

TANCHARA COMMUNITY PROTOCOL

"Safeguarding the Sacred Groves and Sites of Tanchara from Gold Mining"



***By The Tanchara Community
With Support of the Center for Indigenous Knowledge and Organisational Development
(CIKOD)***

"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."

[Guardian of The sacred Groves of Tanchara, 2010]

PREAMBLE

This document outlines the Tanchara communities' rights and responsibilities within a framework of customary and contemporary law. The document is intended as a guide and reference to outsiders to enable them to come to terms with the community in a culturally and rightfully sensitive manner.

Table of Contents

1.0	INTRODUCTION	4
2	TANCHARA COMMUNITY DEMAND RIGHTS TO THEIR SACRED GROVES AND SITES	4
2.1	Free, prior & informed consent	4
2.2	Right to negotiate a benefit-sharing agreement that includes mutually agreed terms.	4
3	Specific Demands	5
3.1	Community demands in the context of activities proposed to take place and impact on community sacred sites and lands and waters.	5
3.2	At the Tanchara Community level	5
3.3	At the District and regional level,	6
3.4	At the National Level.....	Error! Bookmark not defined.
	Bibliography.....	Error! Bookmark not defined.
ANNEX 1.....		8
1.0	BACKGROUND TO THE TANCHARA BIO-CULTURAL COMMUNITY PROTOCOL.....	8
ANNEX 2.....		10
A2.1	CURRENT STATE OF SACRED GROVES AND NATURAL SITES IN TANCHARA	10
A2.3	THREATS TO SACRED GROVES OF TANCHARA.....	12
A2.4	CUSTOMARY LAWS & TABOOS PROTECTING SACRED GROVES	12
ANNEX 3	PREVAILING POLICY FRAMEWORK AND RELEVANCE FOR THE TANCHARA BCP	14
A3.1	Constitutional Provisions.....	14
A3.2	National Provisions.....	16
A3.3	International Conventions.....	19
ANNEX 5.....		21
METHODOLOGY FOR DEVELOPING THE TANCHARA BCP		21
A5.1	BACKGROUND	21
5.2	STEPS FOR IMPLEMENTING THE BCP	21

1.0 INTRODUCTION

The Tanchara Biocultural Community Protocol (BCP), hereinafter referred to as the “Tanchara BCP” has been developed through community consultation carried out by the Center for Indigenous Knowledge Systems and Organisational Development (CIKOD). The Tanchara BCP outlines the communities fundamental ecological, cultural and spiritual values within a framework of customary and contemporary law. The Tanchara BCP is a tool to safeguard the community’s traditional knowledge and resources by providing clear terms and conditions to regulate access to their assets as well as sharing benefits that accrue from any development of these assets.¹

As a result of this BCP, the Tanchara community is expected to be socially and culturally empowered through the affirmation and strengthening of their local governance structures. The process also enhances legal empowerment as the community members will better understand the international and national legal regimes that technically regulate various aspects of their lives.

2 TANCHARA COMMUNITY DEMAND RIGHTS TO THEIR SACRED GROVES AND SITES

2.1 Free, prior & informed consent

We demand free, prior and informed consent with regard to all resources in the community through our established traditional law and governance structure. The Tanchara community has a well established traditional governance structure comprised of a divisional chief and a counterpart traditional woman leader (Pognaa) assisted by 10 sectional chiefs, sectional pognabe and a vibrant youth association. Communication within and with outside our community is managed through this traditional governance structure with the divisional Chief as the entry point for any negotiations. We also have well respected customary laws that guide the use of our natural resources and secure social order in the community. **The resort to our customary law is legitimate, recognised and affirmed by Article 11 of the 1992 constitution of the Republic of Ghana which recognised customary law as part of laws of the Republic.**

2.2 Right to negotiate a benefit-sharing agreement that includes mutually agreed terms.

As an organized community with a legitimate traditional governance and customary law system, we demand the right to negotiate access and benefit sharing arrangements with

¹ Bavikatte & Jonas, 2009. “A Bio-cultural Critique of the CBD and ABS.” In *Bio-cultural Community Protocols: A Community Approach to Ensuring the Integrity of Environmental Law and Policy*. South Africa: UNEP and Natural Justice. (NOTE: Natural Justice developed the notion of the BCP.)

