# Paralysis of Mining Laws and Implications on Economic Development: A Contextual Analysis

Oliver Barker-Vormawor, Esq.

FA678, Aar-Bakor Street, Ogbojo, Accra, Ghana
Telephone: +233 302 555327
Website: www.mfwa.org
Email: info[@]mfwa.org

**Publisher**
Media Foundation for West Africa

**Editor**
Kojo Impraim, Ph.D.

# Table of Contents

# 1. Introduction

Ghana is richly endowed with mineral resources. Ghana is known globally for gold as being the dominant mineral produced. Other precious minerals that are mined include bauxite, manganese, diamonds and other minerals.

Mining is one of the major primary economic activities in Ghana. It plays a vital part contributing significantly to foreign exchange earnings and the country's GDP. Over the years, the sector has contributed significantly to Ghana's socio-economic development through revenue generation, employment creation and increase in foreign direct investments.

This can somewhat be attributed largely to the institution of comprehensive and attractive legal, fiscal and institutional frameworks, which have helped to attract investments into the mining industry. Despite its potential, the mining sector continues to face regulatory, environmental, and socio-economic challenges.

This report examines the gaps and inefficiencies in Ghana's mining laws and policies, explores how these contribute to economic stagnation, and proposes strategic reforms to align Ghana's mining governance with responsible global practices.

# 2.Background and Purpose of the Report

Ghana's mining sector is deeply rooted in its history, having played a central role in its pre-colonial, colonial, and post-independence economic development. From the 7th and 8th centuries when gold attracted Arab traders, to the height of colonial exploitation when Ghana became known as the Gold Coast, and later to nationalisation and liberalisation efforts in the post-independence era, mining has shaped the country's economic and legal landscape. Successive legislative milestones from the Minerals Act of 1962 to the Minerals and Mining Act, 2006 (Act 703), and its amendments have sought to bring structure, fairness, and sustainability to the governance of Ghana's mineral wealth[1].

In theory, Ghana's mining laws are abundant and comprehensive. Yet, the 21st century has revealed a troubling disjunction between legal architecture and practical outcomes. Despite the presence of numerous regulatory instruments, oversight bodies, and reform efforts, the mining sector continues to be beset with weak enforcement, environmental degradation, investor uncertainty, and limited local benefits. This paradox, a surplus of mining legislation coexisting with weak developmental impact, reflects what this report refers to as a paralysis of mining laws.

This paralysis is not merely technical, but systemic. It is shaped by deeper structural, political, and institutional dysfunctions such as fragmented mandates, weak enforcement capacity, and policy incoherence often exacerbated by political polarisation. As a result, the promise of the mining sector as a driver of sustainable development remains unrealised.

This report is developed within the framework of the national project titled "Breaking the Gridlock: Resolving Polarisation-Induced Policy Paralysis in Ghana." This project investigates how entrenched partisanship and institutional fragmentation contribute to stagnation in public policy implementation across various sectors.

# 3.Objectives of the Report

The overarching purpose of this report is to explore the disjuncture between Ghana's robust mining legal regime and its underwhelming developmental outcomes. It seeks to offer a contextual analysis of how institutional and political gridlock continues to hinder effective mining governance, and to present forward-looking recommendations for reform.

Specifically, this report aims to:

[1] See Adu, S. A., *The History and Politics of Mining in Ghana*, Ghana Publishing Corporation, 2010, pp. 15–20.

i. Provide an overview of Ghana's minerals and mining laws and policies, including the historical evolution and current institutional framework;
ii. Analyse the impact of irresponsible minerals and mining laws and policies on economic development, especially in relation to revenue losses, environmental damage, and community discontent;
iii. Identify the challenges of implementing responsible mining laws and policies, with a focus on enforcement bottlenecks, legal fragmentation, and institutional weaknesses;
iv. Offer recommendations for responsible mining governance that align with global standards, emphasising transparency, sustainability, and inclusive development.

By addressing these objectives, the report contributes to broader efforts to rethink natural resource governance in Ghana as a political, social, and developmental imperative rather than an arcane legal exercise.

## 4. Methodology


This report employs a qualitative research approach grounded in legal, policy, and institutional analysis. It is designed to provide a comprehensive understanding of Ghana's mining laws and their developmental implications. The methodology combines both descriptive and analytical techniques to evaluate the legal and policy frameworks governing the mining sector, and to assess their effectiveness within the broader context of governance paralysis in Ghana.

## 4.1 Scope of Work and Research Methods

The scope of this assignment includes:

i. A desk-based literature review of both primary and secondary sources of laws regulating the mining sector in Ghana;
ii. A historical and institutional analysis of the evolution and current state of mining legislation and regulatory bodies;
iii. An impact assessment of mining laws and policies on economic development, focusing on revenue generation, environmental sustainability, and community welfare;
iv. An examination of legal and institutional challenges, including enforcement bottlenecks, policy inconsistencies, and regulatory overlap;
v. The development of practical, forward-looking recommendations for reforming mining laws and governance frameworks in Ghana.

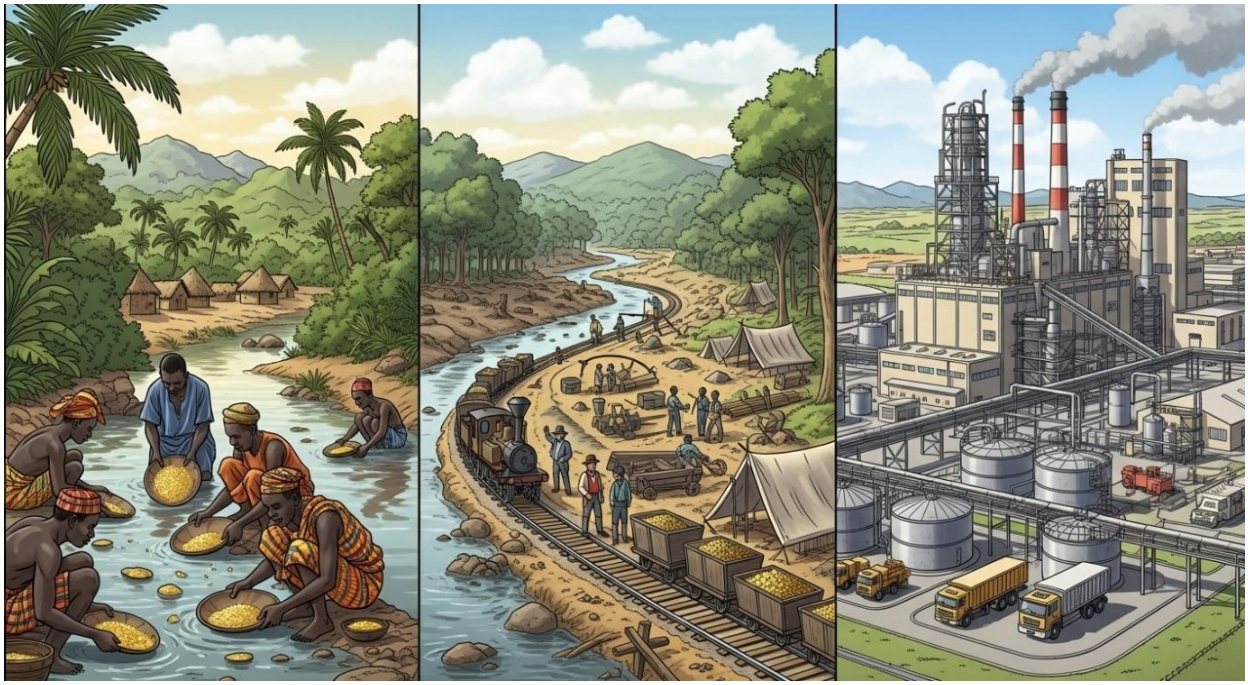
To execute the above scope, the report relies on the following research methods:

i. Legal and Policy Document Analysis: This involves a thorough examination of primary legal texts, including the Minerals and Mining Act, 2006 (Act 703) and its amendments, subsidiary legislation, constitutional provisions, and intersecting laws on land, the environment, and local governance.
ii. Review of Secondary Literature: Scholarly articles, legal commentaries, policy briefs, and academic studies were reviewed to enrich the analysis, and provide theoretical grounding for the concept of legal and policy paralysis.
iii. Comparative Analysis: Global best practices in mining governance were reviewed to benchmark Ghana's regulatory framework against international

standards, particularly in areas such as transparency, accountability, and community participation.

iv. Contextual and Thematic Analysis: The report explores the social, economic, and political dimensions of Ghana's mining regulation, with a focus on how systemic dysfunctions such as institutional fragmentation and political interference contribute to policy inertia.

# 5.Historical Context of Mining in Ghana



Mining in Ghana predates not only independence, but, also the colonial contact. Gold mining in Ghana in particular has a very long history, with evidence suggesting that extraction began centuries before European contact. Gold working and trade in the area can be traced to at least the 7th and 8th centuries A.D., when Arab traders were drawn by the abundance of deposits.[2] Long before the Portuguese arrival in 1471, local populations were engaged in artisanal mining, employing techniques such as alluvial panning, shallow pit digging, and shaft mining.[3] Oral traditions and early European accounts describe the Akan forest states, including Adanse, Denkyira, Wassa, and Akyem, as centres of vibrant gold production.[4]

The socio-political role of gold was equally significant. Among the Asante; for instance, gold was not only a means of acquiring firearms and foreign goods, but,

[2] Asumda, David Asumda, Francis Situma Situma, and Kariuki Muigua Muigua. "GHANA'S REGULATORY FRAMEWORK AND SUSTAINABILITY IN THE MINING SECTOR." *UCC Law Journal* 4, no. 1 (2024): 158-189. TE Anin, *Gold in Ghana* (4th edn Selwyn Publishers, Accra 1994).

[3] Ofosu-Mensah, Emmanuel Ababio. "Historical overview of traditional and modern gold mining in Ghana." *International Research Journal of Library, Information and Archival Studies* 1, no. 1 (2011): 006-022.

[4] Ibid

also the foundation of political authority and symbolism, epitomised in the Golden Stool of the Asantehene.[5] Gold dust functioned as a currency in everyday exchange, while gold nuggets were monopolised by rulers as part of state regalia.

