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Decoding the persistence of gamamsey in Ghana: The meta-contradictions of neutered law

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Abstract

Background: There is a lack of consensus on the appropriate regime for socio-political regulations regarding gamamsey. In this context, people with unrestrained pecuniary ambitions defy or evade laws enacted to curb gamamsey, thereby rendering them neutered even when violently enforced.

Objectives: This study aimed to demonstrate that the failure of the Government of Ghana to curtail gamamsey is due to the clash of ethnic group customs and national laws, thereby generating a meta-contradiction of governance principles in gamamsey enclaves.

Methods: The study was framed by the notion of the contact zone, namely the coexistence of different principles of socio-political regulation. Areas with gamamsey are unstable contact zones of anomie, and those without them are stable synonymic contact zones. The study was qualitative ethnographic research based on primary data generated from individual interviews and focused group discussions with respondents recruited through a chain-link strategy in the communities of Akyem Asunafo and Akyem Kwabeng in the Eastern Region of Ghana.

Results: Akyem Kwabeng demonstrated the trait of an unstable anomic contact zone with its relatively weak customary norms. It was a gamamsey enclave with a destroyed ecology. This study also used secondary information on Tanchara in the Upper West Region. Akyem Asunafo is found to be a stable synonymic contact zone, upholds traditional principles of governance, has no gamamsey, and its ecology is pristine. Conversely, Tanchara, an unstable contact zone, used its customary norms to stem gamamsey and protect its environment.

Conclusions: It will be prudent for the GoG to acknowledge the superior eco-regulatory capacity of chiefs and norms of traditional eco-governance and facilitate the conclusion of Green Social Contracts (GSCs) rooted in customary principles of ecological governance in gamamsey enclaves.

Keywords: Gamamsey, contact zone, synonymic, anomie, meta-contradiction, neutered law, Ghana

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INTRODUCTION

All efforts by the Government of Ghana (GoG) since 1989 to stop gamamsey (illegal gold mining) have failed. Indeed, gamamsey has thrived and increased in scope from a small-scale endeavour to a medium-scale activity with historically unprecedented negative environmental consequences [1]. Conventional perspectives attribute the persistence of gamamsey to factors such as corruption and lack of political will [2]. This study, inspired by Peter Ekeh [3], articulates a contrary position that factors such as corruption and lack of political will, rather than being causative factors of gamamsey, are the symptoms of a clash of the differing philosophies of ethnic group customary norms and the

sovereign laws of the Ghanaian state. The governing principles of ethnic groups are rooted in the philosophy of holism [4]: the principle that the universe understood as a system of balanced interdependence between sacred and secular beings, must not be disrupted by human ambition. With holism, the norms (or laws) governing human ambition, rights, and obligations are calibrated to maintain the ideal of normatively balanced interdependence with all the other entities making up the universe. As such, holism thrives on two types of inclusive power: power-to and power-with. While power-with enacts solidarity-based communal actions, power-to enables the attainment of collective aspirations. Government, on the other hand, as a sovereign institution of the state, functions with exclusive power-over: authority expressed through coercively framed law [5]. Hence power-with and power-to are functionally different from and normatively in conflict with power-over.

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Efforts by the GoG since 1957 to project its power-over in all spheres of national life, including regulating small-scale gold mining, have often clashed with the customs of ethnic groups and, in the process, generated meta-contradictions of anomie [6] epitomised by the loosening of social cohesion often manifesting as ineffective regulation of human conduct. In contexts of matured meta-contradictions of anomie, there is no sense of legality or illegality since normative consensus, the necessary and sufficient condition to guide the framing and procedures to define acceptable and unacceptable human conduct, does not exist. In such a context, any attempt to impose externally framed legal regimes will be resisted or contested since people will only voluntarily submit to the dictates of law if its ethical basis aligns with their worldview(s) or are participants in its framing as co-creators. Resisted or contested laws are ‘paper tiger’ or neutered laws that can only be ineffectively enforced through coercion or violence [7]. One gets a sense of the neutered laws governing small-scale mining in Ghana from the wording of official and private statements such as “the fight against galamsey”. Other expressions emblematic of neutered laws on galamsey include; “The government intends to crack or clamp down and wage relentless war or calls for a shoot-to-kill policy” [8].