Azumah Resources and all related stakeholders on all issues related to gold mining in the Tanchara community before giving our free and prior informed consent before any active mining activities begin.

3 Specific Demands

3.1 Community demands in the context of impact of gold mining on community sacred sites,land and water bodies

In the context of the impending mining operations of Azumah Resources Ltd in the Upper West Region of Ghana in general and Tanchara community in particular, we, the citizens of Tanchara community, want to be recognized by the Environmental Protection Agency (EPA), the Minerals Commission, the Forestry Commission and the Upper West Regional Co-ordinating Council and the Lawra District Assembly as both contributing to and benefitting from the region's biodiversity and to work with them to establish a system that facilitates our continued access to and management of our sacred groves (SGs) and other Sacred Natural Sites (SNS).

In this regard, we make specific demands on the Lawra District Assembly, the Regional Co-ordination Council and the Regional House of Chiefs and outline our commitments as a community:

3.2 At the Tanchara Community level

- *Facilitating inter generational knowledge-sharing within the community using community forums for sensitizing and informing community members of their responsibility towards save guarding their sacred sites. **As citizens of Ghana in general and natives of Tanchara Community in particular, we have a duty under Article 41 of the constitution to protect and safeguard the environment.***
- *Encouraging people especially the youth and educated within the community to openly participate in traditional rites that contribute to natural resources conservation.*
- *Bring to the attention of duty bearers that the "Tengan dem" have been undermined by their exclusion from consultation and decision-making processes regarding granting permission for prospecting for gold in Tanchara and eventually mining as the custodians of the land by the Minerals Commission, the EPA, the Upper West Regional Co-ordinating council and other relevant government agencies. **The Minerals and Mining Act,2006(Act 703) has not enjoined the Minister for Energy and the Minerals Commission to consult the "Tengan dem" before a prospecting licence can be granted.(See section 34 of Act 703)***
- *Work against the appropriation of land and natural resources to Azumah Resource Ltd without adequate education and prior consent of the custodians and owners of the land.*

3.3 At the District and Regional level,

We urge the **Lawra District Assembly**, the Regional Co-ordinating Council and the Regional House of Chiefs to ensure that:

1. Azumah Resources Ltd, as a matter of urgency, do **an appropriate re-entry** into the Tanchara community and all the communities in the Upper West Region that will be affected by the mining activities of Azumah resources through the **conditions laid out in this document** and not on an individual basis. Until then, we strongly recommend that the EPA, the Minerals Commission and other mining sector agencies including share holders of Azumah Resources should freeze or suspend all transactions with Azumah Resources Ltd until the community is assured that the 70 affected sacred groves and other potentially affected sites (see annex) are not damaged and that Azumah Resources put in place pragmatic measures that will facilitate a win-win situations for the environment, the communities and the company (Azumah) through their mining activities.
2. CIKOD should be supported to continue to, carry out sensitization and awareness creation exercise in Tanchara and all communities that will be affected by the mining on the rights of communities affected by mining as well as the opportunities and challenges of gold mining in the affected communities. .
3. Communities' concerns should be noted and incorporated into the Environmental Impact Assessment scoping report. **Indeed, section 5(1) (c) of the Environmental Assessment Regulations, 1999 mandates EPA to among other things incorporate the concerns of the general public and in particular concerns of the immediate residents(emphasis supplied) of the affected area in deciding whether or not to grant an environmental permit to a mineral right holder.**
4. Before a permit is issued to Azumah resources, public hearings must be organised by EPA and District assembly to allow stakeholders and affected communities to speak for themselves at such public hearings or through representatives and or experienced resource persons.

1.0 BACKGROUND TO THE TANCHARA BIO-CULTURAL COMMUNITY PROTOCOL

Sacred groves and natural sites are remnants of natural forest that have been preserved for spiritual and other purposes. In the Tanchara community, we have always had customary laws and practices passed on for generations through oral traditions that govern these sacred groves (SGs). We also consider these customary laws and practices as indigenous methods for biodiversity conservation and responsible for sustaining native plant and animal species.

