

## TERMS OF REFERENCE

### CONSULTANCY SERVICE FOR THE DEVELOPMENT OF A MERCURY MANAGEMENT LAW FOR THE ARTISANAL AND SMALL-SCALE GOLD MINING SECTOR IN GHANA – INDIVIDUAL CONSULTANT (GH-EHPMP-455029-CS-INDV)

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#### 1.0 BACKGROUND

The informal, unsafe, and unregulated nature of mercury use in the artisanal and small-scale gold mining (ASGM) Sector creates a legacy of severe adverse and irreversible environmental and health damage in its wake. It is therefore a priority to reduce, and where feasible, eliminate mercury use in ASGM, as required in Article 7 of the Minamata Convention. Current crude methods of handling mercury to process gold lead to release of mercury into the environment with limited controls, leading to occupational and community exposures.

Ghana became a signatory and ratified the Minamata Convention on 24<sup>th</sup> September 2014 and 23<sup>rd</sup> March 2017 respectively. The Convention calls on Parties to take actions to eliminate some of the worst practices in mining, such as whole ore amalgamation, open burning of amalgam, burning of amalgam in residential areas, and cyanide leaching in sediment, ore or tailings in which mercury can be found. Over the years following the ratification of the Convention, Ghana has developed its National Action Plan (NAP, 2020) to address the national priorities and obligations under the Minamata Convention. However, key national legislations on mercury management in ASGM such as Mercury Act, 1989 (PNDC Law 217), Minerals and Mining Act 2006, (Act 703 as amended) do not address the core obligations of the Minamata Convention because they were promulgated before the Convention was introduced in Ghana.

Ghana is one of five African countries participating in the GEF-funded Africa Environmental Health and Pollution Management Programme (AEHPMP). The project objective is to reduce exposure to mercury and uPOPs pollution at pilot sites and strengthen the institutional capacity to manage and regulate mercury use in ASGM and e-waste in these selected countries. The Project in Ghana has four (4) Components as follow:

**Component 1: Institutional strengthening, capacity building and knowledge sharing.** The component will strengthen the knowledge and capacity base of public institutions and private stakeholders to address environmental health risks associated with mercury use in ASGM sector and POPs/UPOPs releases from e-waste.

**Component 2: Support policy dialogue and regulatory enhancements.** The component seeks to address current policy challenges as well as to strengthen regulatory frameworks and facilitate their implementation, to better address environmental health risks associated with mercury use in ASGM sector and POPs/UPOPs releases from e-waste. It complements activities under component 3, focused on operational-level approaches to incentivize practices and technologies less harmful to human health and the environment.

**Component 3: Demonstrating the application of technological tools and economic approaches.** The component will finance specific community-focused cleaner technology demonstration activities in contaminated areas, selected and designed based on environmental health risks and cost-effectiveness of interventions. The objective is to address technical and methodological challenges to the adoption and deployment of cleaner technologies and practices in complement to activities under component 2, which focuses on challenges and policy incentives to reduce environmental and health pressures.

**Component 4: Project management.** This component will cover the cost for project management, implementation and supervision of project activities, administration of procurement and financial management, monitoring and evaluation, and monitoring of safeguards compliance.

The component will cover the cost of the Project Implementation Units (PIU) within the Environmental Protection Agency (EPA).

## 2.0 OBJECTIVES OF THE CONSULTANCY

The objective of the consultancy is to propose amendments to the current Ghanaian legislation and/or propose the development of new legislation, so that the guidelines established in the Minamata Convention are implemented in ASGM in Ghana. Through the improvement and/or development of legislation for ASGM, it is expected that risks associated with the use of mercury decrease, having a positive impact on health and environmental conditions.

