



GAP ANALYSIS OF THE MINERALS AND MINING ACT, 2006 (ACT 703) AND DRAFT AMENDMENT

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**Africa
Centre for
Energy Policy**



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TABLE OF CONTENTS

Abbreviations	III
Executive Summary	IV
Introduction	1
Overview of Key Considerations of The AMV and ECOWAS Mineral Sector Frameworks	2
Objective of the Gap Analysis	3
Alignment of the Draft Amendment of Act 703 to Regional Frameworks	4
Policy Gaps In Act 703 (and Draft Amendment) and Proposed Recommendations	6
Conclusion	29
References	30
List of Figures	
Figure 1: Mining Sector Contribution to Government Revenue	1
List of Tables	
Table 1: Gaps of the Minerals and Mining Act, 2006 and Recommendations	7



ABBREVIATIONS

Act 703	Minerals and Mining Act, 2006 (Act 703)
AMGF	Africa Minerals Governance Framework
AMV	Africa Mining Vision
ASM	Artisanal and Small-Scale Mining
CDA	Community Development Agreement
ECOWAS	Economic Community of West African States
EMDP	ECOWAS Mining Development Policy
EMMMDA	ECOWAS Model Mining and Minerals Development Act

EXECUTIVE SUMMARY

Ghana is greatly endowed with mineral resources that have contributed significantly to the economy through government revenues and job creation. Nonetheless, effective revenue mobilization remains a major challenge in the sector, as the State continues to lose significant revenues due to illicit financial flows and generous tax incentives. The sector has also been associated with damaging environmental effects, and destruction of the livelihoods of host communities' inhabitants, especially from illegal mining activities.

Most of the problems associated with mining in Ghana can be partially explained by the State's weak mining governance framework from a policy and legal perspective. Some measures have been established to address these problems domestically. Notably, the passage of a more progressive mineral law (Act 703, 2006) with the twin objective of improving fiscal take and ensuring effective regulation. Additionally, Ghana subscribes to regional and subregional policies and laws such as the Africa Mining Vision (AMV); ECOWAS Directive on Harmonization of the Guiding Principles and Policies Governing the Mining Sector; Africa Mining Vision Action Plan; ECOWAS Mining Development Policy (EMDP); Africa Mining Vision's African Minerals Governance Framework; and ECOWAS Model Mining and Minerals Development Act (EMMMDA).

In spite of subscriptions to these regional frameworks, Ghana's Minerals and Mining Act, 2006 (Act 703) which predates these interventions has not undergone any major amendments to reflect international best practices and address the challenges in the sector. A 2017 study by the Africa Centre for Energy Policy on the adoption of the tenets of the AMV in selected African countries showed that Ghana still lagged in contextualizing the AMV in its domestic mining laws. Act 703, 2006 has been amended twice, and Government has proposed a third amendment. Prior amendments focused on minor areas without adequate focus on aligning the law to the regional and subregional standards.

Therefore, this paper analyzes the draft amendment to the Minerals and Mining Act, to ascertain its alignment with the regional frameworks. This is to identify any gaps and propose recommendations for addressing these gaps.

The analysis shows that the draft amendment converges with the regional framework under six thematic areas:

1. **Legal and Institutional Framework** – for the first time, the draft amendment promotes contract transparency through the provision of mandatory disclosure of mineral rights, stability agreements, development agreements and any other agreement, license or permit in Section 20. It also provides a mechanism for conflict resolution through the work of an independent Judiciary.

2. **Geological and Mineral Information Systems** – the provisions in the draft amendment align with the regional requirements in areas such as the establishment of an agency responsible for the conduct of geological activities, requirement for the private sector to share geoscientific data, standardization of such data while keeping it confidential, and the prescription of fractions of blocks for artisanal and small-scale licensing.
3. **Fiscal Design** – the draft amendment has provisions for royalties, ground rent, mineral rights fees and taxes as prescribed by the frameworks. However, the specific rate to be applied in respect of taxes on profit is outlined in the Income Tax Act, 2015 (Act 896). Also, it makes provision for the participation of the State in mining operations and the inclusion of incentives such as stability agreements, transferability of capital and tax exemptions for mining companies.
4. **Localization, Local Community Development and Export of Mineral Resources** – the draft amendment broadens localization to include research and development; technology transfer; and the preference of Ghanaians particularly women and citizens of affected communities for employment. It also introduces a subsection for mandatory corporate social responsibility which instructs companies to enter into an agreement with host communities within six months of the award of a mineral right. Moreover, a non-transferable license is required for the export of mineral resources while diamonds are exported based on the Kimberly Certification Scheme. These align with provisions in the regional frameworks.
5. **Artisanal and Small-Scale Mining (ASM) Operations** – the draft amendment aligns with the regional framework on the reservation of ASM operations for locals; provision of training for small-scale miners through district offices; procedures for the sale of ASM and industrial minerals; ban on the use of Mercury; and creation of local offices to monitor the activities of ASM operators.
6. **Environment and Social Issues** – mineral right holders are required by the draft amendment, in alignment with the regional frameworks, to make the environment a priority by conducting all operations according to domestic laws including responsible mine waste management practices. Hence, environmental permits are needed for the commencement of mining operations.

Some identified gaps in the draft amendment and their respective recommendations are:

1. **Weaknesses in mobilizing the right share of revenues from resource exploitation** – Act 703, the draft amendment and the Income Tax Act, 2015 (Act 896) are silent on additional profit tax on mining operations; they do not consider different royalties for different mineral types and have no provisions on competitive auctioning of mineral rights. ACEP recommends that areas that have basic regional geological, geochemical or geophysical data on concessions being applied for, should be subject to a competitive tendering process based on guidelines developed by the Minerals Commission. The State should also be entitled to a proportion of supernormal profit to the holder of the mineral right in the form of a windfall tax as may be prescribed in the Income Tax Act, 2015.
2. **Sub-optimal contract negotiating capacities** – contract negotiation involves state institutions only. We recommend the creation of a National Advisory Council or Committee on Mineral Resources which should be apolitical with membership from identified recognized professional bodies. The Advisory Council or Committee shall advise on all matters relating to the development of the minerals sector in Ghana.
3. **Inadequate benefits sharing arrangements and management** – There are no express provisions requiring mineral right holders to consult and negotiate on issues/decisions affecting host communities. ACEP recommends an addition to section 13 of the amendment to obligate the holder of the mineral right to consult and negotiate on issues and or decisions that affect the host community throughout the mineral operations. This will enhance social legitimacy and reduce social conflicts in mineral operations.
4. **Inadequate disclosure of resource contracts** – the disclosure of beneficial ownership information is largely absent even though regional frameworks recommend strengthening transparency and access to information at all levels. The draft amendment must, therefore, emphasize the disclosure of beneficial ownership information through the creation of a subsection under Section 20, which provides for public disclosure of all contracts and permits. This inclusion serves to reduce the risk of corruption, illicit financial flows and other rent-seeking behaviour that deny the State of the right revenues and deal with conflict-of-interest situations emanating from politically exposed persons.
5. **Inadequate linkages, diversification and requisite investment to realize resource potential** – there are no provisions in the laws that promote value addition as additional consideration for granting mineral rights. Government must pursue policies at the onset of any mineral operation to promote the establishment of

facilities needed to ensure optimized value addition to minerals in-country as a first option. Government should also implement policies that include structures for planning, financing and development of infrastructural projects that support linkages development.