In 2006, CIKOD carried out Community Institutional and Resources Mapping (CIRM) by which we became more conscious of the presence and quality of the available natural, cultural, physical, human and spiritual resources in the Tanchara community. As an outcome of the mapping, we documented about 30 sacred groves and natural sites in the community. We assessed, the state of the SGs and SNSs and found that their state was in rapid decline: a number of SGs were reducing in size and certain culturally-significant plant species were becoming locally extinct. Wildlife like crocodiles, tortoises, hedge hocks and hares that were common have virtually disappeared. Medicinal herbs that were found in the SGs and SNSs and collected by traditional healers for their remedies are no longer available.

We held several community forums as a community to reflect on this situation. Community members expressed concern about the degradation of the SGs and SNSs as it had serious implications for their spirituality and wildlife conservation and general well being. In 2007 we requested CIKOD to do further studies and to document and assess the health of the SGs and SNSs in the Tanchara community, including a photo-documentation. CIKOD, in collaboration with the university for development Studies conducted further community-led studies and documentation in 2007 and 2008. From the studies, CIKOD identified the need to engage the community to initiate a project to conserve and expand their SGs and SNSs. In this regard, the studies came out with the following observations:

- people need to be, and are willing to discuss their sacred groves, despite their culturally-sensitive nature;*
- local traditional leaders, including landlords and spiritual leaders, need to be engaged in project development;*
- processes to conserve and expand SGs and SNS need to be a gradual based on a strong relationship with the community, respect, and trust;*
- and there needs to be greater understanding and awareness regarding the benefits of SGs for humans and the environment.*

In 2009, a more imminent threat to the community's SGs and SNSs emerged - gold mining. An Australian mining company, Azumah Resources Limited, was granted a concession over 2,000 square kilometers of the Upper West Region which includes Tanchara community for gold

*prospecting and mining without any consultation with the communities that would be directly affected by the mining operations. Although the activities of Azumah Resources Ltd have, thus far, been restricted to community entries and prospecting, they have the right to apply for mining permits in the area that would allow surface mining. The company has so far finalized all the technical prospecting work and are gearing up to start full mining operations in 2012 that will affect eight communities in the Upper West Region including Tanchara – all this **with very little consultation with the communities**.(Does it mean that some consultation did take place between Azuma Resources Ltd and the communities?)*

CIKOD, with support from KASA (a multi-donor funding facility in Ghana) carried out action research into the possible effects of gold mining on the well being of affected communities. Based on this CIKOD alerted the communities and especially Tanchara community on this more serious threat to their SGs and SNSs and well being in general through awareness creation forums in the affected districts in the Upper West Region. In response to this, the Tingan Sob and all his sectional assistants in Tanchara held a meeting in 2009 and prepared a written note, signed by all of them in which they requested CIKOD to request the authorities to stop the gold mining company from destroying their SGs and SNSs if even they have to mine in the community. With this mandate, cikod proposed to the community to consider developing a bio-cultural community protocol (BCP) as a legal tool for asserting their right of Free and Prior Informed Consent and engagement in the design of the mining and any other activities that may lead to degradation of their SGs and SNSs and negatively affect their well-being.

A2.1 CURRENT STATE OF SACRED GROVES AND NATURAL SITES IN TANCHARA

There are as many as 70 sacred sites within the community including groves, ponds, hills and streams. With regards to SGs, there are basically three categories:

- **Tengan Tuu:** contain the spirits of the land. Every community member has the right to access these groves, with the exception of women and gban (albinos). These SGs are the responsibility of the Tengandem (spiritual family), which is led by the Tengansob, the spiritual leader of the entire community. However, it is the responsibility of the entire community to maintain these groves.
- **Konton Tuu:** are groves where herbs with medicinal properties can be found. It is believed that these herbs were discovered through the spiritual possession of individuals from the community; it is believed that spirits possess people in order to communicate with the human world and to provide guidance and protection in times of need (e.g. during an epidemic). Groves of this nature are, thus, considered sacred; as such, routine sacrifices are performed to maintain their sacredness.
- **Bal Tengan Tuu:** are specific to certain clans; access rights and spiritual functions (e.g. protection) are exclusive to particular clans. Although each clan is responsible for the management of their grove(s), all clans in Tanchara respect the groves of the other clans.

