

**IN THE THIRD SESSION ON THE SIXTH
PARLIAMENT OF THE FOURTH REPUBLIC
OF GHANA**

**REPORT OF THE SELECT COMMITTEE ON
MINES AND ENERGY**

ON THE

**MINERALS AND MINING (AMENDMENT)
BILL, 2014**

MARCH, 2015

Acc No: 1573 C1

Acc No: BR/MMB/14.

PARLIAMENT OF GHANA LIBRARY

REPORT OF THE SELECT COMMITTEE ON MINES AND ENERGY ON THE MINERALS AND MINING (AMENDMENT) BILL, 2014

1.0 INTRODUCTION

The Minerals and Mining (Amendment) Bill, 2014 was laid in Parliament on Wednesday, 12th November, 2014 by the Hon. Minister for Lands and Natural Resources, Mr. Nii Osah Mills in accordance with Article 106 of the 1992 Constitution.

The Bill was subsequently referred to the Select Committee on Mines and Energy by the Rt. Hon. Speaker for consideration and report in accordance with Orders 125 and 188 of the Standing Orders of the House.

2.0 DELIBERATIONS

- 2.1 The Select Committee met with the Hon. Minister of Lands and Natural Resources, Nii Osah Mills and Officials of the Ministry to consider the Bill. Officials of the Minerals Commission and Office of the Administrator of Stool Lands also attended the meeting to assist the Committee in its deliberations.
- 2.2 Officials of the Ghana Chamber of Mines were in attendance at the instance of the Committee to provide clarifications on issues raised by the Chamber in its Memorandum submitted to the Committee.
- 2.3 As part of its deliberations, the Committee also considered Memoranda received from key Stakeholders including the National Security Council Secretariat, the National House of Chiefs, the Ghana Chamber of Mines, the University of Mines and Technology (UMaT) and the Office of the Administrator of Stool Lands.

3.0 REFERENCE DOCUMENTS

The Committee made reference to the following documents during its deliberations:

- i. The 1992 Constitution of the Republic of Ghana;
- ii. The Standing Orders of Parliament;
- iii. The Minerals and Mining Act, 2006 (Act 703); and

iv. The Minerals and Mining (Amendment) Act, 2010 (Act 794).

4.0 OBJECT OF THE BILL

The object of the Bill is to amend the Minerals and Mining Act, 2006 (Act 703) to confer power on the Hon. Minister for Lands and Natural Resources to make Regulations to prescribe the rate and manner of royalty payments and to also provide for the confiscation of equipment used in illegal mining operations.

5.0 BACKGROUND INFORMATION

The Minerals and Mining Act, 2006 (Act 703) and the Minerals and Mining (Amendment) Act, 2010 (Act 794) provide the legal framework for minerals and mining activities in the country.

The implementation of the above laws has brought to the fore some challenges which require remedial action. For instance, Act 794 which fixes the royalty rate at five percent (5%) does not prescribe the manner for the royalty payment. This has generated some misunderstanding regarding the time for payment and the agency responsible for the collection of the royalties.

Additionally, the current legal regime does not provide specific measures to deal with the influx of foreigners in the small scale mining sector especially in the area of offences and confiscation of equipment used by illegal small scale miners. There is therefore the need to put in place a legislative framework to address the situation.

The Minerals and Mining (Amendment) Bill, 2014 has therefore been laid in Parliament by the Hon. Minister for Lands and Natural Resources to help address the above issues.

6.0 SUMMARY OF PROVISIONS

6.1 The Bill contains six (6) Clauses. Clause 1 seeks to amend Act 794 to remove the fixed rate of royalty of five percent and to provide for the rate of royalty and the manner of payment by way of legislative instrument.

6.2 The Bill also seeks to amend the Act 703 to provide for the confiscation of equipment used in illegal small scale mining and among other related matters under Clauses 2 to 5.

6.3 Clause 6 relates to repeals and savings in respect of Act 794.

7.0 OBSERVATIONS AND RECOMMENDATIONS

The Committee made the following observations and recommendations during its deliberations:

7.1 Provisions Relating to Mineral Royalties

The Committee observed that though the Minerals and Mining (Amendment) Act, 2010 (Act 794) fixes the mineral royalty rate at five percent, the law does not prescribe the time for the payment of the royalties and the agency responsible for the collection of the royalties. The situation has led to some misunderstanding between revenue agencies and mineral right holders. The Bill therefore proposes to allow the Minister for Lands and Natural Resources to make Regulations to provide for the manner for the payment of the royalties under Clauses 1 and 5 of the Bill.