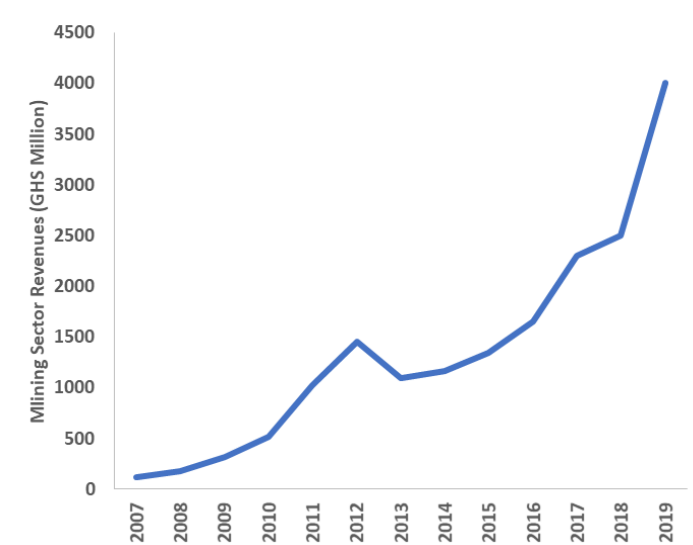
6. **Ineffective regulation of the Artisanal and Small-Scale Mining sector** – the absence of any concrete legal definition that distinguishes artisanal mining from small-scale mining has resulted in a situation where artisanal miners operate outside the remit of the law. Also, the tenure of artisanal mining licenses and processes for acquiring them are not articulated in the existing laws. ACEP recommends a redrafting of Section 82 to 89 to make a clear distinction between artisanal and small-scale mining based on factors such as certification and operating land size. We also recommend that training be a condition precedent for acquiring artisanal and small-scale mining rights to build the capacity and competence of holders.

INTRODUCTION

The mining sector plays an important role in the broad-based development of the Ghanaian economy. The fiscal contribution of the sector to domestic revenue mobilization has increased over the years (see figure 1), reaching about GHC 4.01 billion in 2019 compared to GHC 2.50 billion in 2018.¹ According to the Ghana Chamber of Mines, its members which are predominantly large scale mines also employed 11,899 persons in 2019 representing an 18% growth from 2018. The Artisanal and Small-Scale Mining (ASM) sector on the other hand is estimated to directly employ over a million Ghanaians and indirectly supports about 4.5 million more people.² In terms of its contribution to exports, the sector accounts for 37% of export revenues.³

Although the mining sector of Ghana has contributed significantly to the economy, optimal revenue mobilization remains an underlying challenge. The State continues to lose significant revenues from mining due to illicit financial flows.⁴ Again, the integration of the mining sector to the rest of the economy has been slow due to the over-dependence on fiscal benefits without sustained deliberate attempts to develop linkages along the sector's value chain.⁵ Beyond the fiscal take and economic linkages, the sector has been associated with damaging environmental effects, especially from illegal mining and destruction of livelihoods of host communities.

Figure 1: Mining Sector Contribution to Government Revenue



Source: ACEP, based on the 2019 Mining Industry Statistics and Data: Ghana Chamber of Mines

Much of the problems associated with mining in Ghana can be partially explained by the weak mining governance framework from policy and legal perspectives. However, there has been some progress to address the problem domestically and through regional efforts. In 2006, Ghana passed a more progressive Minerals and Mining Act (Act 703) with the twin objective to improve fiscal take and ensure effective regulation. Subsequently,

¹ Ghana Chamber of Mines 2019 Industry Statistics & Data. Available at: <https://ghanachamberofmines.org/wp-content/uploads/2020/07/2019-Mining-Industry-Statistics-and-Data-or-Ghana.pdf>
² McQuilken & Hilson (2016). Artisanal and Small-Scale Gold Mining in Ghana: Evidence to Inform an 'Action Dialogue.' Accessed on 25th March 2021, at <https://pubs.iied.org/sites/default/files/pdfs/migrate/16618IIED.pdf>
³ Bank of Ghana
⁴ \$5 Billion 2016 Gold Export Missing- Prez Akuffo Addo (January, 2018) Ghana Export Promotion Authority (GEPA). Available at: <https://www.gepaghana.org/5-billion-2016-gold-export-missing-prez-akuffo-addo/>
⁵ Minerals and Mining Policy, 2014

there have been regional policies and laws which Ghana subscribes to the Africa Mining Vision (AMV); ECOWAS Directive on Harmonization of the Guiding Principles and Policies Governing the Mining Sector; Africa Mining Vision Action Plan; ECOWAS Mining Development Policy (EMDP); Africa Mining Vision's African Minerals Governance Framework; and ECOWAS Model Mining and Minerals Development Act (EMMMDA).

These regional frameworks further expose the inadequacies of Act 703, 2006. It, therefore, requires that provisions of the regional frameworks are contextualized in subsequent amendments of Act 703, 2006. This is particularly necessary considering that the challenges and policy gaps that informed the development of the regional and subregional governance frameworks also plague Ghana's mineral sector.

Overview of Key Considerations of the AMV and ECOWAS Mineral Sector Frameworks

Africa, including Ghana, is greatly endowed with mineral resources, accounting for about 30 per cent of global supply.⁶ The exploitation of the continent's mineral resource endowments presents both opportunities and risks for industrial transformation and broad-based sustainable development of the continent. Despite the significant opportunities for transformation, the risks are dominant, undermining attempts to leverage extractive resources to catalyze the continent's sustainable development. These include the over-dependence on raw commodity exports, weak governance frameworks, illicit financial flows, limited diversification and rising inequality and poverty.⁷

By the concerted efforts of African Heads of State, the Africa Mining Vision (AMV) was adopted in February 2009 with a shared vision to achieve "transparent, equitable, and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development". Following the adoption of the AMV, key framework documents – the Action Plan for Implementing the AMV adopted in 2011, the Africa Minerals Governance Framework (AMGF) adopted in 2017 and the Country Mining Vision Guidebook – were developed to respectively guide countries to operationalize the Vision, to serve as a monitoring tool to track country progress with the AMV implementation and to guide States to develop Country Mining Visions.

At the level of the Economic Community of West African States (ECOWAS), the ECOWAS Mineral Development Policy (EMDP) was adopted in 2011, taking into consideration existing treaties, protocols, guiding principles, and policies that are geared towards promoting sustainable mineral sector contribution to the Community's economic growth and social development. ECOWAS again designed the ECOWAS Model Mining and Minerals Development Act (EMMMDA) in June 2019 to, among other things, complement the EMDP to improve the competitiveness of the mining sector towards a well-diversified, sustainable, and integrated socio-economic development of Member States.