Table 4.2: The most Prominent Sacred Groves and their Sectional Locations

Sectional location	Sacred Grove
Koro Peri	Balige, Korbaun
Ko	Gbee, Belaar, Uol
Koro Saazu	Tankpee, tanwoo, Bu, kontong, Diir, Wenii Bule
Susu	Nomen Bule, gole
Tanchara Peri	Buletuu, Navengtuu, Nadom
Tanchara Saazu	Wuo, Kuo, Kankan zie per, Zen Baa
Wale Yir	Tur Zong, Saar Bule, Piir Bule

It is believed that the environment, culture and economics of the community are all intertwined, with spirituality being the common thread that gives the Tanchara community its identity; spirituality is found in every fabric of community social life and is an indicator of community well-being. The environment, including all of its resources, is seen as a vessel through which the spirits relate and interact with the community. The presence and maintenance of the SGs are believed to be what gives identity to the people of Tanchara as

Dagara (the tribe); therefore, destruction of the physical environment, in any form, brings hardship and suffering to the community.

A2.2 The SGs in the community perform the following functions:

- *Medium through which the community fulfils its spiritual obligations with the spirits and ancestors.*
- *Channels through which the spirits avail and manifest themselves to the community.*
- *Junctures where the spiritual and the physical worlds interact; places to seek guidance and counsel.*
- *Houses for the protectors of the community, protecting the community from disease, hunger/famine and oppression. For example, it is believed that people from Tanchara were not part of the slave trade because the Tengansob requested protection from the spirits, thus the slave raiders never found Tanchara.*
- *Bearers of community burdens. It is believed that when a tree dies in a grove, it is a sign that it had borne punishment given to the community by the spirits. This explains why wood from the SGs are not used for fuel wood, or for any other purpose, even if the tree is dead.*
- *Talismans warding off evil and protecting the community from evil spirits.*
- *Habitats for community totems (animal manifestations of spirits that usually serve as protectors of the community).*
- *Places for people to consult the spirits for wisdom, wealth, power, etc.*
- *Aspects of the environment that beautify the community.*

There are some customary practices that are routinely performed in groves as part of the community's cultural identity. For example, every year – usually before the start of the raining season – it is mandatory for all household heads to provide a measure of millet, corn flour and a fowl as an offering to the ancestors; these, along with any stray animals whose rightful owners are unknown to the Tengandem, are sacrificed at the main community SG, thus marking the beginning of the farming season. The offerings provide a meal for the entire community and are prepared with fuel wood collected from the sacred groves; all meal offerings must be consumed at the grove, as it is forbidden to remove food from the ritual and take home. It has always rained heavily on the day of the sacrifice, so it is believed that this signifies the acceptance of the sacrifice by the spirits.

In addition to annual rituals, the SGs are used more periodically for certain customary practices or on specific occasions in accordance to traditional beliefs. For example, it is believed that Mother Earth forbids human bloodshed; the Tengandem will pacify the land by performing a sacrifice in the event of a community member committing suicide, a stranger is found dead within community boundaries, a community member is murdered or man-

slaughtered, or if a tree falls within a grove (which is believed to be an indication that an offence has been committed by a community member).

A2.3 THREATS TO SACRED GROVES OF TANCHARA

Threats to the SGs come from both within and outside the community. The threats that exist within the community are, ultimately, the result of outside influences and the gradual modernization of the community. Institutional religions, such as Christianity and Islam; the introduction of conventional, formal education; the advent of chieftaincy in the community; and a progression away from rural, community life, has resulted in the disintegration of traditional leadership and governance structures, and the undermining of the TenganDEM, traditional spirituality and customary practices.

The community identified several major challenges confronting the maintenance of SGs:

- *There is a disintegration of knowledge-sharing within the community; traditional channels for sensitizing and informing community members of cultural and spiritual practices, such as storytelling, participation in ritual ceremonies, etc. are collapsing.*
- *People within the community are too shy to openly participate in traditional rites.*
- *The TenganDEM have been undermined by their exclusion from consultation and decision-making processes regarding community development by chiefs, District Assembly members and government agencies.*
- *Pressures on community resources due to internal and external population growth.*
- *The commoditization of land and natural resources means both land and resources have become the properties of individuals rather than common.*