## 3.0 SCOPE OF WORK

The scope of work for the assignment is as outlined below:

- a. **Context assessment.** The consultancy will identify current legislation that is used to manage ASGM and mercury usage in Ghana<sup>1</sup>, including national and local legislation, and will understand its limitations and the possibilities of improvement. To assess current legislation, the consultancy should propose criteria that respond to the local context. The analysis of the limitations will include recommendations on the feasibility of changing current legislation and, if this is not feasible, it will propose a roadmap for

Through the literature review, the consultancy will also identify previous initiatives, projects, studies, among others, that are relevant for the improvement of Ghanaian legislation.

- b. **Stakeholder engagement.** To have policies that are applicable and that are in line with the needs of local communities, the consultancy will propose and conduct a Stakeholder Engagement Plan (SEP) in which different stakeholders of the ASGM value chain will be identified and their perspectives on mercury usage in ASGM will be understood. The SEP should establish mechanisms for receiving information from the government, the private sector, local communities, vulnerable groups affected by mercury usage (e.g., pregnant women, children ) and integrating their views into the policies.

- c. **Minamata Convention streamlining into the Ghanaian context.** Once there is an assessment of the current legislation and its needs, the consultancy will propose a roadmap to do amendments of the current legislation and, will propose new legislation if needed, so that priority provisions of the Minamata Convention are incorporated. This will include, but won't limit to, actions according to the following guidelines:

- Waste control
- Emission control
- Ore concentration
- Environmental and health protection
- Accountability
- Regulatory oversight and capacity building

The roadmap should also take into consideration provisions for post monitoring for mine closure and reclamation, mercury free processing technologies and mercury phase down provisions and transition period for complete ban on the of mercury in the ASGM sector.

- d. **Capacity building activities.** In order for the new legislation to be adopted, the consultancy should undertake capacity building activities with the different stakeholders identified. These activities should be tailor made so that different audiences are engaged.

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<sup>1</sup> Including the Mercury Act, 1989 (PNDC Law 217), Minerals and Mining Act 2006, (Act 703 as amended), The Environmental Protection Agency Act, 1994 (Act 490), Environmental Assessment Regulations, 1999 (LI 1652).

