical ecosystems.
43. Secondly, a critical aspect of concern is how L.I. 2462 was promulgated. While it may not be legally mandated, there is a growing customary practice, particularly in the realm of natural resource management in Ghana, wherein civil society organisations and community-based stakeholders are actively engaged in developing legislation about natural resources.
44. Conflicting accounts exist regarding whether civil society groups or community-based stakeholders were consulted during the formulation of L.I. 2462. This absence of consultation with key stakeholders is a compelling political argument for advocating the reconsideration or repeal of this legislation. L.I. 2462 aims to strike a balance between competing interests concerning the management of natural resources. Advocating for an act of Parliament to govern mining in forest reserves would subject the issue to the legislative process, enabling these crucial stakeholders to assert their interests.
45. Thirdly, the recent trend in legislation incorporates a gender quota for women, a strategic move aimed at bolstering gender diversity and inclusivity in natural resource management. However, it is rather conspicuous that L.I. 2462 deviates from this established norm. Despite creating three new institutions under its purview, it glaringly lacks any provisions for gender quotas. This departure from the norm raises concerns and offers a compelling political opportunity to advocate for a thorough review of L.I. 2462.

VI. CONCLUSION AND NEXT STEPS

46. This assessment has identified legal and political weaknesses within L.I. 2462, and two primary avenues are available to address these shortcomings. The first option is resorting to legal action, which comes with an estimated timeline of eighteen (18) to thirty-six (36) months from the date of filing. This timeline could be extended, given the high state interest in the matter.
47. The second option involves a political approach, which entails lobbying political actors to either repeal L.I. 2462 entirely or replace it with an act of Parliament. Given the current political climate and an impending national election, there might be an appetite for such action if pursued strategically. However, it is essential to note the risk involved; if the legislative process is not completed before the current Parliament's tenure expires, the entire process would need to start anew in the new Parliament.

48. It is worth emphasising that these two avenues are not mutually exclusive and can be pursued concurrently to maximise the chances of achieving the desired outcome.



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CLEMENT KOJO AKAPAME