

## **GHANA’S REGULATORY FRAMEWORK AND SUSTAINABILITY IN THE MINING SECTOR**

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### **ABSTRACT**

The mining sector in Ghana predates independence and has, over the years, contributed significantly to Ghana’s socio-economic development through revenue generation, employment creation and increase in foreign direct investments. This can be attributed largely to the institution of comprehensive and attractive legal, fiscal and institutional frameworks by the Ghanaian Government, which have helped to attract investments into the mining industry. Nonetheless, lack of effective revenue mobilization, generous tax incentives, damaging environmental effects, and destruction of livelihoods of host communities, especially due to illegal mining activities, remain major challenges. Most of the problems associated with mining in Ghana are due mainly to a weak mining regulatory framework. Ghana has enacted the Minerals and Mining Act, 2006 (Act 703) (the Minerals and Mining Act), as amended in 2010, 2015, and 2019, as the basic law that regulates the mining sector, to improve the fiscal regime and to ensure effective regulation and sustainability of the mining industry. Even though Act 703 has been amended twice, and the Government has proposed a third amendment, previous amendments focused on “non-essential” areas, without special focus on the management of the environment for sustainability in the mining sector. Making the mining industry sustainable seems to have been addressed as an incidental. The Minerals and Mining Act has not undergone any major amendments to align it with regional frameworks, reflect international best practices and address sustainability challenges in the mining sector in Ghana. This paper reviews the key provisions of the Minerals and Mining Act, with a special focus on how the same facilitates environmental management for sustainability in the mining sector.

**Keywords:** Mining, Sustainability, Environmental Management, Minerals and Mining Act, Ghana

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## INTRODUCTION

The mining sector has been an important part of Ghana's economy, with gold accounting for over 95% of the sector. Ghana is now the number one gold producer in Africa, overtaking South Africa in 2018 and 9<sup>th</sup> largest producer in the world.<sup>4</sup> This is due to pursuing policies that are liberal and macro-economic and, the institution of comprehensive and attractive legal, fiscal, and institutional frameworks by the Ghanaian Government. These measures have helped to attract investments in the mining industry, especially gold.<sup>5</sup>

Ghana has enacted the Minerals and Mining Act<sup>6</sup> as the principal law that regulates the mining industry, supported by several subsidiary legislation, namely, the Minerals and Mining (Compensation and Resettlements) Regulations, 2012,<sup>7</sup> which prescribes procedures for claiming compensation and resettlement of displaced communities; the Minerals and Mining (Support Services) Regulations, 2012,<sup>8</sup> which regulates entities that provide auxiliary services to the mining sector; the Minerals and Mining (General) Regulations, 2012,<sup>9</sup> which prescribes guidelines for the mining industry on matters such as staffing, disposal of minerals, mineral rights and reconnaissance, prospecting and mining operations; the Minerals and Mining (Health, Safety and Technical) Regulations, 2012,<sup>10</sup> which regulates safety, health and technical operation parameters in the industry; the Minerals and Mining (Explosives) Regulations, 2012,<sup>11</sup> which regulates the use of explosives in the sector; and the Minerals and Mining (Licensing) Regulations, 2012,<sup>12</sup> which prescribes the procedures for obtaining, maintaining licences and transferring licences.<sup>13</sup>

The two main institutions with direct supervisory and oversight responsibilities over the mining sector are the Ministry of Lands and Natural Resources (MLNR)

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<sup>4</sup> 'Minerals and Mining Policy, Ministry of Lands and Natural Resources' (Accra 2014) 12 <<https://www.mincom.gov.gh>> accessed August 2024.

<sup>5</sup> 'A Report by the UN's Commission of Sustainable Development in Ghana's Mining Sector' (May 2010) 1.

<sup>6</sup> Minerals and Mining Act, 2006 (Act 703).

<sup>7</sup> Minerals and Mining (Compensation and Resettlements) Regulations, 2012 (LI 2175).

<sup>8</sup> Minerals and Mining (Support Services) Regulations, 2012 (LI 2174).

<sup>9</sup> Minerals and Mining (General) Regulations, 2012 (LI 2173).

<sup>10</sup> Minerals and Mining (Health, Safety and Technical) Regulations, 2012 (LI 2182).

<sup>11</sup> Minerals and Mining (Explosives) Regulations, 2012 (LI 2177).

<sup>12</sup> Minerals and Mining (Licensing) Regulations, 2012 (LI 2176).

<sup>13</sup> ME Akafia and Kuenyehia, 'Getting the Deal Through, Mining in Ghana (June 2020) 94 <<https://www.lexology.com/library>> accessed 21 December 2019.

and the Minerals Commission (MC).<sup>14</sup> The MLNR is responsible for all aspects of mineral resource exploration in Ghana. It formulates policies and grants licences for mining and mineral exploration.<sup>15</sup> The MC is the principal institution for providing the regulatory framework and oversight for the mining sector in the country. It administers the Minerals and Mining Act and ensures compliance with the mining and mineral laws and regulations. It operates under the purview of the MLNR.<sup>16</sup>

Act 703 was enacted to revise and consolidate the law relating to minerals and mining in Ghana. It provides rules related to rights regarding minerals and mining operations in Ghana.<sup>17</sup> Act 703 has been amended twice. In 2015, it was amended for the Minister for Land and Natural Resources to make regulations to prescribe a rate for royalty payments, and to provide for the confiscation of equipment used in illegal small-scale mining.<sup>18</sup> In 2019, it was amended to increase the penalties for a person who buys or sells minerals without valid authority, and to increase penalties for a person who engages in mining contrary to Act 703.<sup>19</sup> Despite the enactment of Act 703 and its amendments and institutional frameworks to implement them, issues of sustainability in Ghana's mining sector still remain. These mining laws and institutions which have a direct or indirect impact on development and the environment are neither effectively implemented nor adequately complied with.<sup>20</sup> This has led to water pollution, air pollution, increased deforestation, land degradation, mercury contamination, increased poverty, displacement of communities, and illegal small-scale mining or "galamsey". Illegal miners' activities leave behind unsafe excavations which render high quality arable land unsuitable for cultivation, and destruction of the land, water bodies and degradation of the environment.<sup>21</sup> Environmental impacts of land degradation have resulted in a reduction in soil fertility, crop yield, biodiversity and food insecurity. The socio-economic impacts led to an increase in

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<sup>14</sup> AK Mensah and others, 'Environmental Impacts of Mining: A Study of Mining Communities in Ghana' (2015) 3 *Applied Ecology and Environmental Sciences* 81-94.

<sup>15</sup> Ministry of Lands and Natural Resources <<http://www.mlnr.gov.gh>> accessed 10 November 2022.

<sup>16</sup> Mensah (n 14).

<sup>17</sup> Minerals and Mining Act (n 6).

<sup>18</sup> Minerals and Mining (Amendment) Act, 2015 (Act 900).

<sup>19</sup> Minerals and Mining (Amendment) Act, 2019 (Act 995)

<sup>20</sup> GA Sarpong, *Ghanaian Environmental Law: International and National Perspectives* (Wildy, Simmonds & Hill Publishing, 2018) 6.

<sup>21</sup> *Ibid.*

poor rural households, migration to the cities and urban communities, and increased competition for access to land.<sup>22</sup>

The regulatory institutions lack the necessary logistical, technological and human resource capacity to effectively implement and monitor these laws. They are saddled with poor remuneration and working conditions, and capable personnel being poached by private and non-governmental organisations (NGOs). Most of the regulatory institutions lack the requisite number of personnel and modern equipment to ensure effective supervision, resulting in a loss of motivation and enthusiasm by the few remaining personnel in those agencies.<sup>23</sup>

Against this background, this paper reviews the key provisions of the Minerals and Mining Act, with special focus on how the same facilitates environmental management for sustainability in the mining sector.

The paper adopted a review approach method by reviewing relevant literature including statutes and regulations on mining and the environment, policies and legal documents, reports, journal articles, newspaper articles and interviews.

## **A HISTORICAL SURVEY OF MINING LAW IN GHANA**

Mining activities in Ghana, particularly, gold, can be traced to the 7<sup>th</sup> and 8<sup>th</sup> Centuries A.D., when deposits of gold attracted Arab traders into the country,<sup>24</sup> and continued throughout the 15<sup>th</sup> century, when Ghana was known as the Gold Coast. Artisanal mining of gold by the local population antedates the first recorded contact with Europeans in 1471.<sup>25</sup> The more capital intensive and large-scale mining by British and other foreign investors began in the late 19<sup>th</sup> century, after the formal imposition of British rule on most of the territory that is now Ghana. Gold, however, was and is still, the principal mineral extracted and accounts for 90% of extracted minerals in Ghana.<sup>26</sup>

In 1905, the Gold Mining Protection Ordinance<sup>27</sup> was passed in the colonial era to prevent indigenes from dealing in gold and any other ventures associated with

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> G Hilson, 'A Contextual Review of Ghanaian Small-Scale Mining Industry' (IIED, London 2001) <<http://www.pubs.iied.org/pdfs/G00722.pdf>> accessed 10 November 2022.