Additionally, the Bill also proposes that the Sector Minister be allowed to change the royalty rate by way of Regulations. Officials of the Ministry of the Lands and Natural Resources informed the Committee that the purpose of the provision is to give some flexibility in the fixing of the royalty rate to enable the Government change the rate to reflect the prevailing international prices of the minerals. The Committee however objected this proposal on the basis that such provision may introduce uncertainty in the minerals royalty regime which would deter investors from investing in the mining sector. The Committee was of the view that the law could be amended when the need arises to achieve the same effect.

7.2 Measures to address influx of foreigners in the small scale mining sector

It was also noted that adequate provisions have been made in the Bill to curb the influx of foreigners in the small scale mining sector. Officials of the Ministry of Lands and Natural Resources informed the Committee that there have been some challenges in the enforcement of the law to curb the incidence of foreigners engaging in small scale mining since the law does not provide specific sanctions to deal with the issue. To address this gap, the Bill

provide specific sanctions to deal with the issue. To address this gap, the Bill seeks to provide penalties to punish foreign nationals who engage in the illegal act. Upon the passage of the Bill into law, it will be an offence for foreign nationals to engage in small scale mining activities in the country and such Offenders may be sentenced to twenty (20) years imprisonment in addition to imposition of fines. Besides, Ghanaians who engage foreigners to undertake small-scale mining will face similar sanctions.

7.3 Confiscation of assets used in illegal mining operations

The Committee further noted with satisfaction that the Bill makes provision for the confiscation of equipment used in small scale mining as a way of supplementing efforts towards combating the illegal small scale menace. Apart from the sanctions that may be imposed on persons engaged in illegal small scale mining, equipment used in the illegal activity would be confiscated and ultimately forfeited to the State. Any mineral obtained from the illegal act would also be confiscated and may be forfeited to the State upon conviction. The Committee strongly believes that these measures would go a long way to discourage the practice and also to abate the devastating effects of illegal mining on the environment and pollution of water bodies.

8.0 PROPOSED AMENDMENTS

The Committee made the following proposed amendments during its deliberations:

- i. Long Title - Amendment proposed – line 2, delete “rate and”
- ii. Clause 1 - Amendment proposed – line 8, insert “of five percent” between “rate” and “and”.
- iii. Clause 2 - Amendment proposed - substitute for clause 2 of

“Offences and penalties

99. (1) A person who sells or buys minerals without a license granted under this Act or any other

summary conviction to a fine of not less than five thousand penalty units and not more than twenty thousand penalty units or to a term of imprisonment of not less than three and not more than five years or to both

(2) A person who,

(a) without a licence granted by the Minister, undertakes a small scale mining operation contrary to the provision of this Act, or

(b) contravenes a provision of this Act in respect of which a penalty has not been specified,

commits an offence and is liable on summary conviction to a fine of not less than five thousand penalty units and not more than twenty thousand penalty units or to a term of imprisonment of not less than three years and not more than five years or to both.

(3) A foreigner who contrary to the provisions of this Act undertakes small scale mining

operations commits an offence and is liable on summary conviction to a fine of not less than thirty thousand penalty units and not more than three hundred thousand penalty units or to a term of imprisonment of not less than ten years and not more than twenty years or to both.

(4) A Ghanaian who employs or engages a foreigner to undertake or participate in small scale mining commits an offence and is liable on summary conviction to a fine of not less than five thousand penalty units and not more than twenty thousand penalty units or to a term of

imprisonment of not less than three years and not more than five years or to both.

(5) Where a person is arrested for an offence under subsection (3) or (4), any equipment used in or associated with the commission of the offence and any product derived from the commission of the offence shall, regardless of the ownership of the equipment or product, be seized and kept in the custody of the district police commander until the court determines the case.”

- iv. Clause 5 - Amendment proposed – line 3 paragraph (v), delete “the rate for royalty and”.
- v. Clause 6 - Amendment proposed – delete subclause (2).

9.0 CONCLUSION

The Committee has duly scrutinized the Bill and is of the view that the passage of the Bill subject to the proposed amendments would greatly assist in combating the menace of illegal small Scale Mining activities in the country.

The Committee therefore recommends to the House to adopt its Report and pass the Minerals and Mining (Amendment) Bill, 2014 in accordance with Article 106 of the Constitution.

Respectfully submitted.



.....
HON. CLETUS APUL AVOKA
AG. CHAIRMAN, COMMITTEE ON
MINES AND ENERGY



.....
PEACE FLAWOYIFE (MS.)
CLERK TO THE COMMITTEE

MARCH, 2015

Page 6 of 6

PARLIAMENT OF GHANA LIBRARY