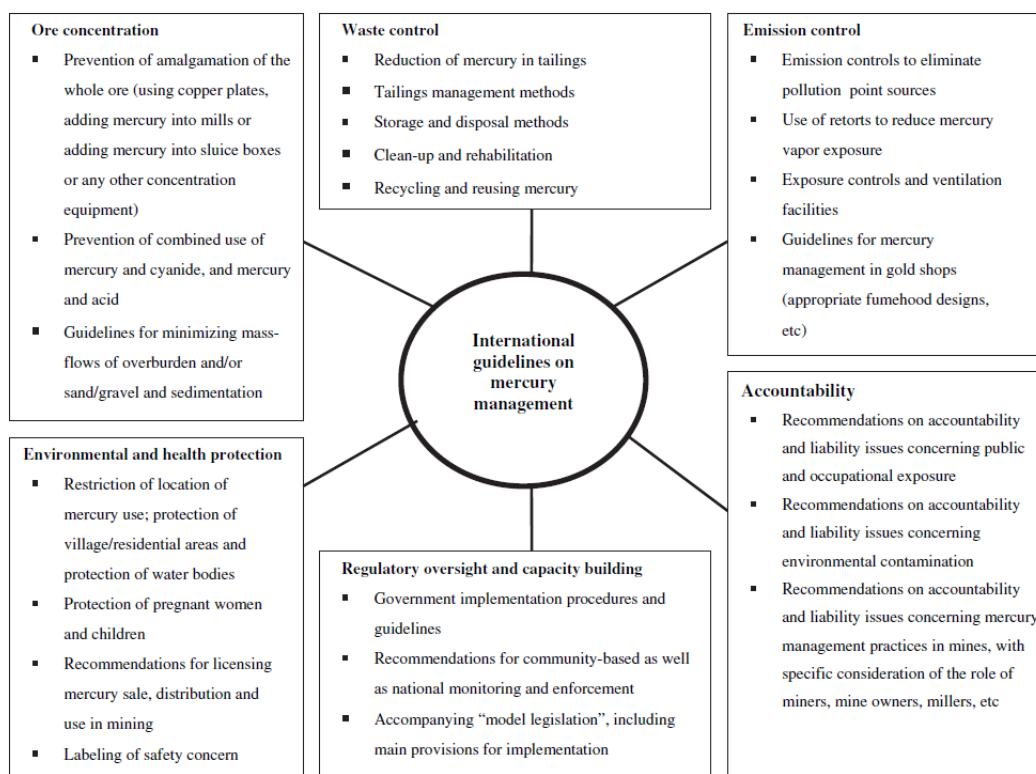


Fig. 1. Main themes in international guidelines on mercury management in small-scale gold mining.

### 3.1. Activities and outcomes

| Scope   | Activities  | Outcomes  |
|---|---|---|
| Context assessment  | Literature review identify previous initiatives, projects, studies, among others, that are relevant for the improvement of Ghanaian legislation.  | <ul style="list-style-type: none"> <li>Analysis of gaps and opportunities of existing legislation to align with the relevant conventions.</li> <li>Literature review that supports the amendment and/or creation of legislation.</li> </ul> |
|   | Propose criteria for reviewing existing Ghanaian legislation and identifying gaps and opportunities of improvement.   |   |
|   | Review and analyse existing legislation.  |   |
|   | Review relevant Conventions, including the Minamata, Basel and Rotterdam Conventions, as well as other global frameworks that are appropriate.  |   |
| SEP   | Conduct a SEP, including stakeholder identification, analysis, and mapping of the entire ASGM in Ghana. The SEP should aim to integrate previous findings from other projects (including mapping of local communities involved in ASGM).                        | <ul style="list-style-type: none"> <li>SEP reports, according to the progress and results achieved in each phase.</li> </ul>  |
|   | Establish mechanisms for receiving and collecting information from the government, the private sector, local communities, vulnerable groups affected by mercury usage (e.g., pregnant women, children, migrants) and integrating their views into the policies. |   |
|   | Participate in stakeholder meetings to understand the context and dynamics of the current and proposed legislations from the stakeholder's perspective.   |   |
|   | Shared the findings from the consultancy with the interested stakeholders, receive their feedback and incorporate (if possible) into the amendments and/or new legislations.  |   |
| Minamata Convention streamlining into the Ghanaian context. | Propose a roadmap to do amendments of the current legislation. This should include details on the different processes that need to occur to do changes, timelines, stakeholders involved, among others.   | <ul style="list-style-type: none"> <li>Roadmap to change/improve existing legislation.</li> <li>Draft document of the new legislation.</li> <li>Roadmap to</li> </ul>   |
|   | Propose new legislation if needed, so that priority provisions of the Minamata Convention are incorporated.   |   |

| Scope             | Activities  | Outcomes                   |
|-------------------|---|----------------------------|
|                   | New legislation should take into consideration: <ul style="list-style-type: none"> <li>Prohibition in Ghana of Minamata Convention worse practices.</li> <li>Provisions on Environmental Assessment requirement for ASGM undertakings.</li> <li>Provisions on mine closure and reclamation including the posting of reclamation bonds; and</li> <li>Provisions on post mining monitoring</li> </ul> Roadmap to implement the new legislation, including to phase down mercury use in ASGM in Ghana. The roadmap should include a budget for the main activities needed, and an identification of the governance structure for undertaking the changes and/or policies proposed. | implement new legislation. |
| Capacity building | Develop supporting materials, including explanatory memorandum, legislation implementation plan and cabinet paper for the draft legislation, where necessary<br>Support the legal team to work together with the responsible government legal office responsible for legislative drafting (e.g., Attorney General's Office and relevant parliamentary select committees).   |                            |

#### 4.0 DELIVERABLES AND PAYMENT SCHEDULE

The consultant is expected to submit the following deliverables prepared in English and submitted electronically. Two copies are required – one MS Word copy and one PDF copy.