When Europeans reached the coast in the late 15th century, the area was already widely known as the "Gold Coast," reflecting its centrality to long-distance trade.[6] The Portuguese, followed by the Dutch, Danes, and English, established forts and castles such as Elmina (1482), primarily to secure access to gold. For much of the 16th and 17th centuries, the region's gold trade underpinned European expansion and sustained the rise of coastal and inland Akan polities.[7]

By the late 19th century, under formal British colonial rule, large-scale mechanised mining took shape. Legislation such as the Gold Mining Protection Ordinance of 1905[8] restricted the participation of indigenous populations, barring them from owning mercury and other resources necessary for processing gold.[9] This led to the consolidation of mining rights in the hands of British and foreign investors, effectively relegating Ghanaians to the roles of labourers and artisanal miners.[10]

In 1905, the Gold Mining Protection Ordinance was followed by the passage of the Mercury Ordinance[11], which made it illegal for indigenes to own mercury. Following independence in 1957, the Ghanaian state enacted new laws to reclaim control over mineral wealth. These colonial ordinances were replaced by the Mining and Minerals Act, 1962 after relating to land and minerals in 1962. The Minerals Act of 1962 vested ownership of all minerals in the President on behalf of the people, while the Concessions Act and the Administration of Lands Act restructured mineral rights and land administration.

The Minerals Act, 1962 (Act 162) which vested the ownership of minerals in *"the President on behalf of the Republic and in trust for the People of Ghana"*[12], also tightened the area and duration provisions relating to mineral rights[13], and gave the President

---

[5] Arhin, Kwame. "Gold-mining and trading among the Ashanti of Ghana." *Journal des africanistes* 48, no. 1 (1978): 89-100.

[6] Asumda, David Asumda, Francis Situma Situma, and Kariuki Muigua Muigua. "Ghana's Regulatory Framework and Sustainability in the Mining Sector." *UCC Law Journal* 4, no. 1 (2024): 158-189.

[7] Ofosu-Mensah, Emmanuel Ababio. "Historical overview of traditional and modern gold mining in Ghana." *International Research Journal of Library, Information and Archival Studies* 1, no. 1 (2011): 006-022.

[8] Gold Mining Protection Ordinance (Cap. 149).

[9] Asumda, David Asumda, Francis Situma Situma, and Kariuki Muigua Muigua. "Ghana's Regulatory Framework and Sustainability in the Mining Sector." *UCC Law Journal* 4, no. 1 (2024): 158-189.

[10] Ofosu-Mensah, Emmanuel Ababio. "Historical overview of traditional and modern gold mining in Ghana." *International Research Journal of Library, Information and Archival Studies* 1, no. 1 (2011): 006-022.

[11] Mercury Ordinance (1982).

[12] Ibid, s 1

[13] FS Tsikata, 'The Vicissitudes of Mineral policy in Ghana' (1997) 2 Resources Policy 9-14.

the power to demand the sale to a state agency of minerals produced in Ghana at a negotiated price determined by the High Court[14].

The Administration of Lands Act, for its part, required that payments in respect of stool lands be made, not directly to the representatives of the owning community, but to the Minister who would allocate portions for the maintenance of the traditional authority, projects for the benefit of the people of the area, and the local government bodies in the area. The last was the Concessions Act, 1962[15] which provided for the establishment of a tribunal and gave the Minister in charge power to determine a concession where the holder unreasonably refused to vary a term which had become oppressive due to a change in economic conditions, the holder had lost the financial ability to develop it, or the land specified had not been developed or used in accordance with the object for which the concession was granted during the eight years preceding the application of the Minister[16].

The economic crisis of the late 1970s and early 1980s; however, led to stagnation in the sector until reforms under the Structural Adjustment Programme of the 1980s re-attracted foreign investment. Prior to the Structural Adjustment Programme, the mining sector saw no significant new investments in Ghana's mining sector. Output in almost all the mines declined and the sector contributed relatively little to gross national earnings because production of Ghana's flagship mineral, gold, had declined to about 283,000 ounces per annum.[17]

The Structural Adjustment Programme introduced in 1983 ushered in a series of reforms that reshaped Ghana's mining sector. Legislative changes were implemented to create a more favourable environment for foreign investment, accompanied by the introduction of environmental regulations and other sectoral reforms. In 1986, the Minerals and Mining Law was enacted to guide and promote the systematic growth of the industry. This was followed in 1989 by the passage of the Small-Scale Gold Mining Law, the Mercury Act, and the Precious Minerals Marketing Corporation Act. Collectively, these laws sought to formalise and regulate small-scale mining, control the use of mercury in gold extraction, and provide state-recognised marketing outlets for gold produced by artisanal miners. The institutional framework established under these statutes also mandated the provision of technical support to small-scale operators. These interventions attracted renewed investment, revitalised the mining industry, and substantially boosted national gold output.

[14] Ibid

[15] Concessions Act, 1962 (Act 124)

[16] Ibid s 3

[17] Asumda, David Asumda, Francis Situma Situma, and Kariuki Muigua Muigua. "GHANA'S REGULATORY FRAMEWORK AND SUSTAINABILITY IN THE MINING SECTOR." *UCC Law Journal* 4, no. 1 (2024): 158-189.

Although Ghana's mining sector has transformed from indigenous artisanal practices through colonial domination to post-independence state control and eventual liberalisation, the contemporary landscape is marked by greater complexity. Beginning the 1980s, successive reforms introduced legislation that liberalised the industry, encouraged foreign investment, revitalised gold production, and established regulatory frameworks for environmental management and small-scale mining.

This momentum continued with the passage of the Minerals and Mining Act, 2006 (Act 703), and its subsequent amendments, alongside a suite of regulatory instruments aimed at modernising the sector. However, despite the expansion of legislation and the establishment of multiple regulatory bodies, Ghana's mining sector has slipped into what may be described as a state of regulatory and developmental stagnation.

This paralysis is evidenced by weak enforcement, duplication of institutional functions, limited technical capacity, and recurring policy reversals. Such deficiencies have eroded investor confidence and curtailed the sector's ability to serve as a driver of inclusive and sustainable growth. In effect, the growth in legal instruments has not translated into stronger governance outcomes. Instead, entrenched political partisanship, fragmented oversight structures, and inadequate accountability mechanisms have produced inertia that risks eroding earlier gains. This outlook underscores the urgency of rethinking the institutional design of mining governance in Ghana today.

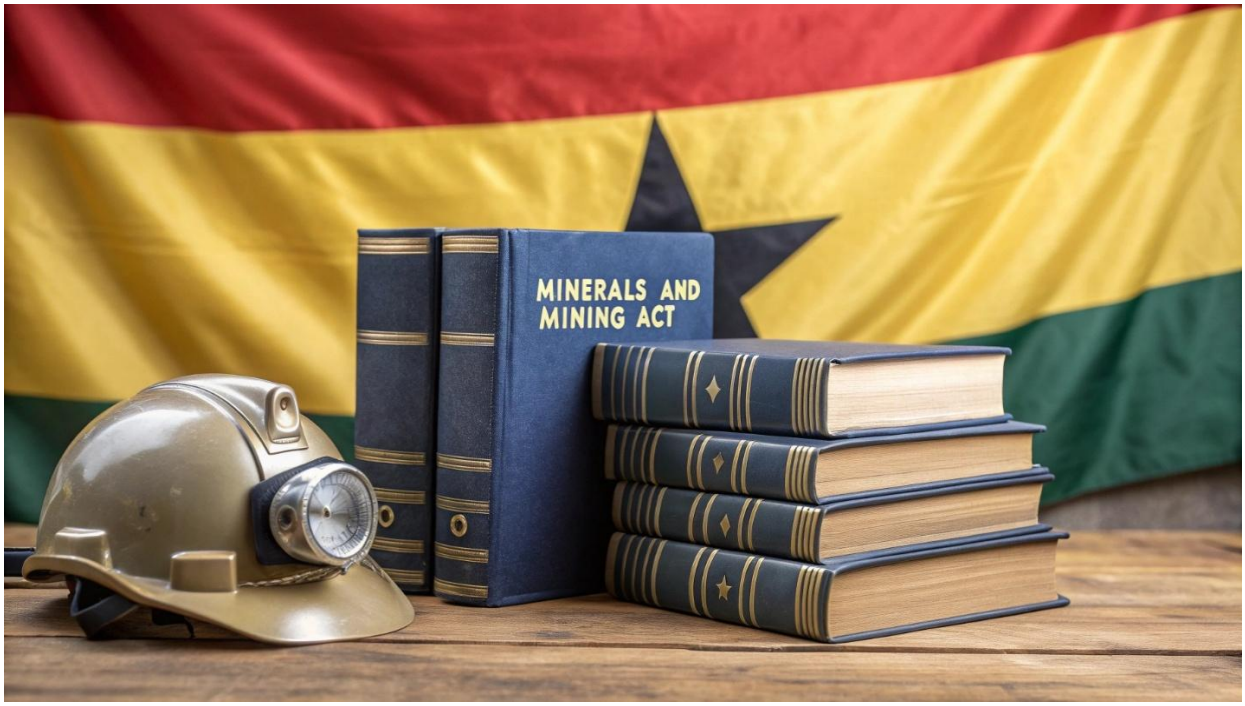
# 6.Overview of Ghanaian Mining Laws

Mining, which entails the exploration and exploitation of mineral resources, is a regulated activity in Ghana. The regulatory framework is expansive and has evolved over time, reflecting the country's shifting political, economic, and environmental priorities.

Long before Ghana attained independence, colonial authorities had already established legal regimes to control access to and benefit from mineral wealth. Since then, successive governments have progressively refined and expanded the legal architecture to respond to emerging challenges such as land rights, environmental protection, local participation, and revenue accountability. Today, mining in Ghana is governed by a complex interplay of constitutional principles, statutory instruments, and administrative guidelines, all designed to ensure that the exploitation of mineral resources serves the broader national interest.

At the heart of this regulatory regime is the recognition that mineral resources are of strategic national importance and must be managed in a manner that balances private investment with public interest. The law establishes clear rules on how mineral rights are granted, who qualifies to hold them, and the processes by which mining operations are monitored and enforced. It also sets out the obligations of mining companies toward local communities, environmental sustainability, and revenue contribution to the state. Over time, the regulatory system has grown more sophisticated, incorporating not only issues of ownership and control, but also broader concerns about transparency, corporate accountability, and long-term social and ecological impacts of mining activities.