MATERIALS AND METHODS

This study is a qualitative ethnographic study by the Akyem Asunafo and Akyem Kwabeng Ghana Mining Research Group and the University of York, UK [9]. Akyem Asunafo and Akyem Kwabeng were chosen because even though they are all located (22.4 km apart) in one of Ghana’s most active zones of galamsey [10], Akyem Asunafo has no experience with galamsey, but Akyem Kwabeng is an active enclave of illegal mining. The study’s respondents were recruited with a two-stage chain-link recruitment strategy, an approach that does not require a pre-designated sampling population size. The first stage involved the non-probability recruitment of an Assemblyman in Akyem Asunafo and a Municipal Chief Executive in Akyem Kwabeng. The second stage involved the first-stage respondents recommending subsequent participants and/or how to reach them. The data used in this study was extracted from the responses of about 70 individuals comprising galamsey workers or entrepreneurs, government security agents, officials, and political actors. It also includes responses from focus group interviews involving three groups of galamsey miners. The study also uses secondary information from the galamsey enclaves of Tanchara in Lawra (Upper West Region of Ghana) and is based on a deductive content analysis of findings.

Theoretical Framework

A contact zone is a socio-political context where different norms of governance co-exist. Contact zones may either be stable, contexts of synomie (i.e. when different norms are consciously programmed to work in sync), or unstable and anomic (i.e. dissimilar norms clashing in opposition to each other). Unstable and anomic contact zones are prone to

crisis due to a lack of consensus on the principles of socio-political organisation [11] and hence exhibit risks of liminality: a transitional unregulated “free for all” situation where people engage in self-seeking behaviours and do not voluntarily submit to externally imposed controls [12]. If people feel entrapped such that they are unable to completely escape external controls, they resort to active subversion to reduce its effectiveness. Ultimately, risks of liminality develop under conditions of weak or absent government authority [13]. The arguments in this study are informed by Margaret Scotford Archer’s [14] idea of morphogenetic critical realism, which suggests that the internal dynamic(s) of society can be efficiently interrogated only when its superficial elements, such as law, culture, and myth, are accounted for. Morphogenetic social phenomena are context-dependent and locale-specific. Archer elaborates morphogenesis as (i) structural conditioning, (ii) social interaction, and (iii) structural elaboration. Structural conditioning defines the permissible limits of individual ambition. Social interaction maps the pattern of transactions individuals engage in. Finally, structural elaboration is the combination of structural conditioning and social interaction. Hence, it depicts the footprint of the two tendencies. The idea of morphogenetic critical realism is used in the context of this study to examine how the principles of ethnic group holism and the sovereign power of the GoG, either operating separately or together, engender galamsey.

RESULTS

Akyem Asunafo

During a focus group discussion with the community’s Queen Mother and her Council of Elders, they noted that they uphold an ancestral admonition to despise avarice. Considering that gold is culturally regarded as a source of greed, its mining in all forms, whether GoG-sanctioned or galamsey, is opposed. They also mentioned that the land is held in trust for their ancestors and future generations, and they will be held accountable for their stewardship. Consequently, they preferred not to offend their forebearers by yielding to the pecuniary temptations of gold. They explained further that they experienced nightmares whenever gold mining proposals from the GoG or galamsey entrepreneurs were presented to their community, and so they have learnt to be content with their farming incomes. The community’s resistance to mining was confirmed by an official of the Minerals Commission, who noted that even though the community is rich in quartz reef gold deposits, it has opposed all efforts over three years to be included in the GoG’s Community Mining Programme [9]. Evidence of the environmental dividend from the posture of Akyem Asunafo was discernible from the pristine ecology of the Esubone River, a tributary of River Pra, which flows through the community (Figure 1).

Akyem Kwabeng

In a focus group discussion, respondents said that the Kwabeng Stool of the Gyaase Division of the Akyem



Figure 1. Esubone River flowing through Akyem Asunafo showing pristine characteristics devoid of pollution

Abuakwa Paramourty fought wars over centuries to secure their land. Given this, they see no reason why Government of Ghana appointees will issue licenses to strangers to appropriate their land for gold mining. Hence, rather than sitting aloof for this to happen, they decided to give out land to gold miners on their terms. When questioned whether, per their statements, they were not engaging in illegal actions or intended to do so, they responded that the question must be directed at the GoG since even the British colonial government, which had all the power to usurp their land, did not do so. They added that in the broader scheme of things, the fact that the GoG used its laws to undermine their land ownership rights made it guilty of illegality. Again, regarding the question of whether they have either petitioned, sought to negotiate, or dialogued with the GoG over their concerns, they responded that any effort in such a manner would be akin to abdicating their customary responsibilities or birthright.