<sup>25</sup> TE Anin, *Gold in Ghana* (4<sup>th</sup> edn Selwyn Publishers, Accra 1994).

<sup>26</sup> K Bentsi-Enchill, 'Colonial Land Policy in Ghana, 1874-1962 with Specific Reference to the Mining Sector of the economy' (1986) Unpublished Manuscript.

<sup>27</sup> Gold Mining Protection Ordinance (Cap. 149).

gold. This was followed by the passage of the Mercury Ordinance,<sup>28</sup> which made it illegal for indigenes to own mercury. These unfair ordinances were replaced by the Mining and Minerals Act, 1962.<sup>29</sup>

After independence in 1957, the Government passed, a series of statutes relating to land and minerals in 1962. The first was the Minerals Act, 1962.<sup>30</sup> It vested the ownership of minerals in “the President on behalf of the Republic and in trust for the People of Ghana”,<sup>31</sup> tightened the area and duration provisions relating to mineral rights,<sup>32</sup> and gave the President the power to demand the sale to a state agency of minerals produced in Ghana at a negotiated price determined by the High Court.<sup>33</sup> The second was the Administration of Lands Act.<sup>34</sup> It required that payments in respect of stool land be made, not directly to the representatives of the owning community, but to the Minister who would allocate portions for the maintenance of the traditional authority, projects for the benefit of the people of the area, and the local government bodies in the area.<sup>35</sup> The last was the Concessions Act, 1962<sup>36</sup> which provided for the establishment of a tribunal and gave the Minister in charge power to determine a concession where the holder unreasonably refused to vary a term which had become oppressive due to a change in economic conditions,<sup>37</sup> the holder had lost the financial ability to develop it,<sup>38</sup> or the land specified had not been developed or used in accordance with the object for which the concession was granted during the eight years preceding the application of the Minister.<sup>39</sup>

The mining sector stagnated and up to the early 1980s, there were no significant new investments in Ghana’s mining sector.<sup>40</sup> Output in almost all the mines declined and the sector contributed relatively little to gross national earnings because production of Ghana’s flagship mineral, gold, had declined to about

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<sup>28</sup> Mercury Ordinance 1932.

<sup>29</sup> Mining and Minerals Act, 1962 (Act 126).

<sup>30</sup> Ibid.

<sup>31</sup> Ibid, s 1.

<sup>32</sup> FS Tsikata, ‘The Vicissitudes of Mineral policy in Ghana’ (1997) 2 Resources Policy 9-14.

<sup>33</sup> Ibid.

<sup>34</sup> Administration of Lands Act, 1962 (Act 123).

<sup>35</sup> Ibid, s 20.

<sup>36</sup> Concessions Act, 1962 (Act 124).

<sup>37</sup> Ibid., s 3(1)(c).

<sup>38</sup> Ibid., s 3(1)(d).

<sup>39</sup> Ibid., s 3(1)(e).

<sup>40</sup> Tsikata (n 32).

283,000 ounces per annum.<sup>41</sup> A Structural Adjustment Programme introduced in 1983 led to various reforms, including modifications to the mining sector legislation to make the sector more conducive to foreign investors as well as the enactment of environmental laws and other mining sector legislative changes. Consequently, the Minerals and Mining Act<sup>42</sup> was enacted in 1986 to promote and regulate the orderly development of the mining sector. The Small-Scale Gold Mining Law,<sup>43</sup> the Mercury Act,<sup>44</sup> and the Precious Minerals Marketing Corporation Act<sup>45</sup> were enacted in 1989 to regularize and streamline small-scale gold mining, regulate the use of mercury by small-scale gold miners, and provide official marketing channels for gold produced by small scale miners.<sup>46</sup> The MC was given the responsibility of providing technical assistance to prospective and registered small-scale miners in Ghana and promoting their activities. These measures led to a significant investment and revival of activities in the mining sector and a substantial increase in the production of gold in the country.<sup>47</sup> The current law that regulates mining in Ghana is the Minerals and Mining Act, 2006 (Act 703).

#### **MINERALS AND MINING ACT, 2006 (ACT 703)**

The Minerals and Mining Act,<sup>48</sup> is the principal law that regulates the mining industry in Ghana, together with its accompanying regulations. The principal regulatory body that administers the Act is the MC. The Act applies equally to local and foreign investors, except for provisions relating to small-scale mining of minerals, which is exclusively reserved for Ghanaians.<sup>49</sup>

#### ***Grant of Mining Rights***

The acquisition of title to mineral rights is covered under the Minerals and Mining Act.<sup>50</sup> It provides that title or ownership of all minerals, including metallic minerals, is vested in the President of the Republic of Ghana in trust and on behalf

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<sup>41</sup> Ibid., p 8.

<sup>42</sup> Minerals and Mining Act, 1986 (PNDCL 153).

<sup>43</sup> Small Scale Gold Mining Act, 1989 (PNDCL 218).

<sup>44</sup> Mercury Act, 1989 (PNDCL 217).

<sup>45</sup> Precious Minerals Marketing Corporation Act, 1989 (PNDCL 219).

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Minerals and Mining Act (n 6).

<sup>49</sup> Ibid.

<sup>50</sup> Ibid (n 6) s 1.

of the people of Ghana.<sup>51</sup> This is, however, subject to any privately owned mineral rights, those that have been or are being granted, or recognized as being vested in any other person.<sup>52</sup> Thus, by Act 703, a person shall not conduct activities in Ghana for the search, reconnaissance, prospecting, exploration, or mining for a mineral unless the person has been granted a mineral right.<sup>53</sup> The Act provides for three types of mineral rights, that is, reconnaissance licences, prospecting licences, and mining leases.<sup>54</sup> Generally, by section 10 of Act 703,<sup>55</sup> a mineral right can only be granted to a body incorporated under the Companies Act<sup>56</sup> or a partnership under the Incorporated Partnership Act.<sup>57</sup> By contrast, a small-scale mining licence can only be granted to a Ghanaian citizen over the age of 18.<sup>58</sup> An applicant interested in obtaining a mineral right or a small-scale mining licence must submit an application in the proper form to the MC.<sup>59</sup>

Mineral rights applications must contain supporting documents which detail particulars of the financial and technical resources available to the applicant for the mining operations, an estimate of the amount of money likely to be spent on the mining operations, particulars of the programme for the proposed mineral operations (be they reconnaissance, prospecting or mining), particulars of the applicant's proposal with respect to employment and training of Ghanaians in the mining industry.<sup>60</sup> It is noteworthy that even though the Act defines what a "mineral" is, it remains unclear whether any substance that is naturally present in the earth and is formed from animal or vegetable matter is a "mineral". It is also unclear whether "mineral" encompasses, and the statute applies to, both metallic and non-metallic substances. It is also noteworthy that a statement or plan on environmental management is not one of the supporting documents that must accompany a mineral rights application!

To ensure transparency in the grant of mineral rights, the law provides that once an application is duly submitted to the MC, the Commission has up to ninety days

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<sup>51</sup> Ibid.

<sup>52</sup> Ibid., s 72.

<sup>53</sup> Ibid., s 9.

<sup>54</sup> Ibid., s 111. The Act also provides for a restricted version of each of these types of mineral right, under which the right-holder can only take 'industrial minerals' such as basalt, clay, granite, gravel, gypsum, laterite, limestone, marble, rock, sand, sandstone, and the like.

<sup>55</sup> Ibid.

<sup>56</sup> The Companies Act 1963, (Act 179).

<sup>57</sup> The Incorporated Private Partnership Act, 1962 (Act 152).

<sup>58</sup> Minerals and Mining Act (n 6) s 83.

<sup>59</sup> Minerals Commission Act, 1993 (Act 450).

<sup>60</sup> Minerals and Mining Act (n 6) s 11.

to submit its recommendations on the application to the sector minister. On receipt of the application from the MC, the minister has sixty days to make a decision on the application and notify the applicant in writing accordingly.<sup>61</sup> To ensure openness based on consultation during the licensing phase, including participation of government agencies and effective consultation of communities that are likely to be affected by the mining activities, the minister shall, at least forty-five days before making a decision on the application, give notice in writing in respect of the land subject to the application for a mineral right to the local chief or the allodial title holder of the land and the relevant District Assembly. The notice shall state the proposed boundaries of the mineral right and be published in “a manner customarily acceptable to the areas concerned” and in the Gazette as well as exhibited in the offices of the relevant District Assembly.<sup>62</sup>

If the Minister approves the mineral rights application, the applicant then has a further 60 days to notify the minister of the acceptance of the offer of a mineral right.<sup>63</sup> However, Act 703, does not appear to provide for value addition to minerals as an additional consideration for granting mineral rights. The grant of mineral rights should give priority to applicants who commit to pursuing actions to add value to the minerals produced to the satisfaction of the Minister, where there are competing applications for a concession.<sup>64</sup>

Before an applicant for a mineral right will be granted a licence, the applicant must provide a satisfactory environmental protection programme,<sup>65</sup> and mining companies must comply with environmental regulations requirements, including requirements relating to Environmental Impact Assessment (EIA), for environmental permitting.<sup>66</sup> As already pointed out above, the requirement for an environmental protection plan should be one of the requirements to accompany the application, rather than being required after the application has been approved, coming like an afterthought.

