

## **REPORT OF THE COMMITTEE ON MINES AND ENERGY ON THE MINERALS AND MINING BILL**

### **1.0. INTRODUCTION**

The Minerals and Mining Bill was laid before Parliament On 14<sup>th</sup> June 2005 and was subsequently referred to the committee on Mines and Energy for consideration and report in accordance with Article 103(3) of the 1992 Constitution and Standing Orders No. 188 of the House.

### **2.0 BACKGROUND INFORMATION**

The existing Minerals and Mining Law was enacted in 1986 and was considered as one of the best enactments on the subject matter in Africa. This enactment made Ghana an attractive destination for mining investment.

However, after nearly two decades of operation, it has come to the realization of government that development in the Mining industry requires a revision of the law to reflect international best practices in the industry. This is also to enable Ghana maintain its position as a major mining investment destination in Africa. The provision of a new legal regime to ensure internationally competitive framework that ensures a stable and equitable tax regime, and also takes cognizance of environmental protection as well as community interest is necessary in order to provide the basis for the development and sustainability of mining in the country.

The bill to a large extent retains many of the provisions in the existing PNDC Law 153 as well as provisions that relates to small scale Mining.

### **3.0 REFERENCE DOCUMENTS**

The Committee made reference to the following documents in the course of its deliberations.

- (1) The 1992 Republican Constitution of Ghana
- (2) The Standing Orders of the House
- (3) The Minerals and Mining law 1986 (PNDC Law 153)

(4) The Mineral Commission Act, 1993 (Act 450)

#### 4.0. DELIBERATIONS

The Committee met two times in the course of its deliberations. The Committee held discussions and received memoranda from the following stakeholders.

- I. The Ministry of Lands, Forestry and Mines
- II. The Minerals Commission.
- III. The Mines Department
- IV. Geological Survey Department
- V. Ghana Chamber of Mines
- VI. Precious Mineral Marketing Company
- VII. National Coalition On Mining.
- VIII. Environmental Research Group/UCC
- IX. Legal Resource Center

#### 5.0. ACKNOWLEDGEMENT

The Committee wishes to acknowledge the immense contribution of the Majority Leader and Minister for Parliamentary Affairs, Hon. F.K. Owusu-Adjapong, the Sector Minister, Prof. Dominic Fobih, the Deputy Minister, Hon Rita Tani Iddi, the Chief Director of the ministry, the Chief Executive of Minerals Commission, the legal and technical officers of the Ministry of Land Forestry and Mines as well as its agencies.

The Committee also wishes to acknowledge the contribution of Dr. Yaw Graham of the Third-world Network and the entire membership of the National Coalition on Mining.

#### 6.0. OBSERVATIONS

The Committee observed that the Minerals and Mining Bill seeks to find solution to the delays that usually characterize the processes associated with the acquisition of mineral rights in Ghana, so as to make the country competitive in the Global Market.

Under the proposed law the Minerals Commission must upon receipt of application, submit its recommendation to the Sector Minister within 90 days.

The Minister is also expected to grant or deny mineral rights to an applicant within 60 days after he has received recommendations from the Mineral Commission.

The Committee further observed that applicants who wish to divert, convert or use water resources must obtain the requisite license from the Water Resources Commission and not the Minister responsible for Mines, as is the case in the existing law.

The Committee considers this as a novelty to check the abuse, misuse and pollution of water bodies by mining operators as is often the case in most mining communities.

The Committee again observed that the bill seeks to expand requirements for rents and fees that are to be paid annually by holders of mineral rights. These include annual Mineral right fees payable to the Minerals Commission, ground rents to land owners and Royalties to the Republic, all to be provided under Legislative Instruments.

Another novelty to the law is the establishment of Alternative Dispute Resolution Mechanism under clause 28 and the use of international arbitration and dispute resolutions particularly, the rules of procedure for arbitration under the United Nations Commission on International Trade Law (UNCITRAL Rules).

The Committee observed that the bill seeks to provide for stability in development agreements that could be entered into for holders of mining leases. The essence is to protect the holder of a mining lease for a period not exceeding 15 years.