⁶ African Governance Report V: Natural Resource Governance and Domestic Revenue Mobilization for Structural Transformation. 2018. United Nations Economic Commission for Africa. Available at: <https://repository.uneca.org/bitstream/handle/10855/24441/b11895147.pdf?sequence=1&isAllowed=y>

⁷ *ibid*

The key thematic areas of mining governance that these regional and subregional interventions seek to influence include the legal and institutional framework for contracts and licensing, geological and mineral information systems, fiscal design and revenue management, linkages, investment and diversification, artisanal and small-scale mining, and environmental and social issues. Despite all these frameworks, Ghana's Minerals and Mining Act, 2006 (Act 703) which predates these interventions has not seen major amendments to reflect international best practices in the aforementioned thematic areas, whose adoption could potentially improve governance to address regulatory, revenue, linkages and environmental and data challenges in the sector.

A 2017 study by the Africa Centre for Energy Policy (ACEP)⁸ on the adoption of the tenets of the AMV in selected African countries showed that Ghana still lagged in contextualizing the AMV in its domestic mining laws. Act 703, 2006 has been amended twice, in 2010 and 2015, in minor areas without adequate focus on aligning the law to the regional and subregional standards.

Objective of the Gap Analysis

Recently, Government has proposed a third amendment to the Minerals and Mining Act, 2006 (Act 703). This analysis, therefore, seeks to review the draft amendment to examine its alignment to the regional frameworks and make recommendations where necessary to address the challenges in the sector.

⁸ An Evaluation Of The Implementation Status Of The Africa Mining Vision (AMV) Through Development Of Country Mining Vision (CMV) In Ghana, Liberia, And Sierra Leone. Available at: <https://acep.africa/file/2019/11/AMVNEW.pdf>

ALIGNMENT OF THE DRAFT AMENDMENT OF ACT 703 TO REGIONAL FRAMEWORKS

After more than ten years of implementation, the Minerals and Mining Act, 2006 (Act 703) is under review for amendment. Given that Act 703, 2006 came into force before the Ghana Minerals and Mining Policy, Africa Mining Vision and ECOWAS Model Mining and Mineral Development Act, there is a need to update and revise certain provisions that have become outdated. The proposed draft amendment was assessed in line with the regional frameworks to determine its responsiveness to current governance issues in the mining sector. The findings from the analysis highlight alignments with the regional frameworks and identify gaps that must be addressed. The alignment of the draft amendment to the regional frameworks is presented below.

In the contracting and licensing process, the draft amendment converges with the regional framework on some key areas. The ownership of mineral resources is vested in the State on behalf of the people; mineral rights are a prerequisite to undertake any mineral operations; ratification of mining contracts by parliament and contract transparency through mandatory disclosure. For the first time, the draft amendment promotes contract transparency through the provision on mandatory disclosure of mineral rights, stability agreements, development agreements and any other agreement, license or permit which it stipulates in Section 20. Finally, it provides a mechanism for conflict resolution through an independent Judiciary.

The draft amendment maintains the provisions of Act 703 on geological and mineral information systems. The provisions in respect of geological and mineral information systems in the draft amendment align with the regional requirements including the establishment of an agency responsible for the conduct of geological activities, a requirement for the private sector to share geoscientific data, the standardization of geological and mineral information data while keeping it confidential, also, fractions of blocks could be prescribed for artisanal and small-scale licensing.

Like Act 703, the draft amendment has provisions on fiscal impost like those outlined by the regional frameworks. These are royalties, ground rent, mineral rights fees and all other taxes prescribed by the State. However, the specific rate to be applied in respect of taxes on profit is outlined in the Income Tax Act, 2015 (Act 896). Also, the amendment makes provision for the participation of the State in mining operations which is in alignment with regional frameworks albeit the percentage of equity participation to be taken by the State differ. Again, the amendments make provision for the inclusion of incentives such as stability agreements, transferability of capital and tax exemptions for mining companies which are useful in attracting investors to exploit our mineral resources.

Provisions on localization, local community development and export of mineral resources in the draft amendment align with regional frameworks. Under localization, the amendment improves on the provision of Act 703 by broadening this definition to include research and development; technology transfer; and the preference of Ghanaians particularly women and citizens of affected communities for employment. This provision is relevant as it broadens the benefits of mining activities to the populace as well as creating an environment for the recruitment of women in a male-dominated sector. It also provides a new subsection for mandatory corporate social responsibility through Community Development Agreements (CDA). This provision mandates companies to enter into agreements with host communities within six months of the award of a mineral right. Such agreements are useful because they improve local development in mining-affected communities. In line with the regional requirements, a non-transferable license is also required for the export of mineral resources while diamonds are exported based on the Kimberly Certification Scheme.

On environment and social issues, the draft amendment requires mineral right holders to make the environment a priority as enshrined in Act 703 and the regional frameworks. Given this, environmental permits are needed for the commencement of mining operations while specific areas have been demarcated for mining operations. Additionally, mineral right holders are obliged to conduct all operations in line with domestic laws including responsible mine waste management practices. Landowners are required to be compensated for any inconvenience in line with the regional frameworks.

The draft amendment maintains the provisions of Act 703 on ASM operations while aligning with the regional framework on the reservation of ASM operations for locals; provision of training for small-scale miners through district offices; procedure for the sale of ASM and industrial minerals; ban on the use of Mercury; and creation of local offices to monitor the activities of ASM operators.

POLICY GAPS IN ACT 703 (AND DRAFT AMENDMENT) AND PROPOSED RECOMMENDATIONS

Challenges with the legal and institutional framework for contracting in Ghana's mining sector are like those of other countries on the continent. National, regional and subregional interventions including the Minerals and Mining Policy of Ghana, the AMV's Africa Mineral Governance Framework (AMGF), the ECOWAS Mineral Development Policy, Ecowas Directive on the harmonization of Guiding Principles and Policies in the Mining Sector and the ECOWAS Model Mining and Mineral Development Act (EMMMDA) have identified these challenges. Broadly, the gaps include weaknesses in mobilizing the right share of revenues from resource exploitation; sub-optimal contract negotiating capacities; sub-optimal regulatory, auditing and monitoring capacities; a weak business sector; inadequate benefit-sharing arrangements and management; lack of requisite infrastructure to realize resource potential; a largely unregulated artisanal and small-scale mining sector; and negative impacts on the environment.

It is acknowledged that some of the weaknesses are within the domain of policy documents and legal frameworks other than the parent Minerals and Mining Act, 2006 (Act 703) such as the Environmental Assessment Regulations, 1999 (L.I 1652), Transfer Pricing Regulations, 2020 (L.I 2412), and the Minerals Development Fund Act, 2016 (Act 912). Others also lie within the domain of institutional policy guidelines and actions.

It is pertinent that reviews and subsequent amendments to the Minerals and Mining Act, 2006 (Act 703) which govern the allocation of rights to prospect, explore, develop and produce solid minerals as well as the relationship between the government and private companies in that venture, incorporate provisions to address the gaps that lie within its remit. An analysis of the challenges and gaps of Act 703, 2006 and its proposed amendment to address the same is presented below with recommendations to enable Act 703 to respond adequately to these challenges and align it to the continental and subregional frameworks.