The holder of a mineral right must obtain approvals from the Environmental Protection Agency (EPA) and the Forestry Commission (FC) for the protection of

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<sup>61</sup> *Ibid.*, s 13.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> B Boakye and Others, ‘Gap Analysis of the Minerals and mining Act, 2006 (Act 703) and Draft Amendment, Africa Centre for Energy Policy’ (2021) <<https://www.jstor.org/stable/resrep33518.1>> accessed 15 November 2023.

<sup>65</sup> Minerals and Mining Act (n 6) s 11(c).

<sup>66</sup> Environmental Assessment Regulations, 1999 (L.I. 1652) reg 3.



natural resources, public health and the environment.<sup>67</sup> It is submitted, however, that since mining has a number of direct and indirect costs on the environment and communities, management of these costs should be addressed before and not when an applicant has been granted and becomes a mineral rights holder.

The Environmental Assessment Regulations, 1999,<sup>68</sup> specify various reporting requirements from mining companies to address water pollution, nature and ecological conservation, air pollution, noise and vibration, soil contamination, changes in social, cultural and economic patterns and reclamation bond.<sup>69</sup> Guidelines like the Mining and Environmental Guidelines, Guidelines for Mining Operations and Sector Specific Environmental Impact Assessment Guidelines manage the mining industry.<sup>70</sup>

There are various mechanisms to ensure environmental sanity in the mining sector and these include effluent and emission standards, ambient quality standards, economic instruments, Environmental Performance Rating and Disclosure (EPRD) called “Akoben”, command and control mechanisms and co-regulation.<sup>71</sup>

Having prepared mine closure and decommissioning plans, posting of reclamation bonds by the investor is used as a mechanism to ensure that, among others, environmental liabilities are not left behind after mining. The EPA and the Inspectorate Division of the Minerals Commission (IDMC) undertake environmental monitoring of the sector.<sup>72</sup>

Despite the apparent comprehensive provisions of the law, illegal mining is a challenge that compromises sustainability in the sector! This is a significant issue for the industry, not only in Ghana, but internationally. Illegal mining, referred to as “galamsey”, often takes place on properties not suited for large-scale mining, that is, small-scale sites that have no regard for regulations that seek to reduce environmental impact. Such illegal mining operations do not follow the requirements for careful use of the resources and, hence, leave in their wake unsafe excavations which render land unsuitable for agriculture, degradation of water bodies, and stripping the topsoil layer for plant growth. Quite often, such mines use traditional less environment-friendly equipment in their operations in order to

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<sup>67</sup> Minerals and Mining Act (n 6) s 18(1).

<sup>68</sup> Environmental Assessment Regulations (n 66).

<sup>69</sup> Ibid.

<sup>70</sup> ‘A Report by the United Nations Commission on Sustainable Development on Ghana’s Mining Sector’ (n 5) 23.

<sup>71</sup> Ibid.

<sup>72</sup> Environmental Assessment Regulations (n 66) reg 23.

minimize the costs involved. They are also less likely to engage in the rehabilitation of the mines through, say, large-scale reforestation schemes. Only ensuring that all mining operations follow and comply with the same environmental rules and standards can help prevent illegal mining operations!

### ***Royalties***

Minerals royalties have played a pivotal role in driving economic growth in Ghana. They have contributed significantly to GDP, and have supported infrastructure development and investment in social services.<sup>73</sup> Investments in road networks, energy systems, water supply, and telecommunications infrastructure have been funded, in part, by mining royalties.<sup>74</sup> Furthermore, mineral royalties have been allocated to social programs aimed at improving education, healthcare, and social welfare. Investments in these sectors help address social disparities and promote inclusive development in communities.<sup>75</sup> They have also generated employment opportunities benefiting both the individuals directly involved in mining operations and those employed in various support services.<sup>76</sup>

The fiscal regime for investments in the mining sector is partly provided for under Act 703 and partly under the Internal Revenue Act, 2000<sup>77</sup> as amended. The main component of the minerals and mining sectors fiscal policy is the royalty regime.<sup>78</sup> The mineral royalties are payable by any operator who extracts minerals from the territory of Ghana. It is payable on the total gross revenue from minerals extracted.<sup>79</sup>

Currently, a holder of a mining lease, restricted mining lease or small-scale mining licence must pay royalty in respect of minerals obtained from its mining operations to the state at the rate to be prescribed by the Minister.<sup>80</sup> Payments are based solely

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<sup>73</sup> World Bank. Ghana Economic Update: COVID-19, Storms, and Oil Price Shocks: Policy Options and Actions to Support a Resilient Recovery' (2020).

<sup>74</sup> World Bank. Ghana Mining Sector Development and Environment Project (2020) < <https://projects.worldbank.org/en/projects-operations/project-detail/P147862>>accessed 11 July 2023.

<sup>75</sup> Ghana Extractive Industries Transparency Initiative (2021), 2019 Mining Sector Report <<https://gheiti.gov.gh/>>accessed 11 July 2023.

<sup>76</sup> Ghana Chamber of Mines, *Annual Report* (2020) <<https://www.ghanachamberofmines.org/>> accessed 11 July 2023.

<sup>77</sup> Internal Revenue Act, 2000 (Act 592).

<sup>78</sup> A Report by the United Nations Commission on Sustainable Development on Ghana's mining Sector (n 5) 13.

<sup>79</sup> From December 16, 1986 under LI 1340 to March 19, 2010 when a fixed rate was introduced under Act 794, the rate was variable.

<sup>80</sup> Minerals and Mining Act (n 6) s 25.

on mining operations and not on environmental considerations. Also, Act 703, does not consider different royalties for different mineral types.<sup>81</sup>

Effective fiscal management and fair distribution of minerals royalties remain ongoing challenges. There are inadequate transparent and accountable mechanisms to track the collection and allocation of mineral royalties. There is a need to strengthen governance frameworks, enhance revenue management systems, and promote fiscal responsibility, all of which are crucial to ensure that royalties obtained from mining are effectively and equitably utilized for the benefit of the entire population.<sup>82</sup>

### ***Public and Stakeholders Consultation and Participation in Decision-Making***

Stakeholder consultation and participation in the mining sector involves getting mining communities involved or being allowed to become involved in the decision making or evaluation of a service, even simply to be among the number of people consulted on an issue or matter.<sup>83</sup> Engaging communities helps to balance economic development considerations with social and environmental considerations, leading to decisions that are sustainable and politically viable and socially.<sup>84</sup> The Rio Declaration 1992 emphasizes that “[E]nvironmental issues are best handled with participation of all concerned citizens, at the relevant level”.<sup>85</sup> Making decisions about mining projects affects the lives of people in mining communities. Therefore, the engagement should start before exploration and continue throughout all phases in the life of the mining project.

Consultation in the processing of mineral rights and management of mining operations is required under Act 703.<sup>86</sup> During the processing of initial mineral rights, the public is consulted through a provision which requires a 21-day publication at the relevant District where the project will be sited.<sup>87</sup> Subsequently, before any work begins, all stakeholders are engaged to negotiate for payments of compensation. Additionally, in the case of a mining lease, various public hearings are

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<sup>81</sup> Boakye (n 64).

<sup>82</sup> World Bank (n 74).

<sup>83</sup> JM Bryson, ‘What to do When Stakeholders Matter’ *Public Management Review* (2004) 6, 21-53.

<sup>84</sup> A Buxton and E Wilson, ‘FPIC and the Extractive Industry: A Guide to Applying the Spirit of Free, Prior and Informed Consent in Industrial Projects.’ *International Institute for Environment and Development (IIED)* (2013).

<sup>85</sup> Rio Declaration on Environment and Development, UN DOC A/CONF. 15/5 (1992) Principle 10.

<sup>86</sup> Minerals and Mining Act (n 6) s 13.

<sup>87</sup> *Ibid.*, s 13(3).

held in and with the project affected communities, by the EPA, required under L.I. 1652, to address envisaged impacts of the mining operations on the environment, in order to reduce air, land and water pollution; land degradation; the provision of better working and living conditions for mine workers; and corporate social responsibility projects for the host communities.<sup>88</sup> Some important consultative processes include consultations during mineral rights acquisition, multi-stakeholder workshops to discuss the draft national mineral policy, and regulations to give effect to Act 703.<sup>89</sup>

Act 703 is silent on the need for an applicant for a mineral right to obtain the free, prior, and informed consent of the host community before the grant of the mineral right by the Minister. This would enhance social legitimacy and reduce social conflicts in mineral operations. Additionally, it would offer community stakeholders an opportunity to contribute to decision making regarding mineral operations and the impacts.<sup>90</sup> Cases of land degradation and the consequential disputes between the mining companies and local communities would, probably, be less common.