The Minister may also enter into a development agreement under a Mining lease where the investment by the holder exceeds US \$500,000,000. Such an agreement will contain stability terms and will be subject to ratification by Parliament.

The Committee observed that the proposed law seeks to bring the Mines Department, which currently is the inspectorate division of the Ministry under the umbrella of the Minerals Commission. This is to ensure uniformity and efficient operations of the sector.

The Committee observed that certain useful provisions of the existing laws are missing in the proposed law. The Committee therefore seeks to propose the following amendment to the bill to be considered by the House at the consideration stage so as to enable the law, when finally approved, stand the test of time.

## **7.0 PROPOSED AMENDMENTS**

**Clause 7, Sub-Clause (2), line 1 delete “Government” and insert “Minister”**

The amendment seeks to remove the controversy that may be created by the use of “Government”.

**Clause 8, sub-clause (2) add paragraph (c) as follows:**

“(c) notwithstanding the provisions of paragraph (a) and (b) of sub-clause (2), fractions of blocks as may be prescribed shall be acceptable in the case of a licence granted for small scale mining.”

Fragmentation of a block is not permitted under the cadastral system, however areas to be granted for small scale mining cannot, for all practical purposes, be more than half of a block (25 acres).

**Clause 9, Sub-clause (1), line 1 delete “Despite” and insert “Notwithstanding”.**

**Clause 13, sub-clause (1), line 1 after “shall” delete “promptly” and insert “within sixty days”.**

**Clause 13 add a new sub-clause(8) as follows:**

“(8) (a) the holder of mineral right shall not remove or destroy any mineral obtained by the holder in the course of any mineral operations without the permission in writing of the head of the Inspectorate Division of the Minerals Commission

(b) notwithstanding the provision in subsection (a) of this section, cores and samples may be retained by a holder for the purpose of assay, identification or analysis of the mineral.

(c) where any core is retained under subsection (b) of this section, the holder shall maintain in respect of the core or sample such particulars as the head of the Inspectorate Division of the Minerals Commission may, in consultation with the Director of Geological Survey Department determine sufficient for the identification of the core or sample and the location and geological horizon of its origin.”

The amendments are to ensure that mineral samples are available for inspection by the state as and when required.

**Clause 15**, sub-clause (1) line 3, **after** “Commission” **insert** “and Geological Survey Department”.

The amendment is to ensure that the Geological survey Department update its data and recording on minerals deposits in the country.

**Clause 15**, Sub-clause (2) paragraph (a), **after** “the” **delete** “mineral discovered” and **insert** “discovery”.

The amendment is to ensure that reference is not made only to a specific mineral, but also indication that mineral could be found.

**Clause 16** **add** new Sub-clause (1) and (2) as follows:

“(1) The holder of a mineral right shall at all times appoint a manager with the requisite qualifications and experience to be in charge of his mineral operations

(2) The holder of a mineral right shall notify the Head of the Inspectorate Division in writing of every appointment of a manager and on every change of a manager.”

These additions are to ensure compliance with established international practices, and to guarantee qualified and identifiable management for mining enterprises. These provisions exist in the current Minerals and Mining laws.

**Clause 18** – **Heading**, **before** “Environmental” **insert** “Forestry and”

**Clause 18**, Sub-Clause (1), line 3 after “from” insert “the Forestry Commission and”.

These are to insure that Forest resources are protected.

**Clause 19**, Sub-clause (2), line 2 after “Commission” insert “Geological Survey Department”.

**Clause 21**, line 1, delete “Despite” and insert “Notwithstanding”

The amendment is to ensure conformity with existing renditions.

**Clause 21**, line 4, delete “19” and insert “20”.

The amendment is to ensure that reference is made to the appropriate clause.

**Clause 25**, line 1, after “Mining lease” insert “and restricted Mining lease or small scale Mining license”.

The amendment is to ensure that holders of leases to mine industrial Minerals also pay royalties.

**Clause 26**, delete the whole of clause 26.

The Committee is of the view that royalties are paid as a percentage of actual production and must therefore be paid anytime production is made.