Table 1: Gaps of the Minerals and Mining Act, 2006 and Recommendations

Challenge as identified by the AMV and EMDP: Inability to mobilize the right share of mineral rents.				
Thematic area of recommendation: Legal and Institutional Framework				
Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/ Ecowas Directive/ EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
Competitive allocation of resource exploitation rights	Act 703 and the draft amendment have no provisions on competitive auctioning of mineral rights. Except for the “so-called” strategic minerals i.e., bauxite, manganese and Iron ore, all concessions either known or unknown to host mineral deposits are treated on a first-come, first-serve basis. For strategic minerals, proposals are invited from companies as a first step before licensing.	<p>Section 13 Grant of Mineral Rights</p> <p>Insert the following:</p> <p>Where basic regional geological, geochemical or geophysical data exists on a concession being applied for, or that area has previously been explored by a company and exploration data exists on the concession, such area shall be subject to the competitive tendering process.</p> <p>Within 90 days into coming into force of this Act, the Commission shall develop guidelines for the competitive tendering of mineral concessions where basic regional geological, geochemical or geophysical data exist.</p> <p>Within 90 days of developing the guidelines for the competitive tendering of mineral concessions, the Commission shall implement the tendering process of these concessions.</p>	<p>AMV (2009): Recommended competitive auctioning of prospective resource blocks as an effective method of achieving a fair value of the resource.</p> <p>AMV Action Plan (2011): Practically, it is impossible to have full knowledge of a geological assets. Thus, where adequate geological knowledge exists, this qualifies the concession to be put on tender.</p>	<p>A competitive allocation of rights helps to set a fair market value of resources and optimizes the country’s revenue take.</p> <p>Additionally, it helps to attract companies with the right financial and technical capacities to conduct effective exploration and mining operations.</p> <p>Again, auctioning of resource blocks would be a way of funding continuous regional exploration without necessarily seeking donor support.</p>

Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/ Ecowas Directive/ EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
Disclosure of resource contracts	<p>Section 20 of the draft amendment provides for the mandatory public disclosure of all contracts and permits.</p> <p>The gap is with the disclosure of beneficial ownership information.</p>	<p>Add the following to Section 20 of the proposed amendment to Act 703:</p> <p>Section 20 (3)d: Beneficial owners of the mineral right</p>	<p>AMV Action Plan (2011): It recommends strengthening transparency and access to information at all levels.</p> <p>EMMMDA (Article 14.14.1): provides that save for classified information, records, documents and other information furnished to the Cadastre office and any other authorized state institutions shall be made available to the public on terms and conditions as shall be prescribed by the State.</p> <p>Article 23.2 (iv): provides for full disclosure of all procurement and supplier contracts to Authorized Agencies in the Member State.</p> <p>EMDP: Article 2.5 (c) enjoins the Member States to encourage the free flow of information on the Mineral Sector for institutional good governance and access by the public and other stakeholders.</p> <p>Ghana Minerals and Mining Policy: section 5.0 (5)c provides procedures for the registration of applications in a Register of mineral rights, maintained by the Minerals Commission made accessible to the public upon the payment of a nominal fee.</p>	<p>The Companies' Act, 2019 (Act 992) obligates companies to disclose beneficial ownership information. Therefore, the draft amendment should place similar emphasis on disclosing beneficial ownership information as has been done in the petroleum sector.</p> <p>The inclusion of disclosure on beneficial ownership information serves to reduce the risk of corruption, illicit financial flows and other rent-seeking behaviours that deny the State of the right revenues.</p> <p>Additionally, it helps to deal with conflict-of-interest situations emanating from politically exposed persons.</p> <p>Public access to mineral rights information about a mineral right holder improves governance issues in the minerals and mining sector and reduces corrupt practices in mineral title administration.</p>

Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/Ecowas Directive/EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
Thematic area of recommendation: Geological and Mineral Information Systems				
Knowledge of mineral assets	<p>Act 703 and draft amendments do not have provisions on the frequency of geological surveys and regular updates by the Geological Survey Authority. There are no provisions for the creation of a digital geological database, base maps and mineral occurrence map. Again, there are no provisions to ensure collaborations with the private sector and different geological and mining-related institutions, a National Strategy for mineral research development.</p> <p>The Act only requires the holder of a mineral right to furnish the Minerals Commission and the Geological Survey Authority with information generated during their geological and mineral activity.</p>	<p>Insert under section 19 of the proposed amendments to Act 703 the following:</p> <p>(4) Any geological or mineral information generated by a mineral right holder, including any such information to be generated by state agencies shall be stored in an acceptable geological and mineral information database equipped with easy retrieval systems.</p> <p>(5) Any such databank on geological and mineral information shall have a mirror databank system at the Commission or the Geological Survey Authority as may be prescribed and shall be used to foster institutional collaboration.</p>	<p>AMV Action Plan (2011): Identifies lack of new geological information in many mineral-rich African countries is due to inadequate capacity in most member states to carry out exploration activities and store these in digital geological information systems.</p> <p>AMV emphasizes the need to increase regional mapping and exploration activities to upgrade mineral inventories and geoscientific information base. It also stipulates that geological information management systems need to be improved. Institutional collaboration for improved geological and information systems is also emphasized by the action plan.</p> <p>EMMMDA: This document provides under Article 13.1.2iv that member states shall establish a web-incorporated, GIS-compatible National Cadastre System and Agency-structure aligned to the adopted regionally defined structure. It also provides under Article 5 that the Central Custodian of geological data shall build, manage and continuously update a national geological model for decision-making.</p> <p>Article 36(3) requires data, information, or maps submitted by the mineral right holder to the regulator in the Member State to be used in generating a geological, mining or mineral databank per the directives issued by the ECOWAS Commission on the format of the databank.</p> <p>Implementation Strategy Requires the Member States to identify prospective areas through geological mapping for mineral activities.</p>	<p>This reduces the risks associated with investments attraction in the sector. Once the risks are reduced governments are given the leverage to demand more in terms of benefits in contract negotiations. It helps to negate the demands for generous tax exemptions. It puts the government in a more competitive bargaining position.</p> <p>Development of geological and mineral information databank promotes green-field private sector exploration activities and lowers significantly the cost of exploration which results in lower pre-production capitalized expenditure leading to increased mineral revenues for the State going into the future.</p>

Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/ Ecowas Directive/ EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
Thematic area of recommendation: Fiscal design				
Share of resource booms	Act 703, the draft amendment and the Income Tax Act, 2015 (Act 896) are silent on additional profit tax on mining operations. This is a deviation from the Petroleum (Exploration and Production) Act, 2016 (Act 919) which provides for additional profit tax under section 89.	<p>Insert a section on Taxes:</p> <p>Taxes payable to the state for the exploitation of any mineral shall be in line with the provisions of the Income Tax Act, 2015 or any other enactment.</p> <p>Where during exploitation of any mineral, the holder discovers a supernormal grade of a mineral deposit or that mineral price increases to abnormal levels, resulting in supernormal profits to the holder of the mineral right, the state shall be entitled to a proportion of such supernormal profit in the form of a windfall tax as may be prescribed in the Income Tax Act.</p>	<p>AMV Action Plan (2011): It recommends that States,</p> <p>Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls.</p> <p>Explore strategies for investing windfall earnings and mineral rent into stabilization funds, infrastructure funds and sovereign wealth funds.</p> <p>EMDP (Article 2.2(e)): Adopt the principle of Resource Rent Tax in the fiscal regimes of Member States.</p>	<p>This is necessary to ensure that the State receives a fair share of revenues when there are resource booms.</p> <p>The windfall tax provision was in the Minerals and Mining Law PNDCL153, but subsequent legislation repealed it without any justifiable reason. Later, Gold prices rose to abnormal levels at the time the law was repealed, and the state failed to capture a proportion of such abnormal profits. Having it on the statute books is harmless since it is only applicable when certain pre-determined conditions crystalize.</p>

Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/ Ecowas Directive/ EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
Royalty design	Both documents do not consider different royalties for different mineral types.	Insert section 25 (2) The rate of mineral royalty payable shall depend on the type of mineral mined as may be prescribed.	AMV Action Plan (2011): It recommends a review of mineral fiscal regimes to optimize revenues. EMMMDA: Article 15.1.1 has provisions to vary royalties based on mineral type.	This strategy allows for tailoring the revenue benefit to the marketing properties of the type of mineral as proposed in the EMMMDA. Processing some precious minerals such as gold is cumbersome while some industrial minerals do not require such processes. It is proposed that for instance, the royalty rate for gold which is a precious mineral should be maintained at 5 per cent considering its value whilst that for bauxite which is of less value than gold could be pegged at between 6 and 15 per cent.
Fiscal Incentives	Stability Agreements – Section 48(1) of the draft amendment reduces the stability period from a maximum of 15 years to 5 years from the date of the stability agreement, renewable for a period not exceeding 5 years. The draft amendment is not clear on the frequency of renewal, creating a risk for a possible negotiation for a period that cumulatively exceeds the 10 years threshold set by the EMMMDA.	Amend the provision in section 48(3) as follows: The stability agreement may be renewed once for a period not exceeding five years subject to such terms and conditions as may be prescribed in regulations.	EMMMDA: Article 16.2.1(1) limits stability agreements to a term of not more than ten (10) years. EMMMDA: Article 16.2.1(4) provides that stability agreements shall not affect the applicability of cost on, or any law or regulation relating to health, safety, labour, human rights, or the environment	It is important to limit the renewal to “once” to ensure compliance with the EMMMDA which limits the stability period to not more than 10 years. Also, this will eliminate the possibility of multiple renewals ad infinitum provided certain conditions are met.

Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/ Ecowas Directive/ EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
	<p>Stability provision in Section 48(1a) of the Act and the meaning implied by the phrase “any other inputs necessary to the mining operations or projects” under Section 48(1a) of the draft amendment purports that stability provisions apply to all revisions that adversely affect the mine. Such provisions do not limit the scope of stability agreements.</p>	<p>Insert a new subsection: A stability agreement entered under this section shall not affect cost on, or any law or regulation relating to health, safety, labour, human rights, or the environment.</p>	<p>Ecowas Directive: Article 7 (2): A stability agreement shall reflect the national interest of the Member State and Investor.</p>	<p>It encourages investment attraction such that investors are assured some level of stability with regards to their financial commitments to the government. Additionally, it provides an opportunity for governments to abstain from freezing fiscals for a long period.</p>
	<p>Development Agreement – The draft amendment does not provide for a Development Agreement. However, the existing legislation makes provision for the threshold of investment required to qualify for a Development Agreement under the Act 703 which is USD500 million, the value of which has reduced since 2006 when the Act was passed to warrant outcomes in similar proportions in 2021.</p>	<p>Insert a Section in the draft amendment thus: Where a holder of a mineral right makes a verifiable investment of over one billion US dollars in its operations directly, the holder may enter into a Development Agreement on terms and conditions as may be prescribed.</p>	<p>EMMMDA: Article 16.2.2(1) provides for a minimum threshold of USD1 billion investment to qualify a Development Agreement.</p>	<p>Increasing the threshold to one billion will impact significantly on the local economy and allow for increased investment attraction into the sector to optimize mineral production.</p>

Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/Ecowas Directive/EMDP/ Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
Equity Participation	The draft amendment maintains the provision in section 43 of Act 703 which entitles the state to a fixed 10% carried interest for no consideration.	Insert a clause to obligate mineral right holders whose grant includes an authorization for commercial extraction to endeavour to list their mining operations on the Ghana Stock Exchange within five (5) years of mining activities in the State.	EMMMDA Article 15.3 provides that the Member States shall have the right to participate in the operations of any mineral activity in a manner as may be prescribed by the Member State. It goes on to prescribe a maximum threshold of 15 per cent carried interest. Ecowas Directive , Article 10 (3): A Member State may also participate in the equity of mining operation within their territorial area on terms to be mutually agreed upon.	Ghana's mineral sector has been de-risked significantly. Increasing the equity participation threshold will ensure that Ghana participates in the benefits associated with de-risking the sector. Further, it will minimize social conflicts in mining communities as community ownership gives comfort to the citizenry.
Challenge as identified by the AMV: Sub-optimal contract negotiating capacities.				
Process and structure for contract negotiation	It appears that the contract negotiation process involves state institutions only.	Insert a clause in the amended draft thus: Creation of a National Advisory Council or Committee on Mineral Resources. There shall be created a body which shall be apolitical with the membership of identified recognized professional bodies. The Advisory Council or Committee shall advise on all matters relating to the development of the minerals sector in Ghana.	AMV Action Plan (2011): Improve public participation through the formulation of national policies, laws and regulations and domestication of relevant provisions on public participation contained in International Conventions. EMMMDA Article 10: Proposes the establishment of a National Advisory Council on Mineral Resources	This would enhance transparency in contract negotiations and promote accountability.

Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/ Ecowas Directive/ EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
Contract/ mineral right renegotiation provisions	<p>The existing provisions in Act 703 and the draft amendment speak to the renewal of mineral rights and tenure of stability agreement. No provisions exist for renegotiation of terms upon changes in project economics, etc. Usually, renegotiation provisions are found in individual contracts.</p> <p>Also, the amended draft in section 44 (1) recommended the renewal of the lease for up to 25 years.</p>	<p>Insert a clause as section 44 (2) as follows:</p> <p>Where in the opinion of the Commission, there is a significant change in the project economics of the mineral right holder, the Commission may at any time before the expiration of the lease, call for a renegotiation of the terms and conditions for the grant of the mining lease.</p> <p>Amend section 44 (1) to read as follows:</p> <p>A holder of a mining lease may, at any time but not later than three months before the expiration of the initial term of the mining lease or a shorter period that the Minister allows, apply in a prescribed form to the Minister for a renewal of the term of the lease for a further period of up to 10 years in respect of all or any number of contiguous blocks the subject of the lease and in respect of all or any of the minerals the subject of the lease.</p>	N/A	<p>Provides opportunities for government to renegotiate contracts of mining leases in times of significant changes to economic conditions that may not have been reasonably contemplated at the time of signing the original contract. Granting a renewal for up to 25 years is too long for any renegotiation as may not have been contemplated initially. What mineral evaluation would have extended the mine life for as long as 25 years?</p>

Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/ Ecowas Directive/ EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
Conflict of interest for public officials and penalty for same in allocating mineral rights or managing contracts	The provisions on offences and penalty in Act 703 and the draft amendment do not target public officials allocating mineral rights or managing contracts.	Insert the following under section 106. Where public officer, in the discharge of his duties in the granting of mineral rights, puts himself in a conflict-of-interest position or fraudulently allocate to himself or through a proxy a mining contract which is not deemed to be in the interest of the country commits an offence and is liable on summary conviction to a fine of not less than three thousand penalty units or a term of imprisonment of not less than five years or both.	N/A	This will reduce the risks of corruption and other rent-seeking behaviours in the mineral title administration system and contracting.
Challenge as identified by the AMV: Inadequate benefits sharing arrangements and management along with national and subnational interests.				
Rent distribution systems for allocating part of mineral revenues to mining projects host communities	This gap is addressed by the Minerals Development Fund. The challenge however is that the Capping and Realignment Act, 2017 has reduced the Fund's share of mineral royalties to below the 20 per cent requirement.	Insert in section 25: Twenty per cent of mineral royalty that is received by the Republic from holders of mining leases in respect of the mining operations shall be disbursed following the Minerals Development Fund Act, 2006 (Act 912).	EMMMDA: Article 21 provides that the Member States shall ensure that a Mineral related Development Fund is set up and becomes fully functional in their territories and shall have the usage of the portion allocated to community development mainstreamed into the Local Government Administration's Development Plan.	The inclusion of this provision would improve the disbursement of mineral revenues to mining-affected communities. The application of these revenues will help to mitigate the effects of mining on livelihoods in host communities.

Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/ Ecowas Directive/ EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
<p>Continuous consultation and negotiations by Mineral right holders on issues/ decisions affecting host-mineral communities</p>	<p>There are no express provisions requiring mineral right holders to consult and negotiate on issues/decisions affecting host communities.</p>	<p>Insert the following clause in section 13 of the amended Act</p> <p>Where an applicant of a mineral right accepts the grant of the mineral right, the holder of the mineral right shall consult and negotiate on issues and or decisions that affect the host community throughout the mineral operations.</p> <p>To Section 41 (4), add the following:</p> <p>Subject to subsection 3 of this section, a community agreement may contain such clause as may permit third-party access to the resource infrastructure (particularly transport, energy and water) at non-discriminatory tariffs; and other non-income benefits such as employment for locals; assistance to community health and educational institutions; access to the use of mine infrastructure by the public.</p>	<p>AMV Action Plan (2011): Establish multi-stakeholder mechanisms to ensure broad participation in the decision making, monitoring and evaluation of mineral projects</p> <p>EMMMDA: Article 19 (viii): Member States must ensure that mineral rights holders maintain consultations and negotiations on issues or decisions affecting host-mineral communities throughout the mineral operations.</p> <p>EMDP: Article 2.6 (2).d): Strengthen multi-stakeholder consultations in all aspects of mineral activities to improve the synergy among them.</p> <p>Article 3.1 (g): Improved consultations among Mineral Sector stakeholders.</p> <p>Ecowas Directive: Article 16 (4): Companies shall maintain consultations and negotiations on important decisions affecting local communities throughout the mining cycle.</p>	<p>This will enhance social legitimacy and reduce social conflicts in mineral operations. Additionally, it will offer community stakeholders an opportunity to contribute to decision-making regarding mineral operations and the impacts.</p>

Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/ Ecowas Directive/ EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
<p>Provisions requiring mineral right holders to obtain free, prior, and informed consent of host-mineral communities throughout all phases of mineral operations, which shall not be unreasonably withheld.</p>	<p>Free, prior, and informed consent of host communities is not a requirement of mineral rights holders. It appears that the State, under sections 2, 3, 5, 13, 73, and 74, stands in the stead of mineral right holders to acquire land necessary for mining without the need for deeper and broader consultation with host communities.</p>	<p>Insert in section 13 of Act 703 the following:</p> <p>An applicant for a mineral right shall obtain the free, prior, and informed consent of host communities which consent shall not unreasonably be withheld before the grant of the mineral right by the Minister.</p>	<p>Ecowas Directive: Article 16 (3) Companies shall obtain free, prior, and informed consent of local communities before exploration begins and before each subsequent phase of mining and post-mining operations.</p> <p>AMV Action Plan: It requires member states to develop instruments to domesticate the Protocol of Free, Prior, and Informed Consent concerning communities affected by mining.</p> <p>EMMMDA: Article 19 (iii) provides that the Member States ensure that mineral rights holders obtain free, prior, and informed consent of host-mineral communities, which consent shall not be unreasonably withheld, throughout all phases of mineral operations.</p>	<p>This will enhance social legitimacy and reduce social conflicts in mineral operations. Additionally, it will offer community stakeholders an opportunity to contribute to decision-making regarding mineral operations and the impacts.</p>

Challenge as identified by the AMV: Inadequate linkages, diversification and requisite investment in infrastructure to realize resource potential				
Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/Ecowas Directive/EMDP/ Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
Establishment of the needed infrastructure to ensure optimized value-addition to minerals	Not provided for in Act 703 and the draft amendment.	<p>Create new subsections under section 16.</p> <p>Insert a provision sub-section 6(6) as follows:</p> <p>The Government shall pursue policies at the onset of any mineral operations, to promote the establishment of facilities needed to ensure optimized value addition to minerals in-country as a first option.</p> <p>The Government shall implement policies that include structures for planning, financing and development of infrastructural projects that support linkage development.</p>	<p>AMV Action Plan: It recommends that member states develop structures for planning, financing and development of infrastructural projects that support linkage development.</p> <p>EMMMDA: Article 9.2 provides that the Member States shall adopt policies that promote the establishment of facilities needed to ensure optimized value addition to minerals in-country as a first option.</p>	This will ensure that the infrastructure developed under this arrangement will be leveraged to develop other sectors of the economy.

Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/ Ecowas Directive/ EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
<p>Value addition to minerals as an additional consideration for granting Mineral Rights.</p>	<p>Both Act 703 and the draft amendment do not contain provisions that promote value addition as an additional consideration to granting mineral rights.</p>	<p>Insert a provision under section 13:</p> <p>The award of mineral rights shall 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.</p>	<p>Mining Policy: identifies Inadequate local value addition to minerals produced as a challenge. Art 10.13 states that Government will actively support applied research and development work in the mining sector, particularly in the following areas: industrial minerals, with the view to mining, processing, value addition and use in the local industry.</p> <p>EMMMDA: Article 9(2) the Member States shall adopt policies that promote the establishment of the facilities needed to ensure optimized value addition to minerals in-country as a first option.</p> <p>Art 17.3 (3) ix Promote the value addition to minerals produced in the Community as an additional consideration to granting Mineral Rights on preferential choice.</p> <p>Art 33 (2)v Promote local beneficiation and value addition of minerals within the Community to provide manufacturing feedstock.</p>	<p>This reduces the government’s overdependence on raw commodity exports and enhances optimization of the value chain for increased benefits from mineral resource exploitation.</p> <p>In addition, value addition will provide manufacturing feedstock for industrialization.</p>