Effective stakeholder consultation and participation build trust and openness, both of which are key to the implementation and compliance of environmental laws and regulations, which in turn, creates better working and living conditions for both mining workers and mining communities. Overall, stakeholder participation ensures incorporation of local knowledge into plans and therefore could contribute to learning and better plans as ideas flow back and forth between planners and affected interests.<sup>91</sup> Also, participation provides planners with opportunity to educate stakeholders, especially those affected by policy, about poorly understood problems and policy issues, which builds incentives and understanding and collaboration.<sup>92</sup>

### ***Equitable Benefit Sharing***

Benefit sharing is reflected in the Minerals and Mining Act, which provides for a localization policy, whereby the holder of the mining lease must give preference in employment to the members of the local community, by training and recruiting Ghanaians.<sup>93</sup> An applicant for a mineral right is also required to include, in his

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<sup>88</sup> Environmental Assessment Regulations (n 66) reg 17.

<sup>89</sup> Ibid.

<sup>90</sup> Boakye (n 64).

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Minerals and Mining Act (n 6) s 50.

application, proposals with respect to the employment and training of Ghanaians in the mining industry.<sup>94</sup> These provisions are designed to transfer technical knowledge and skills to ensure that all the aspects of the local community benefit from mining projects.

The other form of benefit sharing contemplated by the law is the payment of royalties to the State by the mineral right holder. Under the current system, mining companies pay royalties of 90 per cent to the central government, but only 10 per cent go to the local communities.<sup>95</sup> The main challenge, then, is how the 10 per cent of royalty payments is used and managed for the benefit of all community members. The law does not provide a formula. It would depend, therefore, on how the District Assemblies and the Chiefs in the local communities apply those funds.<sup>96</sup>

To facilitate more equitable distribution of accruing benefits among locals, often amongst subsistence, and mining communities, the Minerals and Mining Act requires that in respect of artisanal small-scale mining, Small Scale Mining Committees be established in every designated mining area.<sup>97</sup> The Committee is composed of six members, appointed by the Minister of Mines, who shall assist the District Office of the MC, to effectively monitor, promote and develop mining operations in the designated area.<sup>98</sup> There are no express provisions in Act 703 requiring mineral right holders to continuously consult and negotiate on issues and decisions affecting host communities throughout the mining operations, to enhance social legitimacy and reduce social conflicts in the mining operations.<sup>99</sup>

Failure to equitably share the benefits of the mining project has seen host communities continue to live in poverty, with dire food insecurity, land degradation having imposed huge costs on agriculture. It has also resulted in health problems. Mining communities experience increased diseases as a result of mining operations. These include malaria due to dams that breed mosquitos, skin and

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<sup>94</sup> *Ibid.*, s 11(d).

<sup>95</sup> *Ibid.*, s 183.

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*, s 92 (1).

<sup>98</sup> *Ibid.*, s 92 (2) – (4).

<sup>99</sup> Boakye (n 64).

respiratory diseases from dust in the mines, diarrhea and typhoid from contaminated river water, and eye problems from dust.<sup>100</sup>

The failure has also caused severe socio-economic impacts on local mining communities and workers. Relocation schemes have led to loss of land and resources, chronic impoverishment, social disruption, and decreased access to basic social and public services.<sup>101</sup> For instance, in Teberebie, the gold mining operations by the American – Ghanaian Teberebie Goldfields Ltd. displaced inhabitants of Teberebie. In the early 1990s, the community's illiterate chief signed an agreement with the mining company to provide 168 housing units, a school complex, community centre, electricity, a medical clinic, and potable drinking water within 12 months, but after 7 years, the agreement had still not been fulfilled.<sup>102</sup> In addition, relocation schemes in Ghana have often excluded women from compensation payments. Compensation payments go to heads of families (men), who often abandon their wives and children thereafter!<sup>103</sup>

### ***Mining Contracts***

The enactment of the Minerals and Mining Act,<sup>104</sup> ushered in an era where the Minister responsible for mining was authorized to enter into two types of agreements, namely, Stability Agreement<sup>105</sup> and Development Agreement,<sup>106</sup> to provide stabilization for the holder of a mining lease, especially of fiscal terms.<sup>107</sup> The MLNR, as a part of a mining lease, may enter into a stability agreement with the holder of the mining lease (subject to the ratification of Parliament), to ensure that the holder will not, for a period not exceeding 15 years from the date of the agreement, be adversely affected by a new enactment, order, instrument or other

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<sup>100</sup> Economic and Social Rights Centre (Hakijamii), 'Titanium Mining Benefit Sharing in Kwale County: A Comprehensive Analysis of the Law and practice in the Context of Nguluku and Bwiti' (2017) 17 <<https://www.business-humanrights.org>> accessed 27 November 2023.

<sup>101</sup> A Kumah, 'Sustainability and Gold mining in the Developing World' (2006) 14 *Journal of Cleaner Production* 315-323.

<sup>102</sup> DM Brande, 'Mourning the Future' (1998) <<https://www.newint.org/issue299/mourning.htm>> accessed 21 November 2023).

<sup>103</sup> T Akabzaa and D Abdulai 'Impact of Mining Sector Investment in Ghana: A Study of the Tarkwa Mining Region.' Report Prepared for SAPRI, Third World network, Accra (2001).

<sup>104</sup> Minerals and mining Act (n 6).

<sup>105</sup> *Ibid.*, s 48.

<sup>106</sup> *Ibid.*, s 49.

<sup>107</sup> J Aryee and Others, 'The Political Economy of the Mining Sector in Ghana. Policy Research Working Paper 5730 World Bank' (Washington DC 2011) 167 <<https://www.cmi.no/publications/file/4091-political-economy-of-the-mining-sector-in-ghana.pdf>> accessed 9 December 2022.

instrument that existed at the time of the stability agreement and, subsequently, be adversely affected by changes to the level of and payment of royalties, taxes, fees and other fiscal imports, as well as laws relating to exchange control, transfer of capital and dividend remittance.<sup>108</sup>

The Minister responsible for natural resources, on the advice of the MC, may enter into a development agreement under a mining lease with a person where the proposed investment by the person will exceed US\$500 million. A development agreement may contain provisions relating to the mineral right or operations to be conducted under the mining lease, the circumstance or manner in which the Minister will exercise a discretion conferred by the Minerals and Mining Act on tax stabilization as indicated above, and environmental issues and obligations of the holder to safeguard the environment in accordance with any enactment, and dealing with the settlement of disputes. A development agreement is subject to ratification by Parliament.<sup>109</sup>

Although existing provisions in Act 703 speak to the renewal of mineral rights and tenure of stability agreements, no provisions exist for renegotiation of terms upon changes in project economics. Such an inclusion would provide an opportunity for the government to renegotiate contracts of mining leases when there are significant changes to economic conditions that may not have been reasonably contemplated at the time of signing of the original contract. Also, granting a renewal for up to 25 years is too long for any renegotiation as may not have been contemplated initially.<sup>110</sup>

In addition, there are no provisions in Act 703 to mandate or obligate beneficial owners of minerals rights to publicly disclose contracts, as obligated in the Companies Act, 2019 (Act 992). The inclusion of disclosure on beneficial ownership information would serve to reduce the risk of corruption, illicit financial flows, and other rent-seeking behaviours that deny the State some rightful revenues.<sup>111</sup>

In addition to protecting the physical environment, mining companies are required to adopt practices, such as occupational health and safety practices, to protect workers and their families and the general public. Companies are to comply with applicable environmental, health and safety laws and regulations, and are to

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<sup>108</sup> Minerals and Mining Act (n 6) s 48.

<sup>109</sup> *Ibid.*, s 49.

<sup>110</sup> Boakye (n 64).

<sup>111</sup> *Ibid.*

develop and implement comprehensive monitoring and auditing programmes.<sup>112</sup> Mining companies are required to put in place adequate and effective measures to ensure the achievement of established standards.<sup>113</sup> They are to conduct risk assessments to identify the various dangers inherent in their operations, rank these risks and ensure that effective controls are put in place to ameliorate the risks,<sup>114</sup> provide training and re-training of employees in safety matters,<sup>115</sup> implement appropriate health and safety programmes,<sup>116</sup> and ensure that all employees exercise leadership and commitment to continual improvement in environmental, occupational, health and safety awareness.<sup>117</sup>

### ***Environmental Management***

Act 703 requires and ensures that environmental legislation and guidelines of the country are complied with by mining investors. It requires the holder of a mineral right who wants to undertake any activity to obtain approvals and permits from the EPA and FC for the protection of natural resources, public health, and the environment.<sup>118</sup> For instance, the Act provides that mineral rights may not be granted to an applicant unless that applicant has provided a satisfactory programme of environmental protection measures and how these would be funded;<sup>119</sup> applications for mineral rights must be accompanied by information relevant to all activities requiring approval under environmental legislation;<sup>120</sup> and, mining companies must comply with the requirements of the environmental regulations, including requirements relating to environmental impact assessment, for environmental permitting.<sup>121</sup>

The main environmental laws applicable to the mining industry are the Environmental Protection Agency Act, 1994 (Act 490)<sup>122</sup> and the Environmental Assessment Regulations 1999 (LI 652).<sup>123</sup> The Environmental Protection Agency is

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<sup>112</sup> Minerals and Mining Policy (n 4) 35.

