

Guinea

Findings and Recommendations to Strengthen the Regulatory Framework for Protected Areas and Artisanal Mining

Elaborated by Legal Atlas in collaboration with the ARRC Task Force

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INTRODUCTION

This assessment is limited to a review of laws that govern terrestrial protected areas and artisanal mining. However, there are other areas of law that also play a role and should be considered in future assessments. Among these are forestry, environmental impact assessments and wildlife laws, including additional reviews of related legislation, such as environmental protection laws and criminal codes, for any relevant content associated with this assessment.

The recommendations identify four (4) strategic objectives. They have been selected as they address core aspects of the topic and for their power to maximize the potential impact of a legal reform exercise. Also included is a table with eleven (11) specific recommendations for reform, organized by strategic objective, that identifies the laws and regulations that need to be addressed, as well as key aspects to consider.

All recommendations are based on the Legal Best Practices Assessment conducted by Legal Atlas and reviewed by project partners and stakeholders. The Legal Best Practices Assessment, published separately¹, contains detailed discussions of the points enumerated here, citing specific provisions in the laws reviewed for further reference.

1. Ratifying and applying international tools

The international relevance of both protected area management and artisanal mining, as well as the challenges inherent in international enforcement, place a premium on the adherence to and application of relevant international agreements. Guinea has demonstrated its commitment to international agreements by acceding to twenty-five (25) out of the twenty-seven (27) relevant agreements pertaining to protected areas and artisanal mining. There are, however, key gaps that should be addressed.

2. Maximizing the use and enforceability of regulatory tools

The development of adequate regulatory tools is a fundamental part of any legal system. A common approach includes the delegation of authority to Line Ministries to develop regulatory instruments. In some cases, this includes making management and conservation plans legally enforceable regulatory instruments. Guinea mandates the drafting of conservation plans but fails to take advantage of this opportunity.

3. Harmonizing prohibitions and crimes

The harmonization of prohibitions and crimes is always a major concern, as a prohibition that has no, or an inadequate consequence, is an ineffective deterrent. Guinea's legislation has

¹ Wingard, J., D. Kirkpatrick, M. Pascual. (2023, in progress) *Between Rock and Refuge: Unearthing the Legal Foundations for Guinea's Protected Areas and Artisanal Mining*.

appropriately identified key prohibitions but fails to couple these with a response in its treatment of violations.

4. Clarifying implementation and enforcement powers

Guinea’s legal framework grants enforcement officers partial powers primarily pertaining to hunting offenses, rather than extending these powers universally to all offenses in protected areas. The legal framework would benefit from a more comprehensive approach, empowering enforcement officers with broader authority to tackle offenses across all sectors within protected areas.

Guinea would also benefit from the definition and use of formal systems of coordination and collaboration to improve its ability to enforce, investigate, and prosecute protected area and artisanal mining crimes.

Specific Recommendations

LAWS OR AGREEMENTS AFFECTED	RECOMMENDATIONS FOR LEGAL REFORM
Objective 1. Ratifying and applying international tools	
AFRIPOL	<p>Recommendation 01</p> <p>Sign and Ratify AFRIPOL. This agreement has general application to enforcement activities, established as an independent mechanism for police cooperation for Member States of the African Union. Its main objective is to establish a framework for police cooperation at the strategic, operational, and tactical levels between Member States police institutions. Police are often on the front line of enforcement in transnational crime, but are usually restricted in their operations to those crimes committed within their territory and have few, if any, tools for international cooperation.</p>
Wildlife Protection and Hunting Law	<p>Recommendation 02</p> <p>Require compliance with international agreements. Although the law recognizes the authority and benefits of specific international and regional conventions, there is no explicit requirement for compliance with these agreements. Formally requiring compliance with a national law is a common, if not a universal approach in national legislation that adds both clarity and strength to international commitments.</p>
Objective 2. Maximizing the use and enforceability of regulatory tools	
Wildlife Protection and Hunting Law	<p>Recommendation 03</p> <p>Make Conservation Plans legally binding. Guinean law does not make its ‘<i>conservation plans</i>’ (which are required by law for its terrestrial protected areas) legally enforceable documents. In other words, plans must be drafted, but their implementation is at the discretion of the responsible agency and violation of their terms does not constitute a violation of the law.</p>
Wildlife Protection and Hunting Law Land Law	<p>Recommendation 04</p> <p>Include specific declassification procedures and criteria. There is a lack of specific criteria and regulations concerning the declassification procedure for</p>