The following section provides an overview of the legal framework that governs mining in Ghana, with a focus on its constitutional foundations and statutory evolution. It outlines how the current regulatory architecture has been shaped by historical developments, policy choices, and institutional mandates, and highlights the key features that define the legal control of mineral resources in the country. This overview sets the stage for a deeper understanding of the principles, procedures, and obligations that structure the mining sector today.




## *a. Colonial Foundations and the Constitutional Evolution of Ghana's Gold Mining Regime*

As already intimated above, Ghana's contemporary gold mining laws and regulatory framework are deeply rooted in a colonial legacy that imposed foreign control over mineral wealth and institutionalised the *regalian principle*, where all minerals were deemed to be the property of the sovereign. This legacy, sustained through post-independence legislation and constitutional codification, continues to shape the country's mining governance. Understanding the paralysis within Ghana's mining laws requires an appreciation of this historical continuity and the evolving legal architecture that governs gold exploitation today.

## b. Centralisation and Foreign Domination of Gold Mining


Under colonial rule, mining legislation was deliberately structured to centralise authority over mineral resources in the British Crown. The enactment of the Gold Coast Mining Ordinance of 1907, together with subsequent amendments in 1926, 1938, and 1947, marked a decisive consolidation of British dominance over gold exploitation. These ordinances criminalised unlicensed prospecting and trading, thereby safeguarding the colonial economy and systematically restricting African participation.

The 1936 Minerals Ordinance went further by vesting all mineral rights in the Crown, granting government unfettered discretion to allocate or revoke mining concessions, and mandating permits for virtually all mineral-related activities. This framework entrenched a model of exclusion, privileging foreign capital and enabling companies such as Ashanti Goldfields Corporation to secure extensive concessions with official backing.[18] Conversely, indigenous operators, particularly artisanal miners, were pushed to the margins, and their activities rendered illicit within the colonial legal order.[19]

## c. Post-Independence Reforms and Legal Nationalisation

With the attainment of independence in 1957, the Ghanaian state inherited both the regalian principle and a centralised legislative infrastructure. However, the newly sovereign government embarked on a mission to redefine mineral ownership and control in the national interest. Under President Kwame

[18] Ayelazuno J and Mawuko-Yevugah L, 'The World Bank and the Politics of Mining in Ghana' (2019) Journal of Contemporary African Studies 37(1), 65.

[19] Sewordor K, 'Decolonising Ghana's Small-Scale Gold Mining Industry' (2020) The Extractive Industries and Society 7(3), 904–913.

Nkrumah's socialist-leaning policies, Ghana pursued a deliberate course of mineral nationalisation. This culminated in the passage of the Minerals Act, 1962 (Act 126), which vested all minerals in the President of Ghana "on behalf of and in trust for the people of Ghana."[20]

Although Act 126 safeguarded private rights existing before its enactment, it simultaneously granted the government broad powers to nationalise concessions through executive instruments. This law served not only as a declaration of sovereignty over resources, but, also as a legal framework for state-led mining operations. State-owned enterprises such as State Gold Mining Corporation (SGMC) and Ghana Consolidated Diamonds were established to produce and market minerals. This period also saw a restrictive exchange control regime and high taxes that hindered private sector participation. By the late 1970s, Ghana's mining sector had entered a period of stagnation due to inefficiency and under-investment.[21]

## 7.The Constitutional Embedding of Mineral Ownership


The regalian doctrine introduced by the colonial regime and affirmed by the 1962 Minerals Act became entrenched in Ghana's constitutional development. Each

[20] Minerals Act 1962 (Act 126), s 1.

[21] Tsikata (n 1) 10.

successive constitution - 1960, 1969, 1979, and 1992 - reinforced the colonial practice that ensured that ownership of the minerals was legally assigned to the people and were deemed to be held in trust by the President as representative of the State.

The 1960 Constitution, which inaugurated Ghana's First Republic, concentrated executive authority in the office of the President and, by implication, reinforced state sovereignty over natural resources. While the text did not expressly mention mineral ownership, its broader centralisation of power effectively preserved the post-colonial state's control of the mining sector and continuity with the colonial model of state dominance.

The 1969 Constitution, which ushered in the Second Republic following a period of military rule, reintroduced parliamentary democracy while retaining strong executive authority. In respect of natural resources, it upheld the regalian principle by affirming state control over mineral wealth. Rather than displacing this doctrine, the Constitution deferred to statutory instruments such as the Minerals and Mining Act, 1962 (Act 126), which had already vested ownership of minerals in the state, thereby ensuring continuity of the centralised legal framework.

The 1979 Constitution, which established the Third Republic, set out a more elaborate democratic framework with stronger commitments to accountability and decentralisation. Nonetheless, in the domain of natural resources, it continued the tradition of state custodianship over mineral wealth. Mineral ownership was affirmed as a collective national asset, to be administered by the executive on behalf of the people, thereby sustaining the regalian principle within a framework that sought greater transparency in governance.

# 8. Mineral Rights under the 1992 Constitution of Ghana


The 1992 Constitution, which ushered in the Fourth Republic and remains Ghana's supreme law, offers the most explicit constitutional articulation of mineral ownership. Article 257(6) vests all natural mineral resources in the President, to be held in trust for the people of Ghana. In doing so, it codifies the regalian principle within a constitutional framework, consolidating sovereign control over mineral wealth in the state.

This arrangement empowers the executive to direct exploration, licensing, and management, thereby institutionalising state dominance as the organising principle of Ghana's mineral governance. The provision reflects both colonial and post-independence legal continuities; particularly, the vesting of mineral rights in the state under the Minerals Act, 1962 (Act 126), and now serves as the constitutional foundation for all subsequent mineral rights regimes and regulatory structures.

Article 257(6) of the 1992 Constitution provides that:

> *"Every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, watercourses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the Republic of Ghana and shall be vested in the President on behalf of, and in trust for the people of Ghana."*

This provision makes clear that all mineral resources in their natural state belong to the Republic of Ghana and not to private individuals, even when the minerals are located on privately held land. The provision is comprehensive, extending the state's ownership from land-based deposits to marine and offshore territories within Ghana's jurisdiction, including the exclusive economic zone and continental shelf. It reflects an intent to safeguard national sovereignty over natural resources and prevent private or foreign monopolisation of mineral wealth.

Importantly, Article 257(6) also introduces a fiduciary trust element by stating that mineral resources are held "on behalf of, and in trust for the people of Ghana."[22] This imposes a constitutional obligation on the President and the executive to manage Ghana's mineral wealth not merely as state property, but as a public trust, to be administered transparently and for the equitable benefit of current and future generations.

In addition to vesting ownership in the state, Article 268(1) of the Constitution adds a layer of parliamentary oversight by requiring that:

> *"Any transaction, contract or undertaking involving the grant of a right or concession by or on behalf of any person including the Government of Ghana, to any other person or body of persons, howsoever described, for the exploitation of any mineral, water or other natural resource of Ghana made or entered into after the coming into force of this Constitution shall be subject to ratification by Parliament."*[23]

This requirement serves as a constitutional check on the executive's discretion in granting mining leases and concessions. It ensures that mining leases, especially those with foreign investors, are subject to public scrutiny and democratic accountability through parliamentary ratification. The provision is particularly significant in guarding against opaque or exploitative agreements that could harm national interests or deprive communities of fair compensation and development benefits.

Together, Articles 257(6) and 268 reflect a dual constitutional approach to mineral rights in Ghana; i.e. ownership and sovereignty as well as oversight and accountability.

The Constitution also indirectly reinforces the state's developmental obligations with regard to mineral exploitation through its Directive Principles of State Policy (Chapter 6), particularly Article 36(9), which calls on the state to ensure that natural

[22] Article 257 of the Constitution, 1992.

[23] Article 268 of the Constitution, 1992.

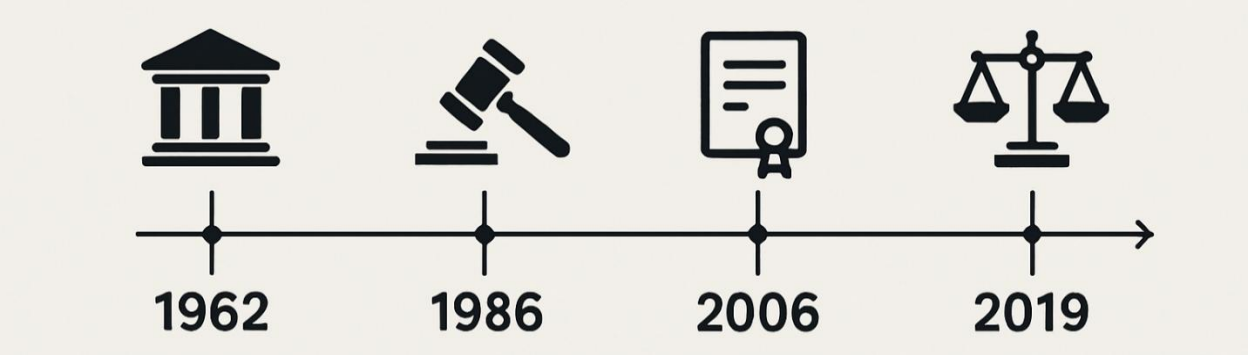
resources are used "to promote the development of the country and the well-being of the people."

Apart from the constitution which is the fundamental law, the legal framework governing mining in Ghana can broadly be classified into core laws (statutory legislation) and complementary laws (subsidiary legislation). Core laws are Acts of Parliament that form the primary legal foundation for the mining sector. These include, the Minerals and Mining Act, 2006 (Act 703), which is the principal legislation regulating all aspects of mineral exploration and exploitation in Ghana and its amendments, such as the Minerals and Mining (Amendment) Act, 2010 (Act 794) and Act 995 of 2019. Other core laws include the Minerals Commission Act, 1993 (Act 450) and the Minerals Income Investment Fund Act, 2018 (Act 978) as well as the Kimberley Process Certificate Act, 2003 (Act 652).

In contrast, complementary laws are supporting instruments enacted under delegated authority to operationalise or clarify the provisions of core legislation. These typically take the form of Legislative Instruments (LIs) and regulations issued by relevant authorities. Examples include the Minerals and Mining (Licensing) Regulations, 2012 (L.I. 2176), the Minerals and Mining (Compensation and Resettlement) Regulations, 2012 (L.I. 2175), and the Minerals and Mining (Health, Safety and Technical) Regulations, 2012 (L.I. 2182).