<sup>113</sup> *Ibid.*

<sup>114</sup> Minerals and Mining (Health, Safety and Technical) Regulations (n 10) reg 474(1)(a).

<sup>115</sup> *Ibid.*, reg 474(1)(b).

<sup>116</sup> *Ibid.*, reg 474(1).

<sup>117</sup> *Ibid.*, reg 474(1)(c).

<sup>118</sup> Minerals and Mining Act (n 6) s 18(1).

<sup>119</sup> *Ibid.*, s 11(c).

<sup>120</sup> Environmental Assessment Regulations (n 66) reg 4(3).

<sup>121</sup> *Ibid.*, reg 3.

<sup>122</sup> Environmental Protection Agency Act, 1994 (Act 490).

<sup>123</sup> Environmental Assessment Regulations (n 66).



the regulatory body that oversees environmental protection and sustainability in the mining sector by administering these laws.<sup>124</sup>

Mining companies are required to be registered with the EPA and obtain an environmental permit prior to commencement of their operations or project.<sup>125</sup> The applicant is required to submit an application and pay the requisite fees after<sup>126</sup> which the EPA will carry out an initial assessment<sup>127</sup> and issue a screening report to be able determine whether the application should be approved, objected to, or requires submission of a preliminary environmental report (PER), or an environmental impact statement (EIS).<sup>128</sup>

Where the EPA thinks that a significant adverse environmental impact is likely to result from the activities of any undertaking, the applicant is then asked to submit an EIS for an assessment of the environmental impact of the undertaking.<sup>129</sup> Where an EIS is acceptable to the EPA, it will issue the applicant an environmental permit.<sup>130</sup> The EPA has 90 days to make a decision from the date of receipt of the application form, except where a hearing is conducted or a PER is required.<sup>131</sup> The environmental permit is valid for 18 months.<sup>132</sup> A mining company is then issued with an environmental certificate within 24 months of the date of the commencement of operations after the EPA has approved a PER or an EIS and issued an environmental permit.<sup>133</sup> Companies that have received approval for either their PER or an EIS are required to obtain an environmental management plan (EMP) within 18 months of commencement of operations and thereafter every three years.<sup>134</sup> The EMP is required to set out steps that are intended to be taken to manage any significant environmental impact that may result from the operation of the project or undertaking.<sup>135</sup>

Reclamation is just one of the methods of trying to redeem mine damaged land, and ensures rehabilitation and long-term care and maintenance of the mine site, when mineral production ceases. Further, it is a means by which steps are taken to

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<sup>124</sup> M Akafia and K Kuenyehia, 'Getting the Deal Through, Mining in Ghana' (n 13).

<sup>125</sup> Environmental Assessment Regulations (n 66) reg 1-2.

<sup>126</sup> *Ibid.*, reg 4.

<sup>127</sup> *Ibid.*, reg 5.

<sup>128</sup> *Ibid.*, reg 6.

<sup>129</sup> *Ibid.*, reg 9-10.

<sup>130</sup> *Ibid.*, reg 19.

<sup>131</sup> *Ibid.*, reg 20.

<sup>132</sup> *Ibid.*, reg 21.

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*, reg 24.

<sup>135</sup> *Ibid.*

alleviate impacts of mining by trying to restore its beauty and productivity in other ways. Mining companies are required to submit reclamation plans to the EPA and are further obliged to post reclamation bonds regarding their reclamation plans, based on approved work plan for reclamation, to cover the costs associated with the implementation of environmental restoration and rehabilitation in the event the mining company does not do it all or does not do it to the satisfaction of the EPA.<sup>136</sup>

The EPA faces institutional weaknesses in ensuring effective environmental management. They include: a weak policy environment; declining budget and resources for programme implementation; limited decentralization and low budget allocations to local levels; poor staff remuneration and performance management; poor accountability of resources by departments and field officers among others.<sup>137</sup> These weaknesses have led to inadequate service delivery, underperformance of the permitting and certification system, low levels of main streaming environment across sectors, low staff moral and high turnover, among others.<sup>138</sup> Although, the EPA has made efforts through strategic plans to reduce the magnitude of the challenges, it has not fully alleviate them.

Regulations LI 2182 provide that before closing a mine site, the holder of the mining lease is required to satisfy the Chief Inspector of Mines that all sources of potential pollution and residual component of the mining project upon closure are designed to be stable for the long term.<sup>139</sup> The holder is required to ensure there is no emission of polluted water, air, or dust will occur from the closed mining area.<sup>140</sup> The holder of a mining lease is required to submit a mine closure plan which should include a description of the closure and rehabilitation of a mine to the Inspectorate Division for approval.<sup>141</sup> The mine closure plan must be submitted, as soon as is reasonably practicable, not later than sixty days before the beginning of the process of closing or abandoning the mine or major part of the mine.<sup>142</sup> The prospector is supposed to take such steps to prevent any person or stock, inadvertently entering there. The holder must fill up or secure to the Commissioner's satisfaction, removal of old shafts, pits, holes and excavations,

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<sup>136</sup> Ibid., reg 13.

<sup>137</sup> 'Ghana Country Environmental Analysis' (2020) 124 <<https://www.documents1.worldbank.org>> accessed 20 August 2024.

<sup>138</sup> 'Ghana Environmental Sector Study' (2008).

<sup>139</sup> Minerals and Mining (Health, Safety and Technical Regulations) (n 10) reg 274(1).

<sup>140</sup> Ibid., reg 274(2).

<sup>141</sup> Ibid., reg 275.

<sup>142</sup> Ibid., s 275(1)

notices, beacons, and boundary posts.<sup>143</sup> In default of so doing, he shall be guilty of an offence.<sup>144</sup> However, the obligation is only up to some limited extent beyond which the land may still be derelict land, especially in the surrounding areas not directly connected with the site.

The main tools for managing the environmental fallouts of natural resources exploitation are the Strategic Environmental Assessments and Social Assessment Requirements (SEASA), and the Environmental and Social Impact Assessment (ESIA) requirements. Arising out of the ESIA processes are EMPs, which are often not publicly disclosed.<sup>145</sup> Opportunities for citizen participation in the ESIA processes come in the form of public hearings, where host and fringe communities are invited to discuss the project's potential impacts, proposed remedial measures, and socio-economic benefits to the state and the communities.<sup>146</sup> However, given the highly technical nature of the ESIA reports, the public hearings are often reduced to discussions on just the job opportunities and economic benefits the project promises.<sup>147</sup> As a result of the poor quality of ESIA consultations, land use contestations have become commonplace in most mining communities after concessions and environmental permits have been granted.<sup>148</sup>

Water pollution is one of the many direct and indirect costs of mining on the environment and local communities. Mining companies are also required to obtain a water permit before starting mining operations. They may obtain the requisite approvals or licences from the Water Resources Commission (WRC), under the Water Resources Commission Act 1996,<sup>149</sup> for purposes of mineral operations, to divert, impound, convey and use water from a river, stream, underground reservoir, or watercourse within the land to be used for mining operations.<sup>150</sup> The application is made in writing to the WRC for the grant of water rights.<sup>151</sup> The WRC then conducts the necessary investigations, including consultations with the mining community, before taking a decision.<sup>152</sup> Any person who claims that his or her interest will be affected by the grant may notify the WRC within three months,

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<sup>143</sup> *Ibid.*, s 277.

<sup>144</sup> *Ibid.*

<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.*

<sup>149</sup> Water Resources Commission Act, 1996 (Act 522).

<sup>150</sup> Minerals and Mining Act (n 6) s 17.

<sup>151</sup> Water Resources Commission Act (n 156) s 16.

<sup>152</sup> Sarpong (n 20) 266.

and such objections may be considered in determining whether the water rights should be granted.<sup>153</sup>

Where the mineral rights holder diverts, dams, stores, abstracts, or uses water resources without a valid permit, the holder commits an offence.<sup>154</sup> If convicted, the penalty may be a fine or imprisonment for a period of three years.<sup>155</sup> The WRC is silent on the remedies available for persons dissatisfied with its decisions. However, the mineral right holder could invoke the supervisory jurisdiction of the High Court or rely on the constitutional guarantees of property rights to ventilate their grievances.<sup>156</sup>

The WRC reserves the right to suspend or vary water rights granted in any area where the water resource is insufficient or is likely to become insufficient as a result of the grant.<sup>157</sup> Also, the WRC has the power to terminate or limit holdings of water rights on grounds that the water is required for public purposes.<sup>158</sup> The owner of such a right is entitled to compensation based on agreement with the WRC or, failing that, by a determination of the courts.<sup>159</sup> Holders of water rights may be divested of the right if they fail to comply with any condition of the grant, use water resources for a purpose not authorized by the grant, or where the owner has not, during the preceding two years, made full beneficial use of the right.<sup>160</sup> In all these instances, the mineral right holders of water rights are entitled to notice requiring them to remedy the breach before the imposition of the sanction.<sup>161</sup>

The principal Act and the subsidiary legislation, the Minerals and Mining (Health, Safety, and Technical) Regulations, 2012,<sup>162</sup> addresses mine related pollution.<sup>163</sup> The Regulations lay down the least stringent conditions against pollution. The Regulations make it an offence for any person to discharge any poison, toxic, noxious or obstructing matter or other pollutants, or to permit another person to do

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<sup>153</sup> Ibid.