**Clause 27**, Sub-clause (1) line 1, after “fee” insert “royalty”.

**Clause 27**, Sub-clause (2) line 1 delete “Despite” and insert “Notwithstanding”.

**Clause 27**, Sub-Clause (2), line 1, after “Minister” insert “in consultation with the Minister of Finance”.

The Committee took into account the fact that all fiscal matters are primarily the responsibility of the minister responsible for finance.

**Clause 28**, sub-clause (3) line1, **after** "citizen" **delete** the following:

"or a body corporate controlled by a citizen or citizens"

**Clause 28**, sub-clause (2) line1, **after** "citizen" **delete** the following:

"or a body corporate controlled by a citizen or citizens"

The amendments are to ensure clarity and simplicity.

**Clause 28** **add** new Clauses 28 as follows:

**" Capitalisation of Expenditure**

28. The holder of a mining lease shall be entitled to the capitalization of all approved expenditures on reconnaissance and prospecting approved by the Minister on the advice of the Minerals Commission where the holder starts development of a commercial find."

**Clause 29**, **insert** new clause 29 as follows;

**" Additional Benefits**

29. The holder of a mineral right shall be granted the following benefits as appropriate:

- (a) exemption from payment of customs import duties in respect of plant, machinery, equipment and accessories imported specifically and exclusively for the mineral operations as provided in the mining list.
- (b) exemption of staff from payment of income tax relating to furnished accommodation at the mine site.
- (c) Immigration quota in respect of the approved number of expatriate personnel.
- (d) Personal remittance quota for expatriate personnel free from any tax imposed by any enactment for the transfer of external currency out of Ghana."

**Clause 30**, sub-clause (3), line 2, **after** "excavation", **delete** the rest of the sentence.

The amendment is to ensure that the holder of reconnaissance licence apply for prospecting license before undertaking any drilling exercise.

**Clause 30, insert new clause 30 as follows:**

“ Transferability of Capital

30. (1) Where the holder of a mining lease earns foreign exchange from his mining operations he may be permitted by the Bank of Ghana to retain in an account, a portion of his foreign exchange earning for use in acquiring spare parts and other inputs required for the mining operations which would otherwise not be readily available without the use of such earnings.

(2) Where the net earnings of a holder of a mining lease from his mining operations is in foreign exchange he shall be permitted by the Minister for Finance, in consultation with the Minister acting on the advice of the Minerals Commission, to retain in an account, not less than 25 percent of his foreign earning for acquiring machinery and equipment, spare parts and raw materials as well as for debt servicing, dividend payment and remittance in respect of quotas for expatriate personnel.

(3) An account operated by virtue of subsection (2) of this section shall be held in trust on behalf of the holder by a trustee appointed by the holder with the consent of the Bank of Ghana.”

(4) Subject to the provision of this law a holder of a mining lease shall be guaranteed free transferability through the Bank of Ghana or in the case of a net foreign exchange holder through the account opened with the permission of the Minister for Finance in convertible currency of:

- a) dividends or not profits attributed to the investments of such convertible currency;
- b) payments in respect of loan servicing where a foreign loan has been obtained by the holder for his mining operations;



- c) the remittance of foreign capital in the event of sale or liquidation of the mining operations or any interest therein attributable to foreign investment.

The additions seek to restate the provisions dealing with incentives and benefits to be derived from investing in the mining industry in Ghana, which exist, in PNDCL. 153 and were inadvertently excluded from Internal Revenue Act, 2000 (Act 592)

This is also to ensure that Ghana maintains a fiscal regime which is flexible enough to accommodate the dynamic environment of a mineral and mining operation to enable Ghana remain competitive and attract investment.

**Clause 32, insert** new clause 32 as follows:

**“ 32. Mine Support Services**

Persons or companies providing prescribed services to a holder of mineral right and registered with the Minerals Commission may be granted concession as prescribed.”

The amendment seeks to make it possible for mine support service companies to be granted privileges and concessions similar to those granted to mining companies as may be prescribed.

**Clause 31, delete** the whole of sub-clause (4).

The Committee observed that under sub-clause (3) of this clause, the Minister is compelled to grant extension where the licensee complies with prescribed requirements.

The Minister must therefore not be prevented from denying extension if a licensee fails to comply.

**Clause 33, delete** the whole of sub-clause (3).

The amendment is in line with the reasons given for the amendments under clause 31(3).