Against this backdrop, the next section will examine the core legal instruments governing the mining sector in Ghana, with a particular focus on their relevance to gold mining and the structural challenges that contribute to policy paralysis.

## 9.Statutory Framework




Prior to the enactment of the current principal mining legislation the Minerals and Mining Act, 2006 (Act 703), Ghana's mining sector was governed by a fragmented and outdated collection of laws, many of which had become inadequate for modern regulatory demands. These ranged from the Minerals Act, 1962 (Act 126) which entrenched state ownership, but employed cumbersome nationalisation powers to military-era regulations like Mining and Minerals Law, 1986 (PNDCL 153), Mercury

Law 1989 (PNDCL 217), Small-Scale Gold Mining Law 1989 (PNDCL 218), and PNDCL 219 (1989) which created the Precious Minerals Marketing Corporation.

These laws were increasingly unsuitable for modernisation goals posing serious barriers to investment and sustainable development. Their repeal enabled the consolidation of mining law under Minerals and Mining Act 703 and its amendments, paving the way for a unified, transparent, investment-friendly, and environmentally sound regime.

## 9.1 Key Repealed Laws


### *i. The Minerals Act 1962 (Act 126)*

In 1962, the Minerals Act, 1962 (Act 126) was passed which Act provided for the vesting of the "entire property in, and control of all minerals in, under or upon, any lands in Ghana, all rivers, streams and watercourses throughout Ghana and land covered by territorial waters" in the President of the Republic of Ghana in trust for the people of Ghana. Minerals therefore became the property of the State regardless of where they were found. At this point, ownership of land became divorced from ownership of minerals found in, on or over the land.

While this Act was significant for establishing state ownership over all minerals in Ghana, it largely mirrored the centralised command-style governance of the post-independence era. Its key limitation was the excessive concentration of powers in the executive, particularly the President, who could nationalise mining concessions through executive instruments without adequate parliamentary oversight.[24]

The Act also lacked a modern regulatory framework for licensing, taxation, or environmental management, making it increasingly unresponsive to the growing need for private sector involvement, transparency, and sustainability in mining operations. Furthermore, it failed to distinguish between large-scale and small-scale mining, lumping all forms of extraction under a rigid administrative framework that stifled flexibility and innovation.

[24] Minerals Act 1962 (Act 126), s 1; see also Tsikata F, *The Vicissitudes of Mineral Policy in Ghana* (UNU/INRA, 1997) 2–4.

### *ii. The Mining and Minerals Law 1986 (PNDCL 153)*

In 1986, the Minerals and Mining Act, 1986 (Act 153) repealed Act 126. Similar to the provision in Act 126, Act 153 provided for the vesting of all minerals, wherever located within the territorial land and waters of Ghana in the President.

This law represented a shift towards liberalisation in the mining sector, with a goal of attracting foreign investment. However, it fell short in several respects. It did not provide a stable fiscal regime, leading to investor uncertainty over royalties, tax holidays, and export obligations.[25]

Additionally, PNDCL 153 offered minimal environmental safeguards; it made only passing references to "good mining practices" without imposing concrete obligations or penalties. Its provisions were also silent on community engagement and benefit-sharing, leaving affected communities without a structured avenue for compensation or inclusion in mining-related decisions. The lack of coordination between licensing and environmental authorities further weakened its practical implementation.

### *iii. Mercury Law, 1989 (PNDCL 217)*

The Mercury Law was enacted to regulate mercury use in artisanal mining. However, this law was narrow in scope and largely unenforceable in practice. It did not include any binding obligations for training miners in safe mercury use, nor did it establish a mechanism for monitoring and penalising violations[26] As a result, mercury continued to be used indiscriminately, polluting rivers and posing severe health risks to miners and surrounding communities. The absence of collaboration between the Minerals Commission and the Environmental Protection Agency (EPA) further hindered enforcement allowing environmental harm to remain unchecked.

### *iv. Small-Scale Gold Mining Law, 1989 (PNDCL 218)*

The Small-Scale Gold Mining Law, 1989 (PNDCL 218) represented Ghana's first serious attempt to formally recognise and regulate artisanal and small-scale mining (ASM), an activity that had been carried out informally for centuries. Before its enactment, small-scale mining was largely criminalised under colonial and early post-independence statutes, which reserved mineral rights for the state and licensed large-scale, often foreign, operators. PNDCL 218 thus marked a policy shift: it sought to legitimise the operations of Ghanaian small-scale miners and to harness their contributions to the national economy within a formal regulatory framework.

Despite this progressive intent, the law's structure revealed significant limitations that ultimately constrained its effectiveness. It imposed restrictive operational conditions that failed to reflect the realities of artisanal production. For instance,

---

[25] PNDCL 153 (1986), s 21; see Aubynn A, 'Sustainable ASM in Ghana' (2017) in *Mining Journal of Ghana*.

[26] PNDCL 217 (1989); see Hilson G, 'Small-scale mining, poverty and economic development in sub-Saharan Africa' (2009) 34(1) *Natural Resources Forum* 15–26

miners were only permitted to operate within concessions not exceeding 10 hectares, and the use of explosives, a tool often essential for accessing ore bodies in hard rock formations, was strictly prohibited. These restrictions limited productivity and discouraged investment in improved technology. In addition, the law confined small-scale operations to Ghanaian citizens, a clause intended to preserve local participation but which inadvertently fuelled the proliferation of informal partnerships between Ghanaian licence holders and foreign nationals who provided capital and machinery.

The licensing process established under the law was another major barrier to formalisation. Although intended to simplify access to mineral rights, it remained highly centralised, requiring approvals from the Minerals Commission in Accra and the Minister responsible for Lands and Natural Resources. For miners located in remote areas, the process was bureaucratically burdensome, time-consuming, and expensive. Moreover, many applicants lacked the literacy, documentation, or financial resources to navigate the application process, pushing them to operate outside the formal system. The cost of registration, coupled with the delays in permit issuance and the perceived risk of arbitrary revocation, made informal mining a more practical and economically rational alternative for many operators.

In terms of institutional design, PNDCL 218 suffered from a regulatory vacuum. It provided no framework for sustained capacity building, extension services, or access to credit and technology for small-scale miners. Similarly, there were no structured provisions for occupational health, environmental management, or safety training, despite the sector's high vulnerability to accidents, pollution, and child labour. Without institutional support, small-scale miners remained largely excluded from state-led development planning, perpetuating their marginalisation within Ghana's mining economy.

By failing to bridge the gap between policy recognition and practical support, PNDCL 218 entrenched a two-tiered mining economy: a well-capitalised, formally regulated large-scale sector on the one hand, and an informal, loosely monitored artisanal sector on the other. Over time, the persistence of informality led to escalating environmental degradation, conflicts over land and water resources, and widespread illegal mining (*galamsey*). The absence of a clear, long-term formalisation pathway meant that the law's intended developmental benefits, job creation, local wealth retention, and poverty reduction, were never fully realised.

From a governance perspective, the paralysis inherent in PNDCL 218 exemplified Ghana's broader regulatory dilemma: legislation was enacted to legitimise and regulate small-scale mining, but without adequate institutional capacity, political commitment, or socio-economic support mechanisms to enforce or sustain compliance. The law's implementation thus reproduced the very problems it sought

to resolve, informality, environmental harm, and uncollected royalties, while deepening the disconnection between mining policy and community development.[27]

### *v. Precious Minerals Marketing Corporation Law, 1989 (PNDCL 219)*

The Precious Minerals Marketing Corporation Law, 1989 (PNDCL 219) was enacted as part of a suite of reforms under the Provisional National Defence Council (PNDC) intended to regularise and modernise Ghana's mining sector. The law established the Precious Minerals Marketing Corporation (PMMC) with a mandate to purchase, assay, value, and market gold and other precious minerals produced in the country; particularly, from small-scale miners. Its primary goal was to create an official channel for gold trade, curb widespread smuggling, and ensure that the state captured a greater share of mineral revenues.

While the creation of the PMMC represented an important step toward formalising mineral marketing, the institution quickly encountered operational and structural weaknesses that undermined its effectiveness. The Corporation lacked the financial capacity to purchase gold in sufficient volumes, leading to chronic delays in payments to miners. Many small-scale miners, who depended on immediate cash flow to sustain operations, found it impractical to sell through the PMMC, and instead turned to informal buyers who offered faster transactions. The Corporation also faced logistical and technical constraints, including inadequate assay and refining facilities, limited regional presence, and outdated valuation methods, which made it uncompetitive compared to private and illicit traders.

The PMMC's statutory monopoly on gold exports was further eroded by the rise of an extensive network of unlicensed middlemen and smugglers who offered higher prices driven by global market differentials and weak enforcement. This situation significantly undermined confidence in state-run marketing, as miners perceived the PMMC as bureaucratic and unresponsive to market dynamics. The resulting exodus of small-scale producers to illicit trade channels reduced state revenues, weakened regulatory oversight, and entrenched the informal economy surrounding gold production.

Institutionally, the PMMC suffered from inefficiency and poor governance, reflecting broader challenges in Ghana's parastatal management during the late 1980s and 1990s. Its operations were constrained by political appointments, limited managerial autonomy, and a lack of reinvestment in modern trading infrastructure. Consequently, it failed to perform its intended developmental role of linking artisanal miners to formal markets and global value chains. Instead, it became

[27] PNDCL 218 (1989), ss 3–5; see Hilson G and Potter C, 'Why is illegal gold mining so common in Ghana?' (2005) *African Development Review*.

emblematic of the persistent gap between legislative ambition and administrative execution that characterises Ghana's mining governance framework.

In 2025, the Gold Board Act (Act 1140) repealed PNDCL 219 and replaced the PMMC with the Ghana Gold Board, a new entity intended to correct the institutional failures of its predecessor. The Gold Board is designed to serve as a more autonomous and commercially oriented body responsible for regulating, monitoring, and promoting gold trading, including the establishment of traceability systems to curb smuggling and enhance transparency. It also aims to integrate artisanal and small-scale miners into formal supply chains through improved licensing, training, and digitalised marketing systems.

Collectively, the repealed laws reflected a disjointed regulatory regime that hindered long-term development. By repealing these fragmented and partially effective laws and consolidating the mining legal framework under Act 703 (and subsequent amendments in Acts 900 and 995), Ghana achieved a more streamlined statutory architecture.