<sup>154</sup> Water Resources Commission Act (n 156) s 13.

<sup>155</sup> Ibid., s 34.

<sup>156</sup> Sarpong (20) 266.

<sup>157</sup> Water Resources Commission Act (n 156) s 19.

<sup>158</sup> Ibid., s 20 (1).

<sup>159</sup> Ibid., s 21.

<sup>160</sup> Ibid., s 23.

<sup>161</sup> Ibid., s 22(1).

<sup>162</sup> LI 2182.

<sup>163</sup> Minerals and Mining Act (n 6).

so. The offender is liable to a fine not exceeding ten thousand United States dollars for both individuals and companies.<sup>164</sup>

The Minerals and Mining Act, on the other hand, does not have comprehensive provisions on mine related pollution. It is fashioned in a preventive rather than a reactive style. Thus, it provides in section 74<sup>165</sup> that the license holder is obliged to pay compensation to owners and occupiers of land, for any resistance or damage caused to any crops, trees, buildings, stock or works during a mining operation.<sup>166</sup> There have been cases of cyanide spills and toxic seepage reported in several mining sites in places, such as Wassa West Region, Teberebie, and Obuasi, that have left local communities with nothing or little recompense. The use of mercury in gold mining is still a controversial issue. The law has no provision on the management of radioactive minerals for the protection of human health and the environment, other than the requirement for the reporting of its discovery to the MC and the GSD.<sup>167</sup>

The Minerals and Mining (Explosives) Regulations<sup>168</sup> provide standards to be followed on use of explosives during mining operations to ensure safety of workers and the environment. Blasting causes massive vibrations which, if not kept within the World Health Organisation (WHO) recommended levels, can lead to adverse health effects to the mine workers and local communities. The Regulations provide standards for storage,<sup>169</sup> transport, use of explosives,<sup>170</sup> and disposal of such explosives on closure of the mine.<sup>171</sup> The Regulations also set blasting standards by providing for a blasting certificate for any blasting operations in or on a mine at a depth of ten metres or more.<sup>172</sup>

### ***Enforcement***

The sector Ministry responsible for enforcement of mining in Ghana is the MLNR.<sup>173</sup> The MLNR oversees the implementation of the Minerals and Mining Act through the MC. The MC is supported by its Inspectorate Division (ID). The ID is responsible for inspections, auditing, monitoring and enforcement of the

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<sup>164</sup> Minerals and Mining (Health, Safety and Technical) Regulations (n 10) reg 249.

<sup>165</sup> Minerals and Mining Act (n 6).

<sup>166</sup> *Ibid.*, s 74.

<sup>167</sup> *Ibid.*, s. 62 (2 – 3).

<sup>168</sup> Minerals and Mining (Explosives) Regulations (n 11) reg 130.

<sup>169</sup> *Ibid.*

<sup>170</sup> *Ibid.*, s 95.

<sup>171</sup> *Ibid.*, s 204.

<sup>172</sup> *Ibid.*, s 28.

<sup>173</sup> Sarpong (n 20) 222.

Minerals and Mining Act.<sup>174</sup> Unless the IDMC is satisfied with a proposed mining project and issues an operating permit, a mineral right holder cannot begin any mineral activity.<sup>175</sup> The head of the IDMC, the Chief Inspector of Mines, is mandated under Act 703 to inspect all aspects of any mining operations for compliance, including whether nuisance is being created and handling it to ensure that the proposed mineral operations would be or are being carried out safely.<sup>176</sup>

Where the MC through the head of the ID or an officer authorized by the head, inspects an area of mineral operations and ascertains that there is the likelihood of environmental degradation,<sup>177</sup> the MC can bring a suit in the Circuit Court or High Court against the mineral right holder. The mineral right holder would be liable on summary conviction to a fine of not more than US\$ five thousand.<sup>178</sup>

An Inspector can order a mineral right holder to cease mining operations or discontinue the use of machinery that the inspector considers unsafe for mining.<sup>179</sup> A mineral rightholder who does not comply with such an order commits an offence and is liable on summary conviction to a fine or term of imprisonment or both.<sup>180</sup>

The Minister, on the recommendation of the MC, can suspend or cancel a mineral right if the holder fails to make a payment on the due date, becomes insolvent or bankrupt, makes a false statement about the mineral right to the Minister, for any reason, becomes ineligible to apply for a mineral right.<sup>181</sup> However, the Minister must first give the mineral right holder the opportunity to remedy the breach within a reasonable period, and where the breach cannot be remedied, to show cause why the mineral right should not be suspended or cancelled.<sup>182</sup>

The Attorney General may bring an action in either the Circuit Court or High Court, against a mineral right holder who violates provisions of the Minerals and Mining Act and its regulations, or environmental law and its regulations. The Minerals and Mining Act, however, has made provision for alternative dispute resolution (ADR).<sup>183</sup> Where, a dispute arises between a mineral right holder and

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<sup>174</sup> Minerals and Mining Act (n 6) s 102(2).

<sup>175</sup> Ibid.

<sup>176</sup> Ibid., s 102(1).

<sup>177</sup> Ibid., s 102.

<sup>178</sup> Ibid., s 106.

<sup>179</sup> Minerals and Mining (Health, Safety and Technical) (n 10) s 2(5).

<sup>180</sup> Ibid., s 2(7).

<sup>181</sup> Minerals and Mining Act (n 6) s 68 (a-d).

<sup>182</sup> Ibid., s 68(2).

<sup>183</sup> Ibid., s 27.

the state, the matter can be referred to ADR, and the parties are to do all they can to reach an amicable settlement.<sup>184</sup>

On the other hand, The EPA is responsible for inspecting, reporting, monitoring and enforcement of environmental regulations and laws.<sup>185</sup> The EPA has powers to inspect and issue enforcement notices. EPA's Environmental Protection Inspectors (EPIs) are authorized, at any reasonable time, to enter any premises to ensure compliance with the EPA Act and any law on the protection of the environment. Any person who assaults or obstructs an EPI in the execution of his duty commits an offence and is liable, on summary conviction, to a fine or imprisonment or to both.<sup>186</sup>

Also, where it appears to the EPA that the activities of any undertaking pose a serious threat to the environment or to public health, the EPA may serve on the person responsible for the undertaking an enforcement notice requiring him to take such steps as the Agency thinks necessary to prevent or stop the activities. The Agency may, in an enforcement notice, direct the immediate cessation of the offending activity where it considers that the circumstances so demand.<sup>187</sup>

Non-compliance with enforcement notices carry grave consequences. Non-compliance with the enforcement notice is an offence which, on summary conviction, is punishable by a fine, and in default, a term of imprisonment.<sup>188</sup> Further, the Minister, without prejudice to a prosecution, may take such steps as he considers appropriate to ensure compliance with the notice. In this regard, a police officer, an officer of the Agency or any public officer, may be authorised by the Minister to use force as may be necessary for ensuring compliance with the enforcement notice.<sup>189</sup>

The main challenge with enforcement of Act 703 by the MC is lack of adequate human resource capacity. Most of the technical staff of the MC have solid academic backgrounds and significant industry experience and are generally highly competent,<sup>190</sup> however, most of the MCs technical staff are in their fifties, posing potential challenges for succession.<sup>191</sup> Also, the MC has fewer staff, at the

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<sup>184</sup> *Ibid.*, s 27(1).

<sup>185</sup> Environmental Protection Act (n 129).

<sup>186</sup> *Ibid.*, s 15.

<sup>187</sup> *Ibid.*, s 13.

<sup>188</sup> *Ibid.*

<sup>189</sup> *Ibid.*, s 14.

<sup>190</sup> Ghana Country Environmental Analysis (n 144) 123-124.

<sup>191</sup> The statutory retirement age in Ghana is 60 years old.

district level, to fully and effectively monitor, inspect and accomplish tasks that are required, which has meant insufficient inspection and monitoring of the operating mines.<sup>192</sup>

### ***Penalties for Small-Scale Mining Offences***

The current legal framework for regulating small-scale mining activities is provided in sections 81 to 99 of the Minerals and Mining Act and its accompanying regulations. However, the prevailing governance regime appears weak and unable to optimise the potential of the sector.