A2.4 CUSTOMARY LAWS & TABOOS PROTECTING SACRED GROVES

One of the reasons why SGs exist in a highly altered, agricultural landscape is because communities associated these areas with spiritual phenomena and, thus, established taboos and customary laws to protect them and ensure their existence. In Tanchara, the following govern the sacred groves:

- *Harvesting wood, including fuel wood, is forbidden. **(within sacred groves?)***
- *Hunting is not allowed within the sacred groves.*
- *For clan groves, members of other clans are not permitted to enter.*
- *Only members of the TenganDEM, spiritual family, are allowed to collect medicinal herbs for the traditional healers.*

- *Non-timber forest products, such as fruits, animals and fish from sacred ponds, can be harvested or collected, but must be consumed within the grove in which they were collected.*
- *It is a forbidden to sell or commercialize any product from sacred groves.*

As SGs are not regularly monitored or under surveillance, the community believes concealed or unnoticed offences will be revealed through the occurrence of certain, perceived, negative phenomenon, such as: drought, floods, disease, famine, mysterious deaths (especially among elders, youth or domestic animals), civil unrest within the community or clans, wild fires, the drying up of community water bodies, house collapse, or animal attacks.

*If an individual does not abide by the laws which govern the groves, the offender is susceptible to punishment according to tradition; sanctions are dependent on the seriousness or severity of the offence committed. Minor offences will likely incur the penalty of a sacrificial fowl, goat, sheep or cow to placate the spirits. High degree offences, such as felling a tree within a SG, could result in a penalty ranging from the provision of a cow to **banishment from the community**. (This is unconstitutional)*

It is believed that if a person commits an offence but fails or refuses to acknowledge their transgression, the offender will still be exposed; the belief is that the offender will essentially be visibly cursed.

A3.1 Constitutional Provisions

The 1992 Constitution of Ghana, and subsequent legislation, recognizes traditional landownership and authority **especially in Northern Ghana**:

For instance Article 257(3) of the constitution stipulates among others that “(3)...all lands in the Northern, Upper East and Upper West Regions of Ghana which immediately before the coming into force of the 1992 Constitution were vested in the Government of Ghana are not public lands...” Again clause (4) also provides that “(4)Subject to this constitution, all lands referred to in clause(3) of this article shall vest in any person who was the owner of the land before the vesting, or in the appropriate skin without further assurance than this clause.”

This implies that with the coming into force of the 1992 constitution and subject to the constitution, all lands that used to be under the custody of government now reverts to the indigenous land owners. This lends validity to the demand by indigenes through their BCP for prior consultation by Azumah Resources Ltd before any gold mining activities can commence.

The 1992 constitution also gives legal backing to customary laws, traditional institution(s) and practice among others. In particular, Article 270 (1) of the constitution provides “The institution of chieftaincy, together with its traditional councils as established by customary law and usage, is hereby guaranteed.” **In deed the constitution also recognises customary laws as part of the laws of Ghana when it stipulates at Article 11(1), (e), (2) & (3) as follows:**

“11(1) The laws of Ghana shall comprise-

(e) the Common law;

(2) The common law of Ghana shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Courts of Judicature.”

Clause (3) explained “customary law” to mean the rules of law which by custom are applicable to particular communities in Ghana.

Thus, the legal import of the above constitutional provisions is that customary laws are not only respected, but acknowledged by the constitution and binding on any Government of Ghana provided such laws are not contrary to or inconsistent with the constitution or any other enactment. It also implies that customary practices, including the spiritual, are to be

respected. It also empowers, legitimizes and affirms the traditional governance structure in Tanchara (the chief and council of elders) to exercise their leadership role in dealing with Azumah Resources Ltd. Role of the tindana?

Again the constitution confer on all persons the right to freedom of thought, thought, belief and to practice any religion among other freedoms when it stipulates in Article 21(1) (b) &(c) as follows:

“21.(1) All persons shall have the right to-

(b) freedom of thought, conscience and belief, which shall include academic freedom;

(c) freedom to practice any religion and to manifest such practice...”

This empowers indigenes of Tanchara to make legitimate demands on Azumah Resources Ltd to keep off their all SGs and SNSs as these are homes for their spirituality.

The traditional practices of the people of Tanchara also receive further legal boost when the constitution provides in Article 26(1) , thus

“26.(1) Every person is entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion subject to the provisions of this Constitution.”