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	<p>protected areas. A clear set of strong, protective procedures can add transparency and safeguards to ensure stability in the status of areas within the protected area network.</p> <p>In practice, at least one protected area (Mt. Nimba) has had a portion removed by first reclassifying the areas as part of the 'artificial public domain' and then further transferring this to private property for purposes of mining.</p>
<p>Environmental Impact Assessment Regulations</p> <p>EIA Guidelines</p>	<p>Recommendation 05</p> <p>Establish specific EIA requirements for artisanal mining. All mining entities, including artisanal and small-scale operations, are obligated to prevent or minimize negative environmental impacts. The law also mandates the rehabilitation of mining sites by holders of artisanal mining licenses. Environmental impact studies are also required for all mining operations. However, artisanal mining is only required to have an 'environmental commitment.'</p>
<p>Objective 3. Harmonizing prohibitions and crimes</p>	
<p>Wildlife Protection and Hunting Law</p>	<p>Recommendation 06</p> <p>Express offenses to match prohibitions. Include express offenses for extractive uses, waste, and environmental harm. Guinea treats only certain activities related to mining, including artisanal mining, such as falsification of permits or transport of contaminants resulting in spills, as offenses. Although oil exploration is prohibited in protected areas, the law does not designate it as an offense nor impose any penalties for violations. Similarly, exploitation of forests is prohibited in protected areas, but there are no penalties specified for forestry offenses, nor is there a general penalty for violating the law pertaining to protected areas.</p>
<p>Wildlife Protection and Hunting Law</p> <p>Mining Law</p>	<p>Recommendation 07</p> <p>Include express penalties for artisanal mining in protected areas. There are specific penalties for artisanal mining operations conducted in protected zones, but no similar statement concerning protected areas.</p>
<p>Wildlife Protection and Hunting Law</p>	<p>Recommendation 08</p> <p>Add a general offense provision for any violation of protected areas rules. Guinea's protected area law has no general penalty for violating the law pertaining to protected areas. This kind of catch-all penalty provision is common in law. Its absence means that all offense types must be comprehensively and accurately defined, or gaps will persist.</p>

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All resource laws Criminal Code	<p>Recommendation 09</p> <p>Define all ancillary penalty types. The legal framework has limited penalties for violations potentially associated with artisanal mining. The Mining Code lists several violations related to mining operations. Some of these are generally worded and would apply to artisanal mining, e.g., bribery, failure to notify, possession of precious metals, fraud and failure to operate with the required form of authorization.</p> <p>There are, however, no express penalties for many other acts that would provide a better foundation for deterring harm to protected areas and critical habitat; including, for example, harm to the environment, operating in a ‘<i>protected zone</i>,’ operating in a protected area, violations of impact assessment procedures, etc.</p>
Objective 4. Clarifying implementation and enforcement powers	
All Resource Laws Criminal Code Criminal Procedure Code Other enforcement related laws	<p>Recommendation 10</p> <p>Enumerate Enforcement Powers. Full enumeration of the powers and duties of enforcement officers is considered best practice, including, at a minimum, the following:</p> <ul style="list-style-type: none"> ● Which laws they may enforce ● Whether, how, and when they may use force, including use of weapons ● Power to arrest ● Power to investigate ● Power to collect evidence ● Power to seize documents, weapons, etc.
Criminal Code Criminal Procedure Code Other enforcement related laws	<p>Recommendation 11</p> <p>Establish mechanisms for cooperation between enforcement agencies. Related to the preceding, another best practice involves the identification of specific requirements and procedures for collaboration between enforcement agencies. This can include:</p> <ul style="list-style-type: none"> ● Joint enforcement operations ● Collection and sharing of enforcement data ● Identifying lead agencies for specific enforcement actions

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