The Minerals and Mining (Amendment) Act, 2019<sup>193</sup> amends Act 703 to prescribe severe penalties for both foreigners and Ghanaians involved in illegal mining (galamsey); and to increase the penalties for a person who buys or sells minerals without a licence or without a valid authority; and increases the penalties for a person who engages in mining contrary to Act 703.<sup>194</sup> Act 703 makes it an offence for a Ghanaian to permit a non-Ghanaian to undertake or participate or facilitates the participation of a non-Ghanaian in small scale-mining activities. A non-Ghanaian who undertakes mining operations or facilitates the participation of any person in mining contrary to Act 703 commits an offence.<sup>195</sup>

Another drastic consequence of violation of Act 703 is that a person who provides or is involved in the provision of an excavator or any other equipment for mining operations contrary to this Act commits an offence and is liable to a fine or to a term of imprisonment or to both;<sup>196</sup> and any equipment used in or associated with the commission of the offence and any product derived from the commission of the offence shall, without regard to the ownership or the equipment or product, be seized and kept in the custody of the Police<sup>197</sup> for sixty days after which the Minister can allocate the equipment or product to the appropriate state institution and publish in the *Gazette* the name of the state institution to which the equipment or product is allocated.<sup>198</sup>

A court which convicts an offender under the aforementioned provisions of the Act, shall in addition to the penalty imposed, order the forfeiture to the state of any

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<sup>192</sup> T Aubynn, 'Mining and Sustainable Development, The Case of Ghana' (2014) 21.

<sup>193</sup> Minerals and Mining (Amendment) Act (n 19).

<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.*, s 99(5)(a)(b).

<sup>196</sup> *Ibid.*, s 99(7).

<sup>197</sup> *Ibid.*, s 99(8).

<sup>198</sup> *Ibid.*, s 99(10).



equipment, product or mineral seized to the state.<sup>199</sup> Yet, s.99 of Act 703 sets only upper limits for offences in dealing with minerals. Which means, a judge sitting on such a case could give a more lenient sentence.<sup>200</sup>

Further, Act 703 contains no penalties for conflict of interest by public officials in allocating mineral rights and managing contracts. Such penalties will reduce the risks of corruption and other rent seeking behaviours in the mineral title administration system and contracting.<sup>201</sup>

Other gaps identified in ss. 81-99 of Act 703 include: lack of a legal definition of artisanal mining to distinguish artisanal from small-scale mining; lack of provisions in the Act on artisanal mining; no provision on licensing requirements for buyers and exporters of artisanal and small-scale mining outputs; no provisions expressly prohibiting child labour in artisanal and small-scale mining; no requirement of training as a condition precedent for acquiring artisanal and small-scale mining rights; no dedicated financing mechanisms to support artisanal and small scale mining; no targeted provisions to make information (including geoscientific data) accessible to artisanal and small-scale mining operators; no provision on technology development and transfer to the artisanal small-scale mining subsector.<sup>202</sup>

Furthermore, there is no regime to provide traditional authorities with clear responsibilities and workable mechanisms in the regulation and management of mineral resources in their respective jurisdictions. This should be singled out as a very critical issue for legislative review or reform. However, this matter should be reviewed with caution. The Constitution vests in the President all mineral resources in trust for the people of Ghana. Any measure that would give Chiefs a regulatory role must be carefully examined to avoid a situation where traditional authorities would lay claim to mineral rights.<sup>203</sup>

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<sup>199</sup> Ibid, s 99(9).

<sup>200</sup> Boakye (n 57).

<sup>201</sup> Ibid.

<sup>202</sup> Ibid.

<sup>203</sup> Ghana News Agency, 'Involve Chiefs in the Issuance of Mining Licences' UNDP Policy Dialogue in Accra Under the Theme: 'Artisanal and Small-Scale Mining Legal Regime in Ghana: Policy Options for Addressing Gaps and Challenges' (2017) <<https://www.ghananewsagency.org>> accessed 10 December 2022.

## **CONCLUSION**

The mining sector laws around the world continue to evolve with changes in governance realities, changing country level expectations, developments in mining technology, and changing international standards, and best practices. The Minerals and Mining Act has served the mining sector in Ghana very well in the past, but not at a time when the mining sector governance was as expansive as it is today. It is apparent that environmental sustainability of the mining sector is not the major import of the Act. It has to rely on other statutes, such as those on the environment, forestry, and water resources. To contribute to sustainable development, a mine must minimize environmental impacts throughout its lifecycle, from exploration, through extraction and refining, to reclamation. This is best accomplished through effective environmental management. Mine exploration, construction, operation. And maintenance may result, and has resulted, in land use changes, leading to deforestation, erosion, contamination and alteration of soil profiles, contamination of local streams and wetlands, and an increase in noise level, dust, and emissions. The Act is short on this. Even though the Act has been amended twice, it has not undergone major amendments to align adequately with regional frameworks, reflect international best practices and address sustainability challenges in the mining sector. It is fitting and timely that the government has proposed a third amendment to strengthen mining sector governance in Ghana.

This article found out that any mining company that applies to the MC for a mineral right, must provide a satisfactory environmental protection programme; comply with environmental laws and regulations, including requirements relating to EIA; comply with environmental guidelines; obtain approvals and permits from the EPA and FC if the proposed mining activity is to take place in a forest; before it may be granted a licence. However, the mining companies comply with these conditions prior to obtaining a licence, but after that fail to keep up with the same laws and regulations, particularly because of weak enforcement. This does not promote sustainability in the mining sector.

Royalties are one of the pillars of sustainable mining and have economic impact. Royalties have been applied to infrastructure development and investment in social services. To achieve adequate community development, hence, sustainable mining, minerals royalties need to be distributed equitably.

To ensure sustainability in the mining sector, continuous stakeholder consultation and participation in decision making is very critical. It ensures that mining companies take their environmental commitments seriously. It helps to reduce

water pollution, air pollution, land degradation and other environmental impacts on mining communities, and creates better working conditions for mine workers.

Proceeds from mining, if shared equitably, have enormous economic impact on mine workers and local communities. They create employment opportunities for local communities. Local communities are trained and recruited by the mining companies. However, benefit sharing in the form of royalty payments, currently at 10 per cent to local communities for development, out of the 90 per cent that the government receives from the mining companies, is not always properly applied by either the chiefs or District Assemblies to benefit the local communities.

The main tools used to manage environmental fallouts in Ghana are the SEASA and the ESIA. Mining communities participate in the ESIA processes only through public hearings, where host and fringe communities are invited to discuss the project's potential impacts, proposed remedial measures, and socio-economic benefits to the state and communities.<sup>204</sup> However, given the highly technical nature of the ESIA reports, the public hearings are often reduced to discussions on just the job opportunities and economic benefits the project promises.<sup>205</sup> As a result of the poor quality of ESIA consultations, land use contestations have become commonplace in most mining communities after concessions and environmental permits have been granted.<sup>206</sup>

The legislation covering mining related pollution is the Minerals and Mining (Health, Safety and Technical) Regulations 2012<sup>207</sup> and the Minerals and Mining Act.<sup>208</sup> The Regulations are less ambitious and lay down the least stringent conditions against pollution.<sup>209</sup> The principal legislation, too, does not have much to say about mine related pollution. It is fashioned in a preventive rather than a reactive style, as in section 74,<sup>210</sup> that the license holder is obliged to pay compensation to owners and occupiers of land, for any resistance or damage caused to any crops, trees, buildings, stock or works thereon during a mining operation.<sup>211</sup> This is because the Minerals and Mining Act is not so

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<sup>204</sup> Ibid.

<sup>205</sup> Ibid.

<sup>206</sup> Ibid.

<sup>207</sup> LI 2182.

<sup>208</sup> Minerals and Mining Act (n 6).

<sup>209</sup> Minerals and Mining (Health, Safety and Technical) Regulations (n 10) reg 249.

<sup>210</sup> Minerals and Mining Act (n 6).

<sup>211</sup> Ibid., s 74.

environmentally oriented; it is mostly concerned with the operations at the mines and how to effectively carry them out.

The EPA is responsible for, inspecting, reporting and monitoring and enforcement of environmental regulations and laws.<sup>212</sup> The EPA has powers to inspect and issue enforcement notices. The EPA's Environmental Protection Inspectors (EPIs) can enter any premises at any reasonable time, to ensure compliance with the EPA Act and any law on the protection of the environment.<sup>213</sup> Also, where the activities of any mining company pose a threat to the environment or public health, the EPA can serve the mining company with an enforcement notice requiring the company to take steps to prevent or stop the activities. The EPA can direct the mining company to immediately stop operations, where the circumstances so demand.<sup>214</sup>

The fact that there are cases of non-compliance with the applicable law on sustainability in the mining industry in Ghana is an indictment on the institutions that have the mandate to enforce the law, rather than, apparently, organic weaknesses in the law.

This article has reviewed some key provisions of the Minerals and Mining Act and found out that it does not adequately address some of the sustainability challenges, particularly in the areas of grant of mineral rights, benefit sharing, contracting, royalties, environmental protection and penalties for small scale mining offences.