Another respondent testified that despite the GoG's mitigation efforts, galamsey has persisted due to the collusion of government law enforcement officials, landowners, and galamsey entrepreneurs. The respondent noted an instance where a registered gold mining firm contracted and protected galamsey workers to mine on its concessions and then bought the gold mined at less than one-fourth of the price prevailing on the open market. Among others, the private firm justified the price it paid to its galamsey miners with the excuse that it would use the deduction for land reclamation even though it did not. Galamsey miners, in a focused group discussion, expressed

the view that even though they were not happy with the environmental destruction caused by galamsey, they had no choice but to engage in it. They reasoned that they were unable to access their farms, especially during the rainy season, due to dangers posed by mining pits. Elaborating further, they noted that when galamsey entrepreneurs move into a farming area and make initial offers to landowners or users, those who hesitated or declined to accept such offers would eventually not be able to access their farms when mining begins and hence are compelled to unwillingly give out their farmland at a lower compensation rate. Hence, all (farm) landowners have learned to accept initial offers.

This set of respondents also testified that since farming is no longer a viable economic venture, they have pooled funds to purchase metal detectors to form a metal detector galamsey group [10] and that they were in negotiations with the Local Assembly to have their machines/group registered and agree on a tax regime. They revealed that most male workers employed by galamsey entrepreneurs also doubled as freelance metal detector miners who are contracted to prospect for gold on farms and in homes with a prior gold sale agreement formula as follows: one-fourth for the owner of the metal detector, one fourth for the metal detector, one fourth for the contractor of the metal detector service and one fourth for the operator of the metal detector if he is not the owner. The members of the metal detector galamsey group also engaged in what they call *kolikoli*: the search for gold in abandoned pits or tailings. To the question of whether they were aware that galamsey is a crime, they responded in the affirmative but added that it



Fig. 2: Birim River showing muddy colouration, and a gamamsey site characterized by muddywater-filled pits (insert) in Akyem Kwabeng

was a risk-free activity since they were always rescued with the help of their employees and the owners of the land on which they mine. According to them, gamamsey miners are only harassed and detained by law enforcement agents when such help is delayed. The pattern of responses shows that GoG's efforts to regulate gold mining have not deterred individuals from pursuing self-centred pecuniary interests and security against the dictates of national law. As anticipated by the concept of the tragedy of the commons [11] and empirically evident at the time of the study in the polluted Birim River, a tributary of River Pra like Esubone (Figure 2), unregulated profiteering from illegal mining had already resulted in extensive environmental destruction.

Tanchara

In 2009, the Chief and Tengansob [12] of Tanchara fought off efforts by the GoG to grant prospecting rights to Azumah Resources Limited (ARL), an Australian gold mining firm, without the consent of the community. The ARL's presence in the community triggered an influx of Gamamsey entrepreneurs, a development perceived by the Chief and his governing council as a threat to the community's sacred groves. In collaboration with the Centre for Indigenous Knowledge and Organizational Development (CIKOD) [13], an NGO, the community mounted a multi-pronged resistance strategy through, for example, radio show discussions and durbars [14]. The Tengansob is reported to have noted that "our sacred groves

have been here since ancient times. Nobody in our community has ever cut down one sacred tree, and we continue this tradition" [15]. While insisting that the GoG respect the community's sacred heritage, the Tanchara people demanded a "free, prior and informed consent with regard to all resources in the community through established traditional law and governance structure", demanding that the EPA [16], the Minerals Commission, and shareholders of Azumah Resources should freeze or suspend all transaction until the community is assured that the 70 affected sacred groves and other potentially affected sites are not damaged and that Azumah Resources put in place pragmatic measures that will facilitate a win-win situation for the environment, the communities, and the company [17].

Tanchara backed its demands with Article 257 (3) of the 1992 constitution, which states, inter alia, that all lands in the Northern, Upper East, and Upper West Regions of Ghana in the custody of the President revert to its indigenous owners after the inception of the Fourth Republic. With the help of the CIKOD, Tanchara drew up a Biocultural Community Protocol (BCP) and a Community-led Health Impact Assessment Tool (CHIAT) to document the impact of gold mining on sacred groves and public health. The BCP and the CHIAT were subsequently presented to the Paramount Chief of Lawra and his Traditional Council, who called on the people of

Tanchara to evict all gamamsey miners attracted by the ARL's prospecting activities. Having witnessed the heightened activism that the BCP and CHIAT engendered, the ARL suspended its mining ambitions [24]. Consequently, the Tanchara experience informed the creation of the Upper West Coalition on Mining based on customary regimes of environmental governance [25].