## 9.2 Key Legislations Currently Regulating Mining in Ghana


### *i. Minerals Commission Act, 1993 (Act 450)*

This Act establishes the Minerals Commissions Act was enacted in response to the need for a centralised and professional governance structure for Ghana's mining

sector. Thus, it establishes the Minerals Commission as the regulatory authority for the mining sector. It essentially provides for the compositions and functions relating to the regulation and management of the utilisation of minerals in Ghana, and for related matters.

The primary objective of Act 450 was to create an autonomous, expert-driven body mandated to manage, regulate, and promote mineral exploration and exploitation. Previously, Ghana's mining governance was fragmented across multiple statutory bodies, leading to inconsistent policy implementation and resource mismanagement. By establishing the Minerals Commission, Parliament aimed to centralise authority, ensure consistency in policy direction, and create a one-stop regulatory agency for both large-scale and small-scale operations. The mandate to coordinate mineral sector policies, advise the Minister, and report to Parliament[28] demonstrates a deliberate attempt to balance executive responsiveness with democratic accountability.

By creating a regulatory entity, the Commission initially founded under PNDCL 154 (1984) and later entrenched through Act 450 laid the framework for modern mineral governance in Ghana. Its establishment enabled subsequent laws (Acts 703 and its amendments Act 900, Act 995) to delegate detailed licensing, environmental, fiscal, and enforcement responsibilities to a designated authority. The Commission's professionalisation has contributed to policy coherence and sector stability, even though some critics highlight ongoing capacity gaps and uneven enforcement.

### *ii. The Minerals and Mining Act, 2006 (Act 703)*

The Minerals and Mining Act, 2006 (Act 703) marked a significant turning point in Ghana's legal and regulatory framework for the mining sector. It repealed and replaced the Minerals and Mining Law of 1986 (PNDCL 153) and sought to harmonise Ghana's mining legislation with international best practices in order to attract foreign direct investment, ensure fiscal stability, and provide clearer regulatory structures. In essence, Act 703 became the central statute governing the ownership, exploration, licensing, and exploitation of mineral resources in Ghana.

The introduction of the Minerals and Mining Act, 2006 represented a deliberate effort by Parliament to overhaul Ghana's outdated and fragmented mining legislation. With the primary objectives of modernising regulatory structures, enhancing revenue generation, and securing environmental and social safeguards, Act 703 consolidated all previous statutes including colonial-era ordinances and PNDC laws into a single, cohesive framework.

The legislative rationale emphasised two key principles: clarity and inclusivity. By harmonising licensing for large-scale and small-scale miners and codifying environmental assessments, community consultation, and local procurement

[28] Minerals Commission Act, 1993 (Act 450), ss 1–4.

obligations, the law aimed to reposition Ghana's mining sector in line with both its constitutional mandates and international best practices.

Innovations included the establishment of transparent processes (e.g., first-come-first-served licensing), timelines for application approvals, and statutory powers for the Minerals Commission to monitor compliance and enforce sanctions. Another key innovation was formal recognition of artisanal mining declaring small-scale permittees subject to the same legal framework as large miners, thus reducing policy fragmentation.

As part of its core provisions, the Act emphasised local ownership and sovereignty over the sector by reaffirming the regalian principle by vesting all minerals in the President of Ghana, to be held in trust for the people. This constitutional embodiment (in line with Article 257(6) of the 1992 Constitution) entrenched state control as the organising principle of mineral governance, centralising ultimate authority in the executive. Similarly, the Act implements the Constitution by providing mechanisms for accessing compensation to lawful right holders in land and occupiers whose rights were disturbed by mining operations. It recognised surface rights but subordinated them to mineral rights, creating structural tensions between mining companies and local communities.

Also, Act 703 established a tiered licensing structure, around reconnaissance licences, prospecting licences, mining leases, restricted licences, and small-scale mining licences. Licences were granted by the Minister for Lands and Natural Resources, acting on the advice of the Minerals Commission. This was subject to Parliamentary ratification.

With respect to fiscal provisions, made under the Act, there were mandated royalty payments of between 3% and 6% of a mining company's total revenue. It provided for corporate tax obligations, surface rentals, and other levies, while enabling fiscal incentives under Ghana's investment laws to apply to mining companies.

With particular regard to Small-Scale Mining, Act 703 formally recognised small-scale mining as distinct from large-scale operations, though participation was restricted to Ghanaian citizens. In practice, bureaucratic hurdles and limited access to credit and technology continued to marginalise artisanal miners.

Finally, the Act affirmed the Minerals Commission as the agency with regulatory oversight. The Minerals Commission was charged with policy formulation and regulatory oversight, while the Inspectorate Division of the Minerals Commission ensured compliance with technical and safety standards. Act 703 also incorporated provisions for environmental protection, requiring Environmental Impact Assessments (EIAs) and compliance with EPA regulations.

Act 703 was operationalised through six key Legislative Instruments (L.I.s) passed in 2012, including:

1. Minerals and Mining (General) Regulations (L.I. 2173)
2. Minerals and Mining (Licensing) Regulations (L.I. 2176)
3. Minerals and Mining (Support Services) Regulations (L.I. 2174)
4. Minerals and Mining (Compensation and Resettlement) Regulations (L.I. 2175)
5. Minerals and Mining (Health, Safety and Technical) Regulations (L.I. 2182)
6. Minerals and Mining (Explosives) Regulations (L.I. 2177)

These sought to provide greater detail on licensing, health and safety, resettlement, compensation, and technical standards.

## 10. Structural Weaknesses and Paralysis


Despite its comprehensive scope and modern design, the Minerals and Mining Act, 2006 (Act 703) has struggled to deliver the regulatory coherence and developmental impact it promised. While the Act consolidated Ghana's mining laws and aligned them with global investment standards, its implementation has exposed deep structural flaws within the country's mineral governance framework. Weak institutional coordination, excessive ministerial discretion, and limited enforcement capacity have collectively hindered effective regulation. In practice, the Act functions more as an investment facilitation tool than as an instrument of

developmental governance. This disjuncture between the law's intent and its execution has produced a regulatory paralysis in which compliance, environmental sustainability, and community development remain secondary to short-term revenue and political interests. The following discussion examines the principal institutional and policy weaknesses that have constrained the effectiveness of Act 703 and perpetuated inertia within Ghana's mining governance system.

At the core of this paralysis lies a governance model that privileges economic liberalisation and foreign investment attraction over social accountability and ecological protection. Although the Act was drafted to provide predictability and transparency, the persistence of executive dominance and administrative fragmentation has undermined its effectiveness. Institutions tasked with oversight, the Minerals Commission, the EPA, and the Forestry Commission, operate within overlapping jurisdictions and often pursue conflicting objectives. This diffusion of responsibility has created enforcement gaps, delayed decision-making, and fostered a culture of selective compliance.

A central weakness of Act 703 lies in the concentration of discretionary power in the executive. The Act vests extensive authority in the Minister responsible for Lands and Natural Resources, who, acting on the recommendation of the Minerals Commission, may negotiate, grant, suspend, revoke, or renew mineral rights on behalf of the President. Although intended to streamline decision-making, this concentration of licensing and regulatory power creates fertile ground for political interference and opaque decision processes.

It undermines the predictability that investors require and weakens procedural safeguards for affected communities. In theory, parliamentary ratification under Article 268 of the 1992 Constitution provides an institutional check on executive discretion; but in practice, scrutiny tends to be perfunctory. Parliamentary oversight is often limited to formal ratification rather than substantive evaluation of the public interest implications of mineral agreements. This imbalance entrenches executive dominance and reduces transparency in mineral resource governance.

Closely related to this is the problem of fragmented and overlapping mandates across key regulatory institutions. Effective mineral governance requires strong coordination among the Minerals Commission, the EPA, the Forestry Commission, the Water Resources Commission, and the relevant Metropolitan, Municipality, and District Assemblies (MMDAs). In reality, however, liaison among these bodies is weak, and institutional responsibilities frequently overlap. For example, while the EPA oversees environmental compliance, the Forestry Commission regulates access to forest reserves, and the Minerals Commission administers mineral rights, all often within the same geographical space. The absence of a unified regulatory framework leads to duplication, inefficiency, and conflicting directives. This fragmentation slows down permitting processes, blurs accountability when infractions occur, and creates opportunities for "forum shopping," where mining

entities exploit jurisdictional ambiguities to secure favourable outcomes or evade sanctions.

The weaknesses in governance are compounded by uneven and inconsistent enforcement. Although Act 703 and its subsidiary regulations clearly provide for sanctions, fines, and permit revocations, enforcement is erratic and often influenced by political and economic considerations. Even in ecologically sensitive areas or in cases of serious non-compliance, regulatory responses are delayed or limited to warnings. The perception that penalties are rarely applied undermines the deterrent value of the law and emboldens further infractions. The persistent gap between statutory rules and administrative action reflects a wider institutional inertia in Ghana's mining governance system, where well-crafted laws coexist with weak operational discipline.

In the area of small-scale mining, the Act's formalisation framework has proven inadequate to address deep-seated structural challenges. Although Act 703 legally recognises small-scale mining and establishes a licensing regime for Ghanaian operators, the process remains bureaucratic, centralised, and poorly resourced at the district level. Limited access to finance, modern technology, and geological information further constrains the ability of licensed miners to operate profitably. Many prospective operators, faced with complex procedures and long delays, are pushed into informality, where they can operate with lower costs and fewer regulatory hurdles. This dynamic fuels a vicious cycle in which informal mining proliferates, environmental degradation worsens, and compliant miners are disadvantaged, eroding the credibility of the formal system.

The shortcomings of environmental governance under Act 703 are particularly evident in ecologically sensitive areas such as forest reserves and river catchments. Although the law and its subsidiary instruments establish environmental assessment and compliance requirements, enforcement is weakest precisely where environmental risks are highest. Political lobbying, ministerial directives, and negotiated exceptions frequently override technical assessments and conservation goals. This selective application of environmental standards has resulted in the encroachment of mining operations into protected zones such as the Atewa Range, with significant ecological consequences. The absence of clearly defined "no-go zones" for mining creates space for ad hoc decision-making, undermining environmental integrity and cumulative landscape protection.