Thus the 1992 constitution of Ghana legitimizes the demands by Tanchara community to protect and safeguard their social, cultural and religious values against any possible destruction by the activities of Azumah Resources in the process of the gold mining.

More importantly under the cultural objectives of the Country as enshrined in Article 38 of the constitution, the State is enjoined to take steps to encourage the integration of appropriate customary values into the fabric of national life through formal and informal education and the conscious introduction of cultural dimensions to relevant aspect of national planning. This noble and all important objective cannot be achieved in a situation where the sacred groves of communities which also constitutes the cultural embodiment of the people are at the mercy of mining companies like Azumah Resources Ltd.

It must also be emphasised that the need to protect the environment is a civic duty on every citizen of Ghana. Article 41(K) of the constitution enjoins every citizen to protect and safeguard the environment. Therefore since sacred groves forms part of the environment, the people of Tanchara would be reneging in their civic duty if they allowed Azumah Resources Ltd to wantonly destroy their sacred groves.

However, the customary laws that govern communities and natural resources on their land are limited due to conventional legislation that **appears** to favour the State, such as:

Article 257.(6) of the constitution which provides that “(6)Every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the Republic of Ghana and shall be vested in the President on behalf of, and in trust for the people of Ghana.”(**This has been re-enacted in section 1 of the Minerals and Mining Act,2006(Act 703)**)

This constitutional provision **appears** to have watered down all the supportive provisions discussed above. This provision supersedes all customary laws of Tanchara and empowers Azuma Resources Ltd to enter any land where gold deposits have been found without hindrance. This calls for negotiation between the state, Azumah Resources Ltd and the community for a win-win arrangement where all sides are winners.

Therefore, the purpose of the BCP is to raise awareness about these constitutional provisions and enable the community to assert the respect and acknowledgement of customary laws and, by extension, community ‘rights’ over their sacred groves. And to empower them to dialogue and negotiate with external stakeholders to get a win-win situation.

A3.2 National Provisions

Current national policy limits the rights communities have over their forest resources (sacred grove is considered a forest resource?); **however, there are policies that could be interpreted as supportive for the purpose of the BCP. The following are articles in national legislation that may be (who is to clarify this? Biocultural lawyers such as Kabir?) useful in supporting the objectives of the BCP. For each article, a suggestive interpretation is affixed; however, these are not to be taken as an exhaustive list.**

In Ghana, the 1994 Forest and Wildlife Policy gives the main lines of the various objectives of biodiversity conservation. This policy is an answer towards the conservation and the sustainable development of the country’s wildlife resources. **The objectives of the policy are in tandem with the BCP in that they advocate a culture of safeguarding and protecting the environment. The BCP on the other hand is a tool also aimed at attaining similar objective among other objectives.**

Forest & Wildlife Policy (1994)

5.3.1 development of an integrated national land policy aimed at the suitable use of all natural resources, including particularly the dedication of various land categories with potential for nature protection and production of timber and other products;

5.3.10 encouragement of local community initiative to protect natural resources for traditional, domestic and economic purposes, and support with the reservation of such lands to enable their legal protection, management and sustainable development

5.5 The government wishes to increase public awareness and people's involvement in conservation of forest and wildlife resources, particularly where they directly affect the livelihood of communities and the stability of the environment.

5.5.5 development of consultative and participatory mechanisms that enhance land and tree tenure rights of farmers and ensure access of local people to traditional use of natural products. There is no unique legal instrument for the conservation of natural resources, but protected areas are governed by various pieces of legislation, including:

- The “Wild Animals Preservation Act” : it exists since 1961 and aims at protecting wildlife through the conservation of a representative sample of Ghana’s ecosystems. It regulates the use and exploitation of wildlife and authorizes the government to establish Protected Area*
- The “Wildlife Reserve Regulation” is a subsidiary legislation to the “Wild Animals Preservation Act”,passed in 1971; and*
- The “Wildlife Conservation Regulation” is also subsidiary to the “Wild Animals Preservation Act”,passed in 1971.*

Minerals and Mining Act,2006 (Act 703)

It is also important to add that the Minerals & Mining Act, 2006(Act 703)which is the current legislation governing the exploitation of minerals in the country appears to favour Mining Companies as opposed to protecting the interest of members of the communities where the mining takes place.