**Clause 33, sub-clause (4), line 2, after “(2)”, delete** “or (3)”.

This amendment is consequential to earlier proposed amendments under clause 33.

**Clause 35, Heading, after “Rights” insert “and Obligations”**

**Clause 35, add new sub-clause (2), (3) and (4) as follows:**

- “ (2) The holder of prospecting licence shall-
- (a) commence prospecting operation within three months from the date of the issue of the licence, or at such time as the Ministry may specify;
  - (b) demarcate and keep demarcated the prospecting area in the prescribed manner;
  - (c) carry on prospecting operation in accordance with the programme of prospecting operations;
  - (d) notify the Minister through the Minerals Commission of any discovery of minerals to which his prospecting licence relates within a period of thirty days from the date of discovery;
  - (e) notify the Minister through the Minerals Commission of the discovery of any mineral deposit which is of possible economic value within a period of thirty days from the date of discovery;
  - (f) fill back or otherwise make safe to the satisfaction of the Minerals Commission any borehole or excavation made during the course of prospecting operations;
  - (g) unless the Minerals Commission otherwise stipulates, remove, within sixty days from the date of the expiration of the prospecting licence any camp, temporary building or machinery erected or installed by him, and repair or otherwise make good any damage to the surface of the ground occasioned by such removal, to the satisfaction of the Minerals Commission;
  - (h) subject the condition of the prospecting licence, expend on prospecting not less than such amount as may be specified in the prospecting licence,
  - (i) submit to such persons at such intervals as may be prescribed, reports of other documents containing such information and supported in such manner as may be prescribed.

(3) Any monies required to be spent under paragraph (h) of subsection (1) of this section and which are not so spent shall be a debt to the Republic and recoverable from the holder in the Court.

(4) The holder of prospecting licence shall keep, to the satisfaction of the Minister, full and accurate records of the prospecting operations showing such particulars as the Minister may prescribe.”

The amendment is to restate the obligations of the holder of a prospecting licence as provided in PNDCL 153.

**Clause 39, delete the Heading and substitute the following:**

**“Rejection of Application for a Mining Lease”**

**Clause 39, delete the whole of sub-clause (3) and substitute the following:**

“ (3) The Minister shall not reject an application for a mining lease made under this Act,

(a) Unless the concerns of the Minister have been conveyed in writing to the applicant and the applicant has been given an opportunity to make appropriate amendments to the application or the proposed programme of mineral operations and has within such reasonable time as the Minister may permit, failed to do so:

(b) On the grounds that applicant is in default, unless the Minister has given the applicant notice of the default and the applicant has failed within such reasonable time as may be specified in the notice to remedy the default.

(c) A dispute between the Minister and an applicant in respect of a matter that arises under this section shall be referred for resolution under section 28.

The amendments seek to ensure clarity.

**Clause 40, sub-clause (1), after “shall” delete “not”.**

**Clause 43**, paragraph (d), **after** “product” **insert** “in a manner as approved in the holder’s Environmental Impact Statement”.

The amendment is to ensure clarity.

**Clause 46**, sub-clause (1), line 1 **after** “Minister may” **delete** “ on behalf of the President”.

The committee is of the view that the every minister is already acting on behalf of the president.

**Clause 46**, sub-clause (1) line 3 **after** “US \$ Five” and before “million” insert “hundred”.

The amendment is to correct a typographical error.

**Clause 46**, sub-clause (2), paragraph (b), line 1, **after** “Minster” **delete** “or the Commission”.

The amendment is of the view that the proposed discretionary power should be resided only in the Minister.

**Clause 48**, delete the whole of Clause and substitute new Clause 48 as follows:

“48(1) The holder of mining lease shall notify the minister three months in advance where the holder proposes to suspend production from the mine and shall in all cases, give reasons for the suspension.

(2) Where the holder is unable to give the required notice as provided under subsection (1) for reasons beyond the holders control (including, without limitation, market conditions) and the holder suspend production from the mine, the holder shall, within fourteen days of suspension notify the Minister.

(3) the suspension of production shall not exceed 12 months and the holder may apply in writing to the Minister for extension for a period not exceeding twelve months.”