The Act also reflects persistent imbalances in community rights and compensation frameworks. While it recognises the payment of compensation for disturbance of surface rights, mineral ownership remains vested in the state, subordinating community interests to the grant of mineral rights. Many affected communities experience displacement, loss of farmlands, and environmental degradation with little or no meaningful redress. Compensation mechanisms often undervalue losses or are delayed, and social investments by companies remain limited and

discretionary. This structural inequity fuels tension between mining companies, local populations, and the state, weakening the perceived legitimacy of the mineral governance regime.

A further dimension of paralysis arises from district-level capacity deficits. Most of the institutions charged with implementing and monitoring mining regulations lack operational presence or resources at the local level. District offices of the Minerals Commission and EPA are understaffed, underfunded, and poorly equipped to conduct routine inspections or respond to complaints. As a result, many infractions go unreported or unaddressed, particularly in remote small-scale mining areas. The absence of strong local oversight not only weakens enforcement; but, also distances affected communities from the state, fostering mistrust and resistance to regulatory interventions.

Transparency deficits deepen these structural problems. Persistent data and disclosure shortfalls obscure licensing decisions, beneficial ownership details, royalty valuation methods, and compliance outcomes. The absence of an accessible and updated online cadastre limits public scrutiny and parliamentary oversight. Without regular disclosure of contracts, production figures, and enforcement actions, it becomes difficult to track accountability or detect conflicts of interest. This opacity reinforces public cynicism about corruption and rent-seeking in the sector, discouraging responsible investment and perpetuating policy inertia.

These institutional challenges are further compounded by policy inconsistency and regulatory drift. Since the passage of Act 703, successive amendments and policy initiatives have attempted to strengthen environmental safeguards and increase state revenues. Yet implementation has remained inconsistent, with competing signals between investment promotion objectives and environmental protection mandates. Decisions to permit or suspend mining in forest reserves, for instance, often shift with political cycles rather than being guided by long-term policy coherence. Such unpredictability discourages credible investors, heightens litigation risks, and contributes to a perception of instability within the regime.

Finally, the combined effect of weak enforcement, limited community participation, and visible environmental degradation has produced spillover harms and the erosion of social licence. Communities in mining-affected areas increasingly associate mining with dispossession, pollution, and inequality. In places such as the Atewa Range and Tarkwa-Nsuaem, grievances over land encroachment, water contamination, and inadequate social benefits have intensified local resistance and activism. This loss of social legitimacy elevates reputational risks for both government and industry, deterring responsible capital while emboldening unregulated operators. The resulting breakdown in trust between the state, communities, and investors perpetuates the cycle of paralysis that continues to define Ghana's mineral governance landscape.

The statute's formal completeness is undermined by executive concentration, fragmented institutions, under-resourced enforcement and opaque practice. The resulting inertia depresses developmental returns from mining, even as legal provisions proliferate. With the absent of a clearer ecological limits, stronger district capacity, routine transparency, and credible and depoliticised enforcement, the sector will continue to underperform against its inclusive and sustainable development potential.

## The Minerals and Mining (Amendment) Act, 2015 (Act 900) and the Minerals and Mining (Amendment) Act, 2019 (Act 995)

Since the enactment of the Minerals and Mining Act, 2006 (Act 703), Ghana has introduced two major amendments to its mineral law regime, reflecting attempts to respond to persistent challenges in governance and enforcement; particularly, those associated with illegal small-scale mining (*galamsey*). The 2015 amendment (Act 900) and the 2019 amendment (Act 995) were both framed as corrective measures; yet, they also illustrate the piecemeal and reactive character of Ghana's mining law reforms.

Act 900 of 2015 arose out of two central policy concerns: the need for greater flexibility in determining royalty rates, and the escalating threat posed by unregulated mining. The amendment revised section 25 of Act 703, empowering the Minister for Lands and Natural Resources to set royalty rates by regulation rather than through fixed statutory provisions.[29] This was intended to give the state room to adjust fiscal regimes in line with fluctuations in global commodity prices and Ghana's domestic economic needs. In addition, Act 900 introduced enhanced enforcement powers by authorising the confiscation of equipment used in illegal small-scale mining operations.[30] This marked a significant departure from prior practice by equipping regulators with tangible tools to disrupt unlawful activity.

Act 995 of 2019 built upon this foundation but reflected the intensifying national crisis surrounding *galamsey*. By the late 2010s, unregulated mining had caused severe environmental damage, including widespread deforestation, water pollution, and land degradation, and had generated acute social and political pressure for reform. The amendment therefore escalated the punitive framework. It introduced mandatory custodial sentences of 15 to 25 years for offences such as mining without

[29] Ibid, s 2; see also Parliament of Ghana, Memorandum to the Bill (2015)

[30] Act 900, s 99(2); see also GNA, 'Parliament Passes Minerals and Mining Amendment Bill' (2015) https://www.graphic.com.gh/news/general-news/parliament-passes-minerals-and-mining-amendment-bill.html accessed 16 July 2025.

a licence or engaging in the unlawful sale and purchase of minerals.[31] This was a marked shift from the discretionary penalties of Act 703, signalling the state's intention to adopt a zero-tolerance approach. Additionally, the Act inserted a new section 96A, explicitly barring foreigners from providing support services to small-scale mining enterprises; a measure designed to close a loophole that had allowed foreign actors, particularly from Asia, to indirectly fuel *galamsey*.

Together, Acts 900 and 995 embody Ghana's evolving legislative response to the tensions between promoting lawful mineral exploitation and combating illegal mining. While they strengthened enforcement powers and introduced greater fiscal flexibility, they also reveal the reactive nature of legislative change, responding to crises rather than proactively redesigning governance structures. Their effectiveness has been limited by the same structural weaknesses embedded in the broader regime: weak institutional capacity, political interference, and fragmented regulatory mandates. Consequently, despite harsher penalties and expanded ministerial discretion, illegal mining remains pervasive, underscoring the paralysis of Ghana's mining laws. Instead of delivering lasting solutions, these amendments risk entrenching a punitive but uneven enforcement culture that does little to address the underlying drivers of informality, such as unemployment, poverty, and barriers to legal small-scale mining.

## Mining Related Legislation

In addition to the principal statutes that directly regulate the mining sector, Ghana's legal framework is supported by a number of ancillary enactments that bear significantly on mining operations. These laws address matters such as land administration, environmental protection, labour relations, taxation, and local governance, all of which intersect with mineral resource exploitation. The following discussion outlines some of the key legislative instruments that, while not exclusively mining statutes, play a substantive role in shaping the governance and practice of mining in Ghana.

### i. The Minerals Development Fund Act, 2016 (Act 912)

The enactment of the Minerals Development Fund Act (Act 912) in 2016 was heralded as a milestone in Ghana's mining governance framework. Its primary objective was to formalise and improve the redistribution of mineral royalties, particularly to ensure that communities hosting mining operations directly benefit from the revenues generated. The Act created a statutory basis for the Minerals Development Fund (MDF), which had previously existed only by executive fiat since 1993, and

[31] Minerals and Mining (Amendment) Act, 2019 (Act 995), s 3; see also GBC Ghana, 'New Minerals Law Imposes Stiffer Penalties for Illegal Miners' (2019) https://www.gbcghanaonline.com/general/minerals-and-mining-act-amended-to-give-stiffer-punishment-to-illigal-miners/2019 accessed 16 July 2025.

introduced mechanisms intended to enhance transparency, accountability, and equitable development in mining-affected areas.

The mandate of the Fund is to provide "financial resources for the direct benefit of mining communities, a holder of an interest in land within mining communities, a traditional and local government authority within mining communities and an institution responsible for the development of mining in Ghana"[32].The Act also provides financial resources for mining sector development and research, and to the Ministry of Lands and Natural Resources (MLNR) to support and develop its policy planning, evaluation and monitoring functions with respect to mining[33].

*Objectives and Structure*

Act 912 provides that 20 percent of all mineral royalties collected by the Ghana Revenue Authority be allocated to the MDF. The fund is then disbursed according to a statutory formula, with allocations directed to:

1. The Office of the Administrator of Stool Lands (OASL): which redistributes shares to traditional authorities, councils, and district assemblies.
2. Mining Community Development Schemes (MCDS): local-level schemes administered by Local Management Committees (LMCs) designed to channel royalties into projects directly benefiting mining communities.
3. Sectoral development agencies and institutions, including the Ministry of Lands and Natural Resources, the Minerals Commission, and the Geological Survey Department, to support research, monitoring, and policy implementation.

The establishment of the MCDS is one of the most innovative aspects of Act 912, as it explicitly mandates that mining communities, rather than district assemblies or chiefs alone, receive dedicated funding. By anchoring development spending in locally representative committees, the Act theoretically decentralises decision-making and aligns royalty spending more closely with community priorities.

*Promise and Potential*

On paper, the Act represents progress towards rectifying long-standing inequities in Ghana's mineral royalty regime. Prior to its passage, disbursements were characterised by delays, misappropriation, and elite capture at both traditional and district levels. The MDF's legalisation, combined with the stipulation of clear distribution percentages, was expected to reduce political discretion and create a predictable flow of resources for local development. Moreover, by mandating local-

[32] Act 912 S1

[33] Act 912, 2(d) and 5(c-e).

level project design and review processes, the Act created space for community participation, potentially enhancing ownership and accountability.

***Structural Weaknesses and Emerging Paralysis***

Despite these reforms, the MDF Act has not fully realised its developmental promise. Scholars and policy reviews note several enduring weaknesses:

1. *Persistence of Elite Capture and Misuse:* Traditional authorities and district assemblies continue to interpret royalty allocations in ways that prioritise ceremonial or administrative expenditure over community development. Ambiguities in the constitutional language, particularly regarding the "maintenance of the stool", have facilitated this misuse.

2. *Insufficient Funding:* Only 20 percent of mineral royalties are directed to the MDF, of which just a portion trickles down to the MCDS. Analysts estimate that mining communities require at least 30-35 percent of total royalties to address basic infrastructural and social needs, making the Act's current formula inadequate.

3. *Weak Accountability Mechanisms:* Although the Act establishes a governing board and mandates reporting, in practice there are delays in disbursement, limited oversight of Local Management Committees, and minimal transparency in project implementation. This replicates the pre-Act problem of royalty capture by local elites.

4. *Policy Fragmentation:* The MDF exists alongside other statutory and policy mechanisms for resource revenue distribution (such as the Petroleum Revenue Management Act). However, unlike petroleum, mineral revenues remain trapped in a fragmented institutional landscape without a coherent framework for long-term savings, investment, or intergenerational equity.