For instance section 1 of the Law (as stipulated in Article 257(6) of the constitution) vests minerals in the President in trust for the people of Ghana. This section like its counterpart in the constitution has the potential to embolden a Mining Company like Azumah Resources Ltd to treat the community members of Tanchara with contempt once it has been licensed by the government of Ghana to either prospect or mine within the community. However, this is without prejudice to section 18 of the Act which seeks to ensure that holders of mineral rights comply with applicable regulations for the protection of the environment in so far as it relates to exploitation of minerals. This can lead to conflict between community and Azumah Resources Ltd with its accompanying consequences. In this regard, the importance of a BCP cannot be overemphasised.

Section 2 of the Law also empowers the President to acquire a land or authorise the occupation of such land and use under an applicable enactment for the time being in force provided such a land is required to secure the development or utilization of a mineral resource. This section further seeks to reinforce section 1 though with some minimal degree of moderation.

Furthermore, under section 3 of the law, a land can be made the subject of an application for a mineral right in respect of a mineral specified in the application. This is without recourse to the owners of land and this can be a recipe for conflict between the mineral right holder and the members of the community. Here again the importance of a BCP cannot be overemphasised.

It is also worth noting that even though under section 23 of the law a holder of a mineral right is mandated to pay annual ground rent to the owners of the land or successors or assigns of the owners, no such rent is paid to the Tanchara people by Azumah Resources Ltd in spite of the fact that under section 111(interpretation section) of the Act, Azumah Resources Ltd qualifies as holder of a mineral right.

Similarly under section 73 of Act 703, the owner or lawful occupier of any land subject to a mineral right is entitled to or may claim from the holder of the mineral right compensation for the disturbance of the rights of the owner or occupier. These last two sections in the Law can be exploited by the people of Tanchara given the appropriate education and orientation. This can be possible through a BCP.

Environmental Assessment Regulations, 1999.

Section 5(1) of the Regulations requires the Environmental Protection Agency (EPA) to among other things take into consideration the concerns of the general public and in particular concerns of the immediate residents of the area of mining before deciding whether or not to grant environmental permit. Again with proper orientation the people Tanchara can use this as an instrument for negotiation with external agencies who want to exploit their mineral resources.

The general picture here is that of a conflicting policy framework that gives rights to communities over the management of their natural resources but takes those rights away under some circumstances. Thus in Tanchara, although the community has rights over their sacred groves, government has at the same time given mining rights to a mining company for gold prospecting and mining in the area. The purpose of the BCP is to dialogue with

government and the mining company for protection of their sacred sites and fair benefit sharing in the gold mining in Tanchara.

A3.3 International Conventions

Ghana has ratified several international conventions which have provisions that support the rights of the Tanchara Community and the objectives of the BCP. These international conventions are included here to obligate the government to respect these international commitments and to potentially engage the international community:

- ILO 169, The Universal Declaration of Human Rights (1948);
- UNESCO Universal Declaration on Cultural Diversity (2001);
- Convention for the Safeguarding of the Intangible Cultural Heritage (2003)
-

Convention on Bio-Diversity (CBD)

- 8j *“Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;”*
- 10c *“Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;”*
- 10d *“Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced;”*
- *Application of the Akwe Kon Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities.*
- *Application of the Code of Ethical Conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities relevant to the conservation and sustainable use of biological diversity.*
-

This strengthens and legitimizes the community demands for control over their sacred groves and natural sites so as to have continuous access to the natural resources conserved in them (wild life, traditional medicine, wild fruits and others) in the advent of gold mining in the

community and the right to govern these using their accepted customary laws and practices. It also legitimizes the demand of the community for equitable sharing in the benefits that accrue from mining on their lands.

Declaration on the Rights of Indigenous Peoples? Article 3, 4, 5, 34

International Covenant on Civil and Political Rights and International Covenant on economic, Social and Cultural Rights?

- *Article 1 “1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. “*

Again, this strengthens the demand for free prior consultation and involvement of the community and its traditional governance structures in the determination of where to site gold mines so as not to jeopardize the social, economic and cultural development programmes of communities.

Rio Declaration?