The amendment is to ensure clarity.

**Clause 79, delete** the whole sub-clause (c) and **substitute** new sub-clause (c) as follows:

“(c) is registered by the officer of the Commission in the designated area under subsection (1) of Section 87”.

The amendment is to ensure consistency with Clause 78 (2).

**Clause 82, line 2, after** “shall” **delete** “not exceed 25 acres” and **insert** “be in accordance with the number of blocks as prescribed”

The amendment is to ensure uniformity with the new cadastral system which makes use of “blocks” rather than the current system that makes use of “acres” or “square km”.

**Clause 86, Heading, after** “District” **delete** “the rest of the sentence” and **insert** “office of Minerals Commission”.

**Clause 86, delete** “the whole clause and insert a new clause 86 as follows:

“86. The Commission may establish Offices which shall among other functions perform the following:

- (a) compile a register of all small scale miners and prospective small scale miners specifying such particulars as may be determined by the Minister;
- (b) supervise and monitor the operation and activities of the small scale miners and prospective small scale miners;
- (c) advise and provide training facilities and assistance necessary for effective and efficient small scale mining operations; and
- (d) submit to the Commission in a form and at intervals directed by the Commission, reports or other documents and information on small scale mining activities within the District.”

These amendments seek to ensure consistency with clause 96 (3).

**Clause 87, sub-clause (1), line 2 after** “the” **delete** “District Center of” and **insert** “office of the Commission in the”.

The amendment is consequential to previous amendments.

**Clause 87, delete** the whole sub-clause (3)

The amendment is to eliminate the apparent conflict with clause 78(1).  
**Clause 88, sub-clause (3) line 1, delete** “District center” and **insert** “office of Commission in the designated area”.

The amendment is to ensure consistency.

**Clause 91, line 2 delete** “Chief Inspector of Mines” and **insert** “Minerals Commission”.

The amendment is proposed the Inspectorate Division cannot report directly to the Minister, except through the Minerals Commission.

**Clause 93, delete** sub-clause (1) and **substitute** new sub-clause (1) as follows:

“(1)The sale of any mineral won by a licensed small-scale miner shall be subject to rules and regulations as prescribed by the Minister” .

The amendment is to ensure conformity with government policy and regulations, and to enable government monitor their activities effectively.

**Clause 96, delete** “sub clause (3)” and **insert** a new “sub clause (3) as follows:

“(3) The Commission may establish such offices in any designated area as it considers necessary for the effective achievement of the object and functions of the Commission”

The amendment is to ensure consistency.

**Clause 97, Heading – delete** “Inspectorate of Mines” and **insert** “Inspectorate Division of Minerals Commission”.

**Clause 97, line 1 after** “Minerals Commission,” **delete** “department” and **insert** “division”.

**Clause 97, line 2** after "Inspectorate of" delete "Mines" and insert "Inspectorate division".

The amendment is because Article 269 of the 1992 Constitution mandates the Minerals Commission to coordinate the policies in relation to all sector institutions, and in order to do so the Commission must assume the appropriate organizational structure. Thus the 'Division Structure' is proposed as more effective in this regard.

**Clause 98, Heading** after "Inspectorate" delete "of mines" and insert "division".

The amendment is to ensure conformity with Clause 97.

**Clause 98, delete** sub clause (1) and insert a new sub clause (1) as follows:

- "(1) the head of the Inspectorate Division or and officer authorized by him may at all reasonable times enter any reconnaissance, prospecting or mining area or any premises in such area other than dwelling house, for any of the following purpose-
- (a) to break up the surface of land in such area for the purpose of ascertaining the rocks or minerals in or under the land;
  - (b) to take samples or specimen of rocks, ore or concentrates, tailings or minerals situated in an area under a mineral right for inspection or assay;
  - (c) to inspect the explosives magazine upon any mine and direct in what manner any explosive shall be store;
  - (d) to inspect the area of mineral operations to ascertain whether any nuisance is created in the area by the mineral operations;
  - (e) to examine documents and records required to be kept under this law, any regulations made thereunder or the terms and conditions of any mineral right and take copies of such documents;
  - (f) to enter into or upon any land through which it may be necessary to pass for the purpose of any survey; or
  - (g) to give directions and effect all acts that are incidental or conductive to the attainment of his functions under this law.