In effect, despite the attempts and good intentions to improve living conditions in the mining areas, the Act contains stipulations that may hinder such development. First, the Act does not clarify how the portion of the royalties that is distributed to the traditional councils should be spent. Second, the mode of selecting and the composition of the LMCs can potentially expose them to cronyism and may limit local participation in decision making regarding how the mineral royalties are spent. Third, the Act missed an opportunity to mandate the GRA to transfer the 20 per cent of total mineral royalties directly to the MDF. Fourth, the percentage of mineral royalties designated to the MCDS scheme is most likely inadequate to develop the mining communities. Finally, the Act provides few mechanisms to ensure transparency and accountability in the distribution and spending of the mineral

royalties. Without addressing these challenges, the MDF may not achieve its stated objective of enhancing socio-economic development in the mining communities[34].

***Implications for Economic Development***

The MDF Act illustrates the paradox of Ghana's mining law regime: even when legislation is enacted to empower mining communities, weak institutional design, political interference, and inadequate funding undermine implementation. Consequently, host communities remain among the poorest in the country despite their proximity to resource wealth. The paralysis here is twofold: the state enacts laws with promising language, but without robust enforcement or adequate resource allocation, these laws become symbolic rather than transformative.

In economic development terms, this failure has ripple effects. Poorly compensated communities become resistant to mining activities, social tensions escalate, and the state forfeits the opportunity to leverage mineral wealth for inclusive development. Rather than functioning as a vehicle for empowerment, the MDF risks reinforcing patterns of dependency, elite rent-seeking, and distrust between mining communities and the state.

### ii. The Minerals Income Investment Fund Act, 2018 (Act 978) as amended by the Minerals Income Investment Fund (Amendment) Act, 2020 (Act 1024)

The Minerals Income Investment Fund Act, 2018 (Act 978), later amended by Act 1024 in 2020, represents one of Ghana's most ambitious attempts to transform mineral wealth into long-term financial capital. The Act established the Minerals Income Investment Fund (MIIF) with a mandate to receive and manage royalties derived from mining operations, invest them prudently, and generate income for the benefit of current and future generations. Conceptually, the MIIF sought to insulate Ghana's mineral revenues from commodity price volatility, while ensuring that mineral wealth was not consumed immediately but channelled into productive investment portfolios that could underpin economic transformation.

The 2020 amendment sought to accelerate this vision by creating a Special Purpose Vehicle (SPV), Agyapa Royalties Limited, through which future mineral royalty streams could be securitised and monetised on international capital markets. This strategy, theoretically, was intended to raise upfront capital for infrastructure and development projects while allowing the state to retain a degree of ownership.

However, the execution of the Agyapa transaction sparked intense national debate. Civil society groups, opposition parties, and independent analysts criticised the process as opaque, alleging that it undervalued Ghana's mineral assets and risked mortgaging future generations' wealth for short-term fiscal gains. The absence of

[34] Päivi Lujala,John Narh '*Ghana's Minerals Development Fund Act: Addressing the Needs of Mining Communities*' (in press) *Journal of Energy & Natural Resources Law*

broad stakeholder consultation, coupled with partisan contestation, eroded public confidence and ultimately stalled the implementation of the transaction.

This paralysis in the operationalisation of the MIIF highlights deeper structural weaknesses in Ghana's mining governance. First, it demonstrates how political polarisation can derail otherwise innovative legislation. Rather than functioning as a non-partisan sovereign wealth mechanism, the Fund became entangled in partisan struggles, undermining its legitimacy. Second, the controversy underscored the deficit of transparency and accountability in resource governance.

The limited disclosure of the valuation processes, ownership structures, and potential beneficiaries of the Agyapa arrangement entrenched suspicions of elite capture. Third, the MIIF framework exposed Ghana's broader institutional fragility, as its objectives have remained largely aspirational, with little demonstrable impact on economic diversification or intergenerational equity since its establishment.

Comparatively, other resource-rich countries have demonstrated that sovereign wealth vehicles can serve as critical instruments for stabilising national economies and building long-term wealth. Botswana's Pula Fund, for instance, channels surplus diamond revenues into carefully managed financial assets that support fiscal stability. Similarly, Norway's Government Pension Fund Global has become a global benchmark for resource-based wealth management, premised on transparency, accountability, and strict depoliticisation. Against these examples, Ghana's MIIF illustrates how well-intentioned legislation can succumb to paralysis when governance structures are weak, when political interests override technical design, and when public trust is absent.

The implications for economic development are profound. Instead of providing a predictable and sustainable flow of investment capital, the MIIF remains largely underutilised. Ghana continues to rely heavily on raw mineral exports without successfully converting royalties into transformative investments. The missed opportunity weakens fiscal stability and perpetuates the country's dependence on extractive rents, undermining long-term industrialisation and inclusive development. Unless the paralysis surrounding the Fund is resolved through stronger transparency, independent oversight, and genuine depoliticisation, the MIIF risks becoming yet another example of mining legislation whose promise is trapped in inertia rather than realised in practice.

### iii. The Kimberley Process Certificate Act, 2003 (Act 652)

The Act establishes the legal requirement that any export or import of rough diamonds from Ghana must be accompanied by a Kimberley Process Certificate. Under Act 652, only holders of valid mining licences under the national Minerals and Mining Law may apply for a Kimberley certificate. Applications must follow prescribed forms and procedures. Exporters must submit periodic reports, declare

packaging details, and maintain comprehensive records, including serial numbers and shipment documentation. Failure to comply may result in suspension or cancellation of export privileges and criminal penalties, including fines on summary conviction.

The Act aims to align Ghana with the International Kimberley Process Certification Scheme (KPCS), a global mechanism launched in 2003 to prevent the trade in so-called "conflict diamonds", mined in war zones and used to finance armed groups[35]. As a participating country, Ghana thus commits to maintaining rigorous internal controls to verify the origin of rough diamonds destined for export.

Despite the legislative framework, Ghana has faced criticism over internal conflicts of interest; particularly, when the Precious Minerals Marketing Company (PMMC), which engages in buying and trading, also functions as the de facto issuer of Kimberley certificates. Independent observers note that mixing commercial and regulatory roles may compromise the integrity of certification and has led to Ghana being placed on probation at Kimberley Process plenary meetings as early as 2007.[36]

In addition to key core legislation, Ghana as part of the plethora of laws governing mining also has subsidiary legislation which plays a crucial role in contemplating and giving effect to the provisions of the primary legislation discussed above. The subsidiary legislation (also known as legislative instruments or regulations) is made under the authority of an enabling Act. For instance, in the case of the Minerals and Mining Act, 2006 (Act 703), regulations are made to provide operational clarity, enforce standards, and ensure regulatory compliance. These instruments cover a wide range of matters that the principal Act could not exhaustively address, such as royalties, health and safety, compensation, licensing procedures, and local content requirements.

**Subsidiary Legislation on Mining**

a. **Minerals (Royalties) Regulations, 1987 (LI 1349)** - This regulation provides for the calculation and payment of royalties by mineral right holders to the state[37]. It ensures that Ghana derives fiscal benefits from the commercial exploitation of its mineral resources. The regulation prescribes how royalties are to be assessed, the rate applicable, and the timeframe for payment. This instrument is critical to revenue mobilisation, as royalties form a significant portion of the government's income from the mining sector.
b. **Minerals and Mining (General) Regulations, 2012 (L.I. 2173)** - L.I. 2173 provides comprehensive operational guidelines for mineral right holders. It addresses staffing obligations, the proper disposal and reporting of minerals,

[35] Wright, Clive. "Tackling conflict diamonds: the Kimberley process certification scheme." *International Peacekeeping* 11, no. 4 (2004): 697-708.

[36]

[37] Mineral(Royalties) Regulation 1

and standards for reconnaissance, prospecting, and mining operations. It also deals with requirements for mineral samples, annual reports, and demarcation of mining areas. This regulation essentially operationalises many provisions of the Minerals and Mining Act and ensures a uniform code of conduct for mining companies. Its broad scope makes it a foundational instrument for day-to-day compliance and regulatory supervision.

c. **Minerals and Mining (Support Services) Regulations, 2012 (L.I. 2174)**- This regulation governs entities that provide support services to the mining sector, such as drilling companies, assay laboratories, and mine support contractors. The Minerals and Mining (Support Services) Regulations establish that support services may be provided to a holder of a mineral right by persons registered in accordance with the Regulation. Support service providers may be registered as a 'Class A' or a 'Class B' provider.
    i. A 'Class A' support service provider is a person who offers more extensive contract mining services. These include mining and ancillary construction services, works which are provided specifically and exclusively for the mining industry (e.g. construction of a heap leach pad and haulage roads), assay laboratory services, and supply of mining equipment and spare parts (reg. 2).
    ii. A 'Class B' support service provider must be Ghanaian and provides services specifically and exclusively to a mineral right holder, including contract mining services for small scale mining, reclamation, re-vegetation and management of mining operations and haulage services to and from mine sites (reg. 2).
    iii. The provider shall additionally submit monthly and annual reports to the Commission on the mineral rights holder's activities (reg. 4). Under regulation 6, the support services provider must comply with the mining and environmental laws and Regulations. By formalising the operations of auxiliary service providers, this regulation helps professionalise the industry, ensure quality control, and enhance local content participation by regulating the environment in which these businesses operate.
    iv. **Minerals and Mining (Compensation and Resettlement) Regulations, 2012 (L.I. 2175)** - The Minerals and Mining (Compensation and Resettlement) Regulations list the requirements for compensation and resettlement for any land affected by minerals and mining operations in Ghana. A person whose interest in land is affected by the grant of a mineral right may submit in writing a claim for compensation to the holder of this mineral right (reg. 1). Compensation needs to consider impact on crops, deprivation of land, commercial structures which affect business and immovable property (reg. 3).