## **RECOMMENDATIONS**

The grant of mineral rights should give priority to applicants who commit to pursuing actions to add value to the minerals produced to the satisfaction of the Minister, where there are competing applications for a concession; payment of royalties should take into account environmental considerations, and the rate of mineral royalty payment should depend on the type of mineral mined; and an applicant should obtain free, prior, and informed consent of the host community prior to the grant of the mineral right by the Minister, to enhance social legitimacy, reduce social conflicts in mineral operations, and offer community stakeholders an opportunity to contribute to decision making regarding mineral operations and the impacts.<sup>215</sup>

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<sup>212</sup> Environmental Protection Act (n 129).

<sup>213</sup> *Ibid.*, s 15.

<sup>214</sup> *Ibid.*, s 13.

<sup>215</sup> Boakye (n 64).

In addition, express provisions should be included in the Act to obligate mineral right holders to consult and negotiate continuously on issues and decisions affecting host communities throughout the mineral operations; provisions exist for renegotiation of terms upon changes in project economics to provide opportunity for government to renegotiate contracts of mining leases when there is significant changes to economic conditions that may not have been reasonably contemplated at the time of signing of the original contract;<sup>216</sup> review of stability agreements and cessation in the grant of developments as well as modalities for funding community development projects.<sup>217</sup>

Furthermore, beneficial owners of minerals rights should be mandated to publicly disclose contracts, to reduce the risk of corruption, illicit financial flows and other rent-seeking behaviours that deny the state of the right revenues; localization should be broadened to include research and development; technology transfer;<sup>218</sup> and progressive and affirmative action towards increasing opportunities for women and citizens of affected communities.<sup>219</sup> Express provisions on sustainable development should be included in Act 703 as a binding policy for mining companies, to ensure the effective implementation of sustainable development.

On Artisanal and Small-Scale Mining, Act 703 should be amended to include: a legal definition of artisanal mining to distinguish artisanal from small-scale mining; provisions on artisanal mining; provisions on licensing requirements for buyers and exporters of artisanal and small-scale mining outputs; provisions expressly prohibiting child labour in artisanal and small-scale mining; requirement of training as a condition precedent for acquiring artisanal and small-scale mining rights; a dedicated financing mechanisms to support artisanal and small scale mining; targeted provisions to make information (including geoscientific data) accessible to artisanal and small-scale mining operators; provisions on technology development and transfer to the artisanal small-scale mining subsector.<sup>220</sup>

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<sup>216</sup> Ibid.

<sup>217</sup> ‘Minerals Commission, Chamber of Mines Discuss proposals on Mining Law Amendments’ (2021) <<https://www.ghanachamberofmines.org>> accessed 9 December 2022.

<sup>218</sup> Boakye (n 64).

<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

## REFERENCES

- ‘A Report by the UN’s Commission on Sustainable Development on Ghana’s Mining Sector’ (May 2010).
- Akabzaa T and Abdulai D, ‘Impact of Mining Sector Investment in Ghana: A Study of the Tarkwa Mining Region.’ Report Prepared for SAPRI, Third World network, Accra (2001).
- Akafia M and Kuenyehia K, ‘Getting the Deal Through, Mining in Ghana’ (2020) <<https://www.lexology.com/library>> accessed 27 November 2023.
- Aryee J and Others, ‘The Political Economy of the Mining Sector in Ghana. Policy Research Working Paper 5730 World Bank’ (Washington DC 2011) 167 <<https://www.cmi.no/publications/file/4091-political-economy-of-the-mining-sector-in-ghana.pdf>> accessed 9 December 2022.
- Anin TE, *Gold in Ghana* (4<sup>th</sup> edn Selywn Publishers, Accra 1994).
- Bentsi-Enchill E, ‘Colonial Land Policy in Ghana, 1874-1962 with Specific Reference to the Mining Sector of the economy’ (1986) Unpublished Manuscript.
- Boakye B and Others, ‘Gap Analysis of the Minerals and mining Act, 2006 (Act 703) and Draft Amendment, Africa Centre for Energy Policy’ (2021) <<https://www.jstor.org/stable/resrep33518.1>> accessed 15 November 2022.
- Buxton A and Wilson E, ‘FPIC and the Extractive Industry: A Guide to Applying the Spirit of Free, Prior and Informed Consent in Industrial Projects.’ International Institute for Environment and Development (IIED) (2013).
- Brande DM, ‘Mourning the Future’ (1998) <<https://www.newint.org/issue299/mourning.htm>> accessed 21 November 2023).
- Bryson JM, ‘What to do When Stakeholders Matter: Public Management Review’ (2004) 6, 21-53.
- ‘Economic and Social Rights Centre (Hakijamii), ‘Titanium Mining Benefit Sharing in Kwale County: A Comprehensive Analysis of the Law and practice in the Context of Nguluku and Bwiti’ (2017) 17 <<https://www.business-humanrights.org>> accessed 27 November 2023.
- Francis X and Tuokuu D, “Sustainable Development in Ghana’s Gold Mines: Clarifying the Stakeholder’s Perspective” (2019) 18 *Journal of Sustainable Mining* 77-84.

- Ghana Chamber of Mines, *Annual Report* (2020) <<https://www.ghanachamberofmines.org/>> accessed 11 July 2023.
- Ghana Extractive Industries Transparency Initiative (2021), 2019 Mining Sector Report <<https://gheiti.gov.gh/>> accessed 11 July 2023.
- Ghana News Agency, 'Involve Chiefs in the Issuance of Mining Licences' UNDP Policy Dialogue in Accra Under the Theme: 'Artisanal and Small-Scale Mining Legal Regime in Ghana: Policy Options for Addressing Gaps and Challenges' (2017) <<https://www.ghananewsagency.org/>> accessed 10 December 2022.
- Hilson G, 'A Contextual Review of Ghanaian Small-Scale Mining Industry' (IIED, London 2001) <<http://www.pubs.iied.org/pdfs/G00722.pdf>> accessed 10 November 2022.
- Kumah A, 'Sustainability and Gold Mining in the Developing World' (2006) 14 *Journal of Cleaner Production* 315, 320-321.
- Mensah AK and others, 'Environmental Impacts of Mining: A Study of Mining Communities in Ghana' (2015) 3 *Applied Ecology and Environmental Sciences* 81-94.
- 'Minerals Commission, Chamber of Mines Discuss proposals on Mining Law Amendments' (2021) <<https://www.ghanachamberofmines.org/>> accessed 9 December 2022.
- Minerals and Mining Policy, Ministry of Lands and Natural Resources (Accra 2014) 12 <<https://www.mincom.gov.gh/>> accessed 24 November 2022.
- Ministry of Lands and Natural Resources <<http://www.mlur.gov.gh/>> accessed 10 November 2022.
- Rio Declaration on Environment and Development, UN DOC A/CONF. 15/5 (1992).
- Sarpong GA, 'Ghanaian Environmental Law: International and National Perspectives' (Wildy Simmonds & Hill Publishing, 2018) 266.
- Tsikata FS, 'The Vicissitudes of Mineral policy in Ghana' (1997) 2 *Resources Policy* 9-14.
- World Bank. Ghana Economic Update: COVID-19, Storms, and Oil Price Shocks: Policy Options and Actions to Support a Resilient Recovery' (2020).
- World Bank. Ghana Mining Sector Development and Environment Project (2020) <<https://projects.worldbank.org/en/projects-operations/project-detail/P147862>> accessed 11 July 2023.

## **LEGISLATION**

Administration of Lands Act 1962 (Act 123).  
Companies Act 1963 (Act 179).  
Concessions Act 1962 (Act 124).  
Environmental Assessment Regulations 1999 (L.I. 1652).  
Environmental Protection Agency Act 1994 (Act 490).  
Gold Mining Protection Ordinance (Cap. 149).  
Incorporated Private Partnership Act, 1962 (Act 152).  
Internal Revenue Act 2000 (Act 592).  
Mercury Act 1989 (PNDCL 217).  
Mercury Ordinance 1932.  
Minerals Commission Act 1993 (Act 450).  
Minerals and Mining Act 1986 (PNDCL 153).  
Mining and Minerals Act 1962 (Act 126).  
Minerals and Mining Act 2006 (Act 703).  
Minerals and Mining (Amendment) Act 2019 (Act 995).  
Minerals and Mining (Compensation and Resettlements) Regulations 2012 (LI 2175)  
Minerals and Mining (Explosives) Regulations 2012 (LI 2177)  
Minerals and Mining (General) Regulations 2012 (LI 2173)  
Minerals and Mining (Health, Safety and Technical) Regulations 2012 (LI 2182)  
Minerals and Mining (Licensing) Regulations, 2012 (LI 2176).  
Minerals and Mining (Support Services) Regulations 2012 (LI 2174).  
Precious Minerals Marketing Corporation Act 1989 (PNDCL 219).  
Small Scale Gold Mining Act 1989 (PNDCL 218).  
Water Resources Commission Act 1996 (Act 522).