Challenge as identified by the AMV: Ineffective regulation of the artisanal and small-scale mining sector				
Thematic area of recommendation: Legal and Institutional Framework				
Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/Ecowas Directive/EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
Definition of artisanal and small-scale mining	Both Act 703 and the draft amendment do not define artisanal mining. Section 111 only defines small-scale mining, and this is even in terms of the number of blocks prescribed. The absence of any concrete legal definition that distinguishes artisanal from small-scale mining has resulted in a situation where artisanal miners operate outside the remit of the law and are therefore considered illegal.	<p>Section 82 to 89 needs to be redrafted to make a clear distinction between artisanal and small-scale mining based on the definition below:</p> <p>Artisanal mining may be carried out by a person or group of persons with a Certificate of Registration and, in accordance with a production method, capital investment, and optimal safe-depth of operation as prescribed in a Member State, involving the use of rudimentary and un-motorized equipment or machinery, over a minimum land size of 3" x 3" Sub-Cadastre Block Unit to a maximum concession size below one (1) Regional Cadastre Block Unit defined by 10" x 10" per Unit.</p> <p>A small-scale mining or semi-mechanized mining operation may be undertaken by a corporate entity involving a planned and coordinated open-pit or underground mining method deploying semi-mechanized or fully mechanized operation that carries out mining through decommissioning, over a land size within one (1) to one hundred and fifty (150) Regional Cadastre Block Units defined by 10" x 10" per Unit.</p> <p>A small-scale mining activity may be carried out to a depth that shall be determined by the Chief Inspector of mines as safe.</p>	<p>Mining Policy: Article 2.1 clearly states its objectives:</p> <p>Generate detailed geological information in designated areas for demarcation to artisanal and small-scale miners.</p> <p>Provide opportunities for artisanal and small-scale miners to access financing to upscale their activities.</p> <p>Art 9.1 is on the Promotion of Efficient Artisanal and Small-Scale Mining Operations</p> <p>EMMMDA: It defines artisanal mining operation as a mining activity usually carried out by a person or group of persons with a Certificate of Registration and, in accordance with a production method, capital investment, and optimal safe-depth of operation as prescribed in a Member State, involving the use of rudimentary and un-motorized equipment or machinery, over a minimum land size of 3" x 3" Sub-Cadastre Block Unit of a Member State, to a maximum concession size below one (1) Regional Cadastre Block Unit defined by 10" x 10" per Unit.</p> <p>The EMMMDA also defines small-scale mining or semi-mechanized mining operation as a mining activity undertaken by a corporate entity that involves a planned and coordinated open-pit or underground mining method deploying semi-mechanized or fully mechanized operation that carries out mining through decommissioning, over a land size within one (1) to one hundred and fifty (150) Regional Cadastre Block Units defined by 10" x 10" per Unit.</p>	<p>It is important to expand the scope of the definition to ensure that all aspects of ASM operations are captured by the law to include registration requirements.</p> <p>Also, it might be useful to have a definition for medium scale mining and the requirements that go with it.</p>

Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/ Ecowas Directive/ EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
<p>Separate tenure of licenses for artisanal mining and small-scale mining</p>	<p>Both Act 703 and the draft amendment focus on small-scale mining without any provisions on artisanal mining. Consequently, the tenure of artisanal mining licenses and processes for acquiring them are not articulated in the law and draft amendment</p>	<p>Insert following provisions in the draft amendment</p> <p>Section 83 Qualification for Small-scale Mining</p> <p>A lease for small-scale mining shall be granted to:</p> <p>A citizen of Ghana or a body corporate owned by Ghanaians, or a partnership, co-operative or association made up of Ghanaian citizens.</p> <p>Citizens who have been duly trained and certified by an authorized body as prescribed.</p> <p>An applicant for a small-scale mining license shall demonstrate as part of the application that mining activity shall adopt a planned and coordinated mining method deploying semi-mechanized or fully mechanized operation that carries out mining through decommissioning.</p> <p>No Small-scale mining activity shall be carried out within one hundred (100) meters from any first, second or third order waterbody or watercourse, and aquifer recharge areas.</p> <p>A holder of a small-scale mining lease may use chemicals as may be authorized by the Commission</p> <p>A holder of a small-scale mining lease shall not use prohibited substances, such as mercury, in any phase of the mining activity.</p>	<p>EMMMDA: Section 14.8 of the EMMMDA has provisions on artisanal mining in this regard. For instance, it mentions that licenses for artisanal mining should not exceed three years for the first grant, renewal should not exceed 3 years and must be based on the holder fulfilling the terms and conditions of the license.</p> <p>Small-scale mining lease on the other hand has a tenure of five (5) years maximum and the same for renewals.</p>	<p>This differentiation will help to minimize the risks of environmental degradation with artisanal miners who are relatively less skilled than small-scale miners.</p> <p>Maybe useful to consider introducing another category of leases called Medium Scale Mining Lease.</p>

		<p>Section 85 – Duration of Small-scale Mining Lease</p> <p>Include as part of Section 85 (1) “... and may be renewed for a maximum period of five years” to replace “... and may be renewed on expiry for a further period that the Minister may determine”.</p> <p>A small-scale lease may be renewed where the holder fulfils the terms and conditions of the subsisting mining lease.</p> <p>No renewal shall be granted to a holder of a small-scale mining lease unless the holder demonstrates to the satisfaction of the Commission that, all environmental conditions relating to the first and any subsisting grant have been complied with.</p> <p>Insert Sections on Artisanal Mining to indicate qualification for an artisanal mining license, duration and conditions for renewal, prescribed number of blocks, fees payable for license acquisition and renewal, use of unmechanized approaches to mining etc.</p>		
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Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/ Ecowas Directive/ EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
Sale of minerals	Both Act 703 and the draft amendment have provisions under section 97 on the sale of minerals by a small-scale miner as may be prescribed in regulations. The act itself has no provision on licensing requirements for buyers and exporters of artisanal and small-scale mining outputs. The Act 703 and draft amendment defer this to rules and regulations prescribed by the Minister responsible for mining.	<p>Insert a provision under section 97 of the draft amendment as follows:</p> <p>Sect 97 (2)</p> <p>A license for the purchase and export of mineral by a non-mineral right holder shall be limited to Ghanaian controlled companies.</p> <p>For the avoidance of doubt, no foreign non-mineral right holder shall be granted a license to purchase and export any mineral from Ghana.</p> <p>A holder of a license to purchase a mineral for export shall demonstrate the repatriation to Ghana of the revenues obtained from a previous shipment of mineral before another shipment of mineral can be permitted.</p>	EMMMDA: Section 9(1)(5) and (6) require countries to license exporters of minerals. Additional sections 14.7.13 and 14.8.11 make provisions specific to artisanal mining and small-scale mining respectively in regards to the sale of minerals won.	<p>The purchase and sale of minerals especially gold are in the hands of foreign nationals and their activities lead to illicit financial outflows and capital flight from Ghana.</p> <p>It is important to underscore these provisions in the Act to limit the powers of the Minister in this regard.</p>
Prohibition of child labour	There are no provisions in both Act 703 and the draft amendment that expressly prohibits child labour in artisanal and small-scale mining.	<p>Insert section 93(1)</p> <p>No child shall visit or be seen to carry out any form of labour in mining activity.</p>	<p>Mining Policy: Child labour in mining is outlawed.</p> <p>EMMMDA: Article 24.2 requires the Member States to enact appropriate legislation which shall prevent children from visiting any mine sites or carrying out any form of labour in mining activity.</p>	This is necessary to ensure a socially responsible and sustainable artisanal and small-scale mining sector

Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/ Ecowas Directive/ EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
<p>Training as a condition precedent for acquiring artisanal and small-scale mining rights</p>	<p>The qualification for a small-scale mining license in section 83 in both Act 703 and the draft amendment do not require training in artisanal and small-scale mining.</p>	<p>Insert section 83 (d) as follows:</p> <p>has obtained the required practical and theoretical training and has been certified by a competent authority approved by the Minister. The license of competence shall be renewed annually as a pre-requisite for any artisanal and small-scale mining activity.</p>	<p>AMV (2009): It further states that there is a need to provide ASM miners with analytical skills and training on sound business management. This can facilitate the transformation of ASM from a transitory and shock-or-coping-responsive activity that takes places in “marginal enclaves” into a serious business and change ASM communities.</p> <p>AMV Action Plan: It recommends Member States develop programmes to upgrade knowledge, skills and technologies in the ASM sector.</p> <p>EMMMDA: Article 14.8.2(ii) provides that A licence for artisanal mining shall be granted to persons who have been provided training on artisanal mining by an authorized body as prescribed in the guidelines on the sector, in a Member State.</p>	<p>The rationale of the training is to build the capacity and competence of holders of artisanal and small-scale mining license in efficient and sustainable mining operations.</p>

Thematic area of recommendation: Institutional Development

Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/Ecowas Directive/EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
<p>Dedicated financing mechanisms to support artisanal and small-scale mining</p>	<p>Not captured in both Act 703 and the draft amendment.</p>	<p>Insert the following provisions:</p> <p>Financing of artisanal and Small-Scale Mining Activities</p> <p>The Minister shall through the MDF provide adequate funding for institutions to explore suitable lands for demarcation to artisanal and small-scale miners.</p> <p>The Minister shall develop appropriate financing and marketing needs for artisanal and small-scale mining activities</p> <p>The Minister shall facilitate access to funding for local participation in mineral projects in the community.</p> <p>All large-scale mining companies, shall as part of their corporate social responsibility, provide a plan for the approval of the Minister, financial support to small-scale mining enterprises in their areas of operation.</p>	<p>AMV Action Plan: It recommends that Member States develop a financing and marketing strategy appropriate to the needs of ASM programmes to upgrade ASM operations including financing and marketing programmes appropriate to the sector.</p> <p>Mining Policy: Article 2.1 Provide opportunities for artisanal and small-scale miners to access financing to upscale their activities.</p> <p>EMMMDA: Article 17.2.3 (ii) provide that the Member States shall facilitate access to funding for local participation in mineral projects in the Community, particularly for women-owned enterprises.</p> <p>EMMMDA Implementation Plan requires the provision of financial support to medium and small-scale enterprises in the Community as part of the Corporate Social Responsibility of large-scale mining companies.</p>	<p>A dedicated source of financing for ASM operations will address the financing challenges faced by miners.</p>

Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/ Ecowas Directive/EMDP/ Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
<p>Targetted provisions to make information (including geoscientific data) accessible to artisanal and small-scale mining operators</p>	<p>Not captured in both Act 703 and the draft amendment.</p> <p>The absence of a provision to give artisanal and small-scale miners access to geo-scientific information has led to encroachment on concessions belonging to large-scale mining companies and indiscriminate degradation of land by illegal miners.</p>	<p>Insert the following in section 82 of Act 703</p> <p>All geological or mineral information on an area demarcated for artisanal or small-scale mining shall be provided to the applicant on the grant of the license.</p> <p>Where an application for an artisanal or small-scale mining license falls outside a demarcated area, the Commission and the Geological Survey Authority shall provide all geological or mineral information free of charge to the applicant on the grant of the license.</p>	<p>N/A</p>	<p>This provision would reduce significantly the environmental destruction posed by the “hit and run” attitude of the miners in search of viable prospective areas.</p>

Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/Ecowas Directive/EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
<p>Technology development and transfer to the artisanal and small-scale mining subsector.</p>	<p>Not captured in both Act 703 and the draft amendment</p>	<p>Insert in section 82 the following:</p> <p>All large-scale mining companies shall as part of their corporate social responsibility provide a plan for the approval of the Minister, technology transfer to artisanal and small-scale mining enterprises in their areas of operation.</p>	<p>AMV (2009) implementation plan requires Governments to promote technology innovation hubs.</p> <p>Article 6 Identified as a problem, lack of training and appropriate technology to ASM miners.</p> <p>AMV Action Plan: It recommends that Member States develop programmes to upgrade ASM operations including models for partnership with government and large-scale mines to facilitate access to technology, skills, knowledge and market.</p> <p>EMMMDA: Article 17.1. (1) technology transfer is a requirement for the grant of a mineral right to large scale companies.</p> <p>Art 17.2 (4) iii: Requires large scale companies to promote the understanding and application of international mineral-market principles and technology developments to improve the regulation of mineral activities.</p> <p>Art 17.2 (4) xiii Ensure that a holder of a mineral right submits for approval of the Member State, a programme of activity for the development of Institutional, Human, Technical, and Financial Capacities and Technology Transfer into the Member State.</p>	<p>The focus of this is to build the technical and technology capacities of ASM sector players to ensure efficiency in mineral production from this sub-sector since it accounts for more than one-third of all gold produced in Ghana.</p>

Indicator	Gaps in Act 703 and Proposed Amendment	Recommendations for inclusion in the Minerals and Mining Act, 2006, Act 703	AMV/EMMMDA/ Ecowas Directive/ EMDP/Minerals & Mining Policy of Ghana Positions where applicable	Justification for proposed recommendation
Offences	Section 99 sets the upper limit for offences in dealing with minerals. A judge sitting on such a case could give a more lenient sentence.	Amend section 99(1) to read A person who sells or buys minerals without a licence granted under section 97 or 104 or without a valid authority granted under this Act or any other enactment commits an offence and is liable on summary conviction to a fine of not less than Ten thousand penalty units or a term of imprisonment of not less than five years or both.	N/A	The environment is under serious threat. This provision will take out discretionary powers of judges that may hand down lenient sentences to offenders.

CONCLUSION

Mining sector laws across the world continue to evolve with changing governance realities, changing country-level expectations, and changing international standards. The Minerals and Mining Act, 2006 (Act 703) which is the subject matter of review served the country's needs in the past when the demands of mining sector governance were not as expansive as it is today. It has therefore become imperative to review Act 703 to bring it to par with the Africa Mining Vision (AMV) and all the relevant regional and subregional governance frameworks that take inspiration from the AMV.

ACEP's review of the draft amendment of Act 703 against, the AMV's Africa Mineral Governance Framework (AMGF), the Ecowas Mineral Development Policy, ECOWAS Directive on the harmonization of Guiding Principles and Policies in the Mining Sector and the ECOWAS Model Mineral and Mining Development Act (EMMMDA) reveals that Act 703 does not adequately address some governance challenges, particularly in the areas of contracting and licensing, fiscal regimes, artisanal and small-scale mining, and linkages, investment, and diversification.

The adoption of the recommendations made, based on the key findings would enrich the provisions of a new Minerals and Mining Act to strengthen mining sector governance in Ghana. Amendment of Act 703 should also trigger the amendment of key areas of Ghana's 2014 Minerals and Mining Policy which is already due for review. Additionally, the review of other subsidiary laws is pertinent particularly those dedicated to the mining sector, including the environment, local content, linkages, and diversification, fiscal regimes, licensing, and artisanal and small-scale mining.

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