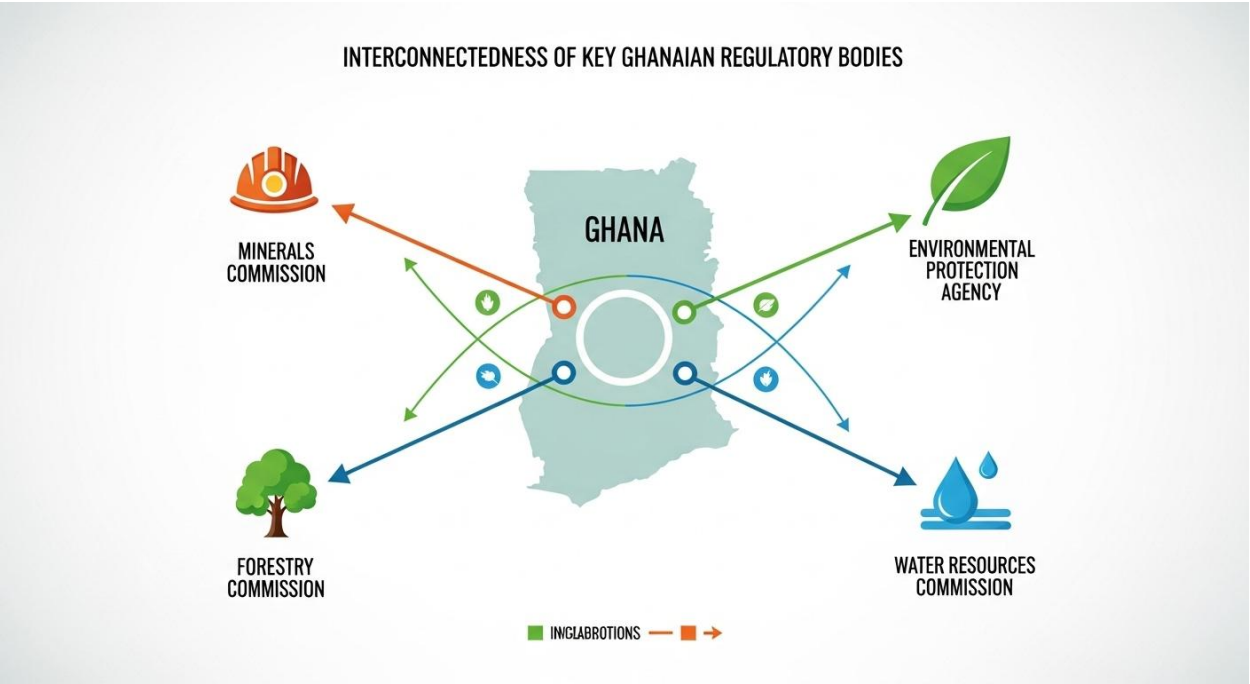
d. **Regarding resettlement, the holder of a mining lease must conduct extensive research (reg. 8)** in order to be able to prepare a comprehensive resettlement plan. They themselves must resettle displaced persons on suitable alternative land, bearing in mind the economic well-being and socio-cultural values, with the objective of improving livelihoods (reg. 6). The Regulation stipulates that fair and adequate compensation must be paid before mining activities begin and outlines the process for valuation, negotiation, and dispute resolution. This legal framework is essential in minimising social conflict, ensuring justice for affected communities, and upholding human rights in resource development.
e. **Minerals and Mining (Licensing) Regulations, 2012 (L.I. 2176)** - This instrument sets out the procedures for the application, renewal, and transfer of mineral rights such as reconnaissance, prospecting, and mining licenses. It streamlines the licensing process and provides clear timelines, documentation requirements, and decision-making procedures. It also enables transparency and predictability in the acquisition and management of mineral rights, which is crucial for investor confidence and accountability in resource governance.
f. **Minerals and Mining (Explosives) Regulations, 2012 (L.I. 2177)** - This regulation governs the importation, storage, transportation, use, and disposal of explosives in the mining industry. Given the hazardous nature of explosives, the regulation imposes stringent safety standards, licensing requirements, and supervision protocols. It also mandates training for personnel and regular inspections. The goal is to minimise accidents, environmental damage, and misuse of explosives, thereby protecting workers, communities, and national security.
g. **Minerals and Mining (Health, Safety and Technical) Regulations, 2012 (L.I. 2182**) - L.I. 2182 sets out detailed requirements on health, safety, and technical operations in the mining industry. It covers issues such as underground safety, ventilation, shaft maintenance, machinery standards, personal protective equipment, and occupational health. It also mandates safety audits and the appointment of safety officers. This regulation ensures the protection of workers, promotes operational efficiency, and aligns Ghana's mining practices with international safety standards.
h. **Minerals and Mining (Ground Rent) Regulations, 2018 (L.I. 2357**) - This regulation provides guidelines on the payment of ground rent by mineral right holders to landowners or the state. Ground rent is an important aspect of benefit-sharing and serves as compensation for the occupation and use of land. The regulation clarifies who is eligible to receive rent, how it is calculated, and payment timelines. It aims to reduce disputes and promote harmony between mining companies and landholding communities.
i. **Minerals and Mining (Mineral Operations – Tracking of Earth Moving and Mining Equipment) Regulations, 2020 (L.I. 2404)** - L.I. 2404 introduces a requirement for mining companies to install tracking systems on earth-

moving and mining equipment, such as excavators, bulldozers, and haul trucks. This is a response to the growing menace of illegal mining (galamsey) and the unauthorised use of heavy machinery in unregulated operations. The regulation enhances surveillance, accountability, and enforcement by enabling real-time tracking of equipment, thus supporting national efforts to combat environmental degradation.

j. **Minerals and Mining (Local Content and Local Participation) Regulations, 2020 (L.I. 2431)** - This regulation seeks to increase Ghanaian participation in the mining sector, both in terms of employment and procurement. It mandates mining companies to submit local content plans, hire Ghanaians in specific roles, and procure goods and services from local suppliers. It also sets quotas for local ownership and participation in supply chains. The regulation is part of a broader policy to retain more value from mining within the Ghanaian economy and build local capacity.

k. **Income Tax (Minerals Income Investment Fund Exemptions) Regulations, 2020 (L.I. 2433)** - This regulation provides tax exemptions for contributions to the Minerals Income Investment Fund (MIIF). It clarifies the income streams that qualify for exemption, such as capital gains and interest derived from MIIF investments. The purpose is to strengthen MIIF's financial position and incentivise contributions that will, in turn, be invested in long-term national development projects. It forms part of the broader strategy to transform mineral revenues into enduring wealth.

# 11. Mining-Related Legislation and Institutional Frameworks



Ghana's mining industry is regulated through a range of statutes that extend beyond the *Minerals and Mining Act, 2006 (Act 703)*. Several related enactments and subsidiary instruments establish the environmental, forestry, and water governance structures that interact with mineral development. Together, they define the institutional environment in which mineral exploration, extraction, and rehabilitation occur. The main instruments include the *Environmental Protection Agency Act, 1994 (Act 490)* and its accompanying *Environmental Assessment Regulations, 1999 (L.I. 1652)*; the *Forestry Commission Act, 1999 (Act 571)*; the *Water Resources Commission Act, 1996 (Act 522)*; and the *Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I. 2462)*. Each of these statutes creates an agency with distinct responsibilities but interlinked mandates relating to mining.

## a. Environmental Protection Agency Act, 1994 (Act 490)

The *Environmental Protection Agency Act* established the Environmental Protection Agency (EPA) as the principal state authority for the protection and management of Ghana's environment. The Agency operates under the Ministry of Environment, Science, Technology and Innovation. Its functions include the coordination of policies related to the environment, the preparation of environmental action plans, the regulation of industrial discharges, and the enforcement of environmental standards.

Under the Act, any person undertaking an activity likely to have significant environmental effects must obtain a permit from the Agency. The EPA therefore serves as the gatekeeper for mining projects, ensuring that environmental impact assessments (EIAs) are conducted before operations commence.

The Agency also monitors compliance with environmental conditions, requires the submission of periodic reports, and may suspend or revoke permits where necessary. Through these powers, the EPA integrates environmental considerations into mineral development and provides the framework for continuous environmental oversight.

## b. Environmental Assessment Regulations, 1999 (L.I. 1652)

The *Environmental Assessment Regulations* made under Act 490 detail the procedures for environmental permitting. Mining projects fall within undertakings that automatically require an environmental impact assessment. The process begins with a screening report submitted by the proponent, followed by scoping to determine the issues to be examined. The proponent then prepares an environmental impact statement (EIS) which is subject to public disclosure and review.

After the review process, the EPA issues an environmental permit that allows the project to proceed, subject to compliance with specified mitigation and monitoring measures. The Regulations also provide for the preparation of Environmental Management Plans (EMPs) and Annual Environmental Reports to demonstrate continuing compliance. These instruments have become a central part of the approval process for mining and related infrastructure, ensuring that potential effects on land, water, air quality, and biodiversity are assessed before operations begin.

### c. Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (L.I. 2462)

These Regulations, issued under Act 490, specifically govern the conduct of mining within Ghana's forest reserves. They set out the conditions under which prospecting or mining may take place, the procedures for applying for consent, and the environmental obligations of operators. Under the Regulations, no person may undertake reconnaissance, prospecting, or mining in a forest reserve without the written approval of the Minister responsible for Lands and Natural Resources, acting on the recommendation of the Forestry Commission and the EPA.

L.I. 2462 prescribes requirements relating to buffer zones, reclamation, and biodiversity management plans. It also establishes offences and penalties for unauthorised activities in forest reserves. The Regulations aim to balance mineral development with forest conservation by providing a clear process for evaluating and managing mining proposals within protected areas.

### d. Forestry Commission Act, 1999 (Act 571)

The *Forestry Commission Act* established the Forestry Commission as a corporate body responsible for the regulation and management of Ghana's forest and wildlife resources.

The Commission consolidates the functions of the former Forest Department, Wildlife Department, and the Timber Export Development Board. Its duties include the protection, development, and sustainable management of forest reserves, national parks, and wildlife sanctuaries, as well as the issuance of permits for timber and forest produce. Mining activities that occur within forest reserves or areas adjacent to them therefore fall under the supervision of the Forestry Commission.

The Commission advises the Minister responsible for Lands and Natural Resources on whether to grant consent for mining in forest areas and monitors restoration after mining operations cease. Through this mandate, it acts as a custodian of forest ecosystems affected by mineral exploitation.

## e. Water Resources Commission Act, 1996 (Act 522)

The *Water Resources Commission Act* created the Water Resources Commission (WRC) as the institution responsible for the regulation and management of Ghana's water resources. The Commission's powers cover both surface and groundwater. It issues water use permits for activities involving abstraction, damming, or diversion, including those connected to mining operations.