The amendment seeks to clearly state the functions of the head of the Inspectorate Division (which replaces the Chief Inspector of Mines) as stated in PNDCL. 153.

**Clause 98**, sub clause (2) line 1 **delete** “of Mines” and **insert** “Division”.

**Clause 98**, sub clause (2), line 2, **delete** “department” and **insert** “Division”

The amendments are consequential to earlier amendments

**Clause 98**, add a new sub-clause (3) as follows:

“(3) The head of the Inspectorate Division of the Minerals Commission or an officer authorized by him shall have power to hold an inquiry whenever there is an occurrence as may be prescribed on any land subject to a mineral right.”

The amendment seeks to clearly state the functions of the head of the Inspectorate Division of the Commission as stated in the existing PNDCL153.

**Clause 106**, sub-clause (2), paragraph (g) **after** “Inspectorate” **delete** “of Mines” and **insert** “Division”

**Clause 106**, sub-clause (2), paragraph (h), line 4 **delete** “of Mines” and **insert** “Division”

**Clause 106**, sub-clause (2), paragraph (i), line 3 **delete** “of Mines” and **insert** “Division”

**Clause 106**, sub-clause (2), paragraph (n), line 1 **after** “lake” **insert** “ forest”

### **Interpretation**

**Clause 107**, sub-clause (1), “ authorized officer”, line 2 **delete** “ of Mines” and **insert** “Division”

**Clause 107**, sub-clause (1), “controller” line 3 **delete** “50” and **insert** “20”



The amendment seeks to lower the threshold for becoming a controller of a mining company so as to make it more competitive.

**Clause 107**, sub-clause (1), **delete** the definition for “director” **Clause 107**, sub-clause (1), **add** new definition as follows:

“ “ Head of Inspectorate Division” means Chief Inspector of Mines”

**Clause 107**, sub-clause (1), **add** new definition as follows:

“ “**mining area**” means the area designated by the holder of a lease from time to time subject to the approval of the Minerals Commission.

**Clause 107**, sub-clause (1), “**Minister**”, **after** “for” **delete** “minerals” and **insert** “mines”.

**Clause 107**, sub-clause (1), add new definitions as follows:

“ “**pre-emption**” means the right to buy mineral won or raised before it is sold to others”.

**Clause 107**, sub-clause (1), “reconnaissance”, line 4 after “not” delete the following:

“, unless authorized under section 29,”.

The amendment is consequential to earlier amendments under clause 29.

**Clause 107**, sub-clause (1), **add** “**termination**” means the lapse of mineral right by expiry of time, surrender or cancellation”

The amendment seeks to ensure clarity and certainty.

**Clause 107**, sub-clause (1), “rough diamonds”, line 2 after “or” **delete** “bruted” and **insert** “bruted”.

**Clause 107**, sub-clause (1), “small scale mining operation” line 2 **after** “25 acres” **delete** the rest of the sentence and **insert** “ in accordance with the number of blocks as prescribed”

**Clause 108**, sub-clause (6), line 4 **delete** “ of Mines” and **insert** “Division”

Clause 108, sub-clause (7), line 4 delete “ of Mines” and insert “Division”

The amendments seek to ensure conformity.

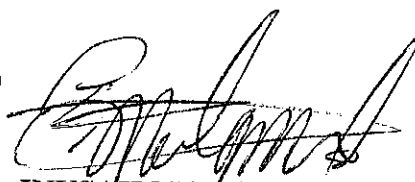
**8.0. CONCLUSION**

In conclusion the Committee wishes to state that in view of the importance of the bill to the development of the mining sector which contributes about forty percent of our foreign exchange earnings, the Committee wishes to recommend to the House to adopt its report and approve the Minerals and Mining bill subject to the proposed amendments.

Respectfully submitted.



**HON. GIFTY EUGENIA KUSI (MRS.)  
CHAIRPERSON  
(COMMITTEE ON MINES AND ENERGY)**



**INUSAH MOHAMMED  
CLERK  
(COMMITTEE ON MINES AND ENERGY)**