DISCUSSION

The three communities of Akyem Asunafo, Tanchara, and Akyem Kwabeng together represent a spectrum of contact zones. While Akyem Asunafo, one extreme of the spectrum, is in a stable condition of synnomic and demonstrates the regulatory efficacy of customary norms in a pure form, Akyem Kwabeng, the opposite extreme of the spectrum, is an anomic zone of liminal crisis and, as such, is marked by neutered law and lax customary regulation. Tanchara, located between the two extremes of Akyem Asunafo and Akyem Kwabeng, is a stable contact zone of synchronised customary norms and national mining law, with the regulatory power of customs being relatively stronger. Consequently, while the lack of contested regulatory norms in Akyem Asunafo has preserved its ecological integrity, Tanchara, through the process of contesting the regulatory power of the GoG, has developed a model of ecological governance expressed as a philosophical antithesis to that of the state, which has become a model for the Upper West Region of Ghana. In Akyem Kwabeng, efforts by the GoG to operationalise its power to grant gold mining rights by the President, the trustee of minerals in Ghana, [26] led to disruptive consequences since the GoG's gold mining principles contradict the customary notions of land tenure, which defines land beyond the terra firma solid earth to include minerals and rivers and prohibits private ownership [27]. Against this background, the GoG's power to grant gold mining rights, from the perspective of customary norms of land tenure, counts as an illegal expropriation of land.

Albert O. Hirschman [28] argues that when actors face situations they perceive to be threatening, such as power-over pressures, they exit or evade danger by secretly forming counter-alliances as a resistance strategy. The testaments of the Akyem Kwabeng respondents can, therefore, be understood as efforts to evade or reduce the corrosive effects of the GoG's power over them. Again, recalling Archer's morphogenetic critical realism, the inability of the GoG to regulate gold mining in Akyem Kwabeng, given the uncooperative and resistant posture of the community, has created a power vacuum allowing government agents (e.g. law enforcement officials), vulnerable people (evicted farmers) and entrepreneurs to cunningly exploit the resulting governance crisis to engage in gamamsey. The social interaction structure of all the entities mentioned is defined solely by an unbridled quest for monetary gain and security. The environmental degradation of Akyem Kwabeng is the structural elaboration of the combined effect of the structural

condition of governance crisis and social relations defined by the quest for economic security.

Conclusion

The cases of Akyem Asunafo, Tanchara, and Akyem Kwabeng show that the paradox of the persistence of gamamsey, despite decades-old government coercive regulation, can best be resolved beyond curtailing corruption and enhancing "political will" as conventionally suggested by scholars. With the aid of the theory of contact zone and the methodology of morphogenetic critical realism, this study postulates that gamamsey and its negative environmental effects are the norm in contexts with high government regulatory presence and lax customary authority. This is so because the government's enforcement of coercive power-over laws contradicts the power-with and power-to customary norms of traditional institutions under the auspices of chiefs, who consequently adopt a non-cooperative posture with the GoG. Therefore, the law in such contexts is neutered and has no regulatory effect. The experiences of Akyem Asunafo and Tanchara demonstrate that customary norms of environmental governance, without doubt, are worthy of being considered superior regulatory mechanisms. As such, chiefs, being fiduciary guardians of the said regimes, count as actors whose attitude can either make or unmake the effectiveness of any government initiative.

The GoG's efforts to continuously deploy its legal coercive powers and institutions in the name of the rule of law to curtail gamamsey without the support of chiefs is therefore futile. Given this, it will be prudent for the GoG to acknowledge the superior eco-regulatory capacity of chiefs and norms of traditional eco-governance and facilitate the conclusion of Green Social Contracts (GSCs) rooted in customary principles of ecological governance in gamamsey enclaves. As a first step, by way of a goodwill gesture, the GoG ought to shed its excessive reliance on coercive methods and institutions and rather commission the EPA to introduce traditional rulers to UNESCO's Man and the Biosphere Programme [29] and/or the relevant aspects of the UN Sustainable Development Goals and facilitate the framing and adoption of GSCs which will commit gamamsey endemic societies to uphold and practice high standards of ecological integrity. Over time, GSCs can be formalised as bylaws to be policed by local eco-civil society organisations constituted for that purpose under the auspices of traditional rulers and local authorities. In a theoretical sense, the GSCs will facilitate the emergence of solidarity-based eco-governance systems, which may be more sustainable than externally imposed regulations.

DECLARATIONS

Ethical consideration

The University of Ghana/University of York Gamamsey Research was conducted in line with the Chatham House Rules with the prior and informed consent of its respondents.

Consent to publish

All authors agreed on the content of the final paper.

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Competing Interest

None

Author contribution

Not applicable

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Availability of data

The data for this work is available upon request from the author.

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