| # | Deliverable   | Deliverable Deadline  |
|---|---|---|
| 0 | Workplan and methodology proposed, including: <ul style="list-style-type: none"> <li>Outline of a schedule of activities or workplan.</li> <li>Proposed deliverable schedule.</li> <li>Study methodology/approach</li> </ul>  | 10 days after signing of Contract                                     |
| 1 | Context assessment. Document including: <ul style="list-style-type: none"> <li>Literature review that supports the amendment and/or creation of legislation.</li> <li>Analysis of gaps and opportunities of existing legislation to align with the relevant conventions.</li> </ul> |   |
| 2 | SEP Report<br>The report from the consultation process shall contain consultation outcomes, analysis of the recommendation from the consultation and a list of participants consulted.  | 1-month after the submission of the inception report.                 |
| 3 | Amendments to existing legislation and roadmap <ul style="list-style-type: none"> <li>Roadmap to change/improve existing legislation.</li> </ul>  | 2-months after the submission of the stakeholder consultation report. |
| 4 | Draft Legislation <ul style="list-style-type: none"> <li>Draft document of the new legislation.</li> <li>Roadmap to implement new legislation, including a general budget</li> </ul>  | 1-month after the submission of the zero draft.                       |

The consultant will be paid in lump sum following satisfactory submission and acceptance of the deliverables. All data and reports related to this exercise belong to the Client and the Consultant must seek the consent of the Client before giving it to any third party. The timelines indicated below for the execution of the assignment is exclusive of reviews and validation workshops after each deliverable that will be facilitated by the client (EPA).

| Deliverable | Deliverable Deadline                                  | Payment Terms |
|-------------|---|---------------|
| 1           | 10 days after signing of Contract                     | 15%           |
| 2           | 1-month after the submission of the inception report. | 25%           |

| Deliverable | Deliverable Deadline   | Payment Terms |
|-------------|--|---------------|
| 3           | <b>2-months</b> after the submission of the stakeholder consultation report. | 40%           |
| 4           | <b>1-month</b> after the submission of the zero draft.                       | 20%           |

## 5.0 DURATION

- The assignment is to be carried out over a period of four (4) months and 10 days.

## 6.0 EXPERIENCE AND QUALIFICATION OF CONSULTANT

The successful candidate should possess the following qualifications and experience to be considered for this assignment:

### Educational Qualifications

- Law degree from a recognized and reputable institution.
- Postgraduate degree in legislative drafting in the environmental sector would be an advantage.
- Ability to communicate fluently in English (spoken and written).

### Professional Experience

- Minimum of 10 years' legislative drafting experience.
- Knowledge of the subject-matter (i.e., Minamata Convention, Basel Convention, mining, and environmental laws) and knowledge of international standards with respect to the ASGM sub-sector.
- Strong drafting, analytical and communication skills.
- Experience in performing similar assignments, and relevant experience.
- Ability to coordinate and moderate the relevant deliberations on the proposed legislation and facilitate multi stakeholder groups on the subject matter.
- Ability to engage with a cross-section of stakeholders in the public and private sectors, especially in the ASGM sub-sector.
- In-depth knowledge and understanding of Ghanaian legal system (Constitutions, statutes, subsidiary laws)
- Experience working with Parliamentarians or law makers.
- Experience in training in the enforcement of legislations.
- Excellent communication skills.
- Proven ability to work under pressure and meet deadlines.

## 7.0 INFORMATION TO BE PROVIDED BY CLIENT

The Client will provide the following information to the Consultant:

- The Mercury Initial Assessment (MIA) for Ghana, 2018
- The draft National Action Plan (NAP, 2020) for ASGM
- Letter(s) introducing the Consultant wherever required in performing the assignment.

It should be noted that the Consultant will need to provide all the administrative, technical professional and support staff needed to carry out their services efficiently. The Consultant will also be responsible for providing all other necessary facilities and logistical support for their staff or team(s) engaged, including accommodation, vehicles/transportation, utilities, office supplies and other miscellaneous requirements wherever applicable to render their services.