- *Principle 10 “Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”*
- *Principle 22 “local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.”*

The Rio declaration in particular lends tremendous support to the tanchara community to demand participation in the determination in the decisions about where to locate gold mining sites and related activities to ensure maximum environmental protection. Based on their indigenous knowledge of the community, community people are better placed to give direction on environmental vulnerability and how to avoid them.

Although Ghana may have ratified many of these conventions, it is important to note that unless aspects of conventions have been domesticated (introduced and legitimised into national policy by parliament) it will have very little bearing within national policy and, more importantly, enforcement. The purpose of this BCP will be to encourage government to domesticate these commitments to meet the needs of the local community.

ANNEX 5 METHODOLOGY FOR DEVELOPING THE TANCHARA BCP

A5.1 BACKGROUND

The BCP process in Tanchara must be seen from the context that it is part of a long term endogenous development process that CIKOD and the Tanchara community has been engaged in since 2003. The ED process in Tanchara involved supporting the community to carry out a detailed assessment of the institutions, resources and mechanisms they had in the community and how to manage these to meet the well-being needs of the community. Based on this, there has been an on-going development process to strengthen the indigenous governance structures, support the conservation and management of their sacred sites and natural resources, engage in conservation agriculture and other livelihood activities and engage government actors to support their livelihood and development initiatives. These activities have contributed to building a strong relationship of trust between CIKOD and Tanchara since 2003. The endogenous development approach adopted by cikod for implementing field programmes has been important for building this relationship of trust as it rhymes with community perceptions of well-being. It is based on this trust that community requested support from CIKOD to engage with external agents to safeguard their rights to their natural resources. cikod proposed the development of a BCP as a methodology for a rights based approach The need for a BCP in Tanchara was proposed by CIKOD as a rights-based approach that the community could do for documenting their assets, raising awareness about the health of these assets and using it as a tool for negotiating with external agents to assert their rights, protect any possible destruction by external interveners to their resource and demand equitable benefit sharing.

5.2 STEPS FOR IMPLEMENTING THE BCP

1. Desk study by CIKOD staff on BCPs developed elsewhere.

As an entry point for developing the BCP, several BCPs from other countries were reviewed as examples for guiding the content and format for BCPs in the Ghanaian context.

2. Synthesis of earlier work of CIKOD in the community in view of the BCP

A desk study was carried out on earlier studies and documentations of the work of CIKOD in Tanchara in their endogenous development process to have preliminary information on the following:

- **Who:** *Background on the Tanchara community and who is included in ‘community;’ what the community stands for (beliefs and functions); and where the community is located.*
- **What:** *The resources and assets (i.e. any associated knowledge or spiritual beliefs) that are integral to the community.*
- **Why:** *The threats (from the past or impending) that have affect on the community.*
- **How:** *The intentions of the community and on-going initiatives for conserving resources and assets. This included a review of policies and international convention articles that provide rights to communities over their resources and the external actors (e.g. government institutions, civil society, etc.) that are important for assistance in order to enjoy their rights over their resources.*

4. Community meetings for awareness raising on Sacred groves as biocultural resources resulting in Community Well-being Impact Assessment Report (July 2010?)

The rest of the process consisted of a series of community forums, focus group discussions and individual interviews. The community forums consisted of men, women and children from all ten sections of the community. The FGDs were targeted separately at men groups, women groups and youth groups to ensure gender and generational balance. Individual interviews were targeted at special individual such as the tingandem from the various sections and knowledgeable elders and opinion leaders. All discussions centered on mapping the indigenous institutions, governance systems, accountability systems, sacred sites, groves and all bio-resources in the community. This turned out to be an effective awareness creation exercise as most people had forgotten of some of these institutions and the status and value of their bio-cultural resources especially their sacred sites and groves.

5. Action planning by the community to conserve sacred groves, including a community written BCP

With this awareness, the community already developed action plans for a sacred grove conservation and expansion project (SaGEP). The paramount Tingan sob and all the sectional Tingan dem, in view of the grave threats to the sacred groves by modern developments including mining, came together and produced the first “BCP” – a short hand written statement asking that “.....”. On this basis, a draft BCP was written by a Canadian student on internship with CIKOD.

6. Validation meetings

7. Re-formulation of Bio-cultural Community Protocol

8. *Initial negotiations with Azumah resources*

9. *Advocacy work (article in The Advocate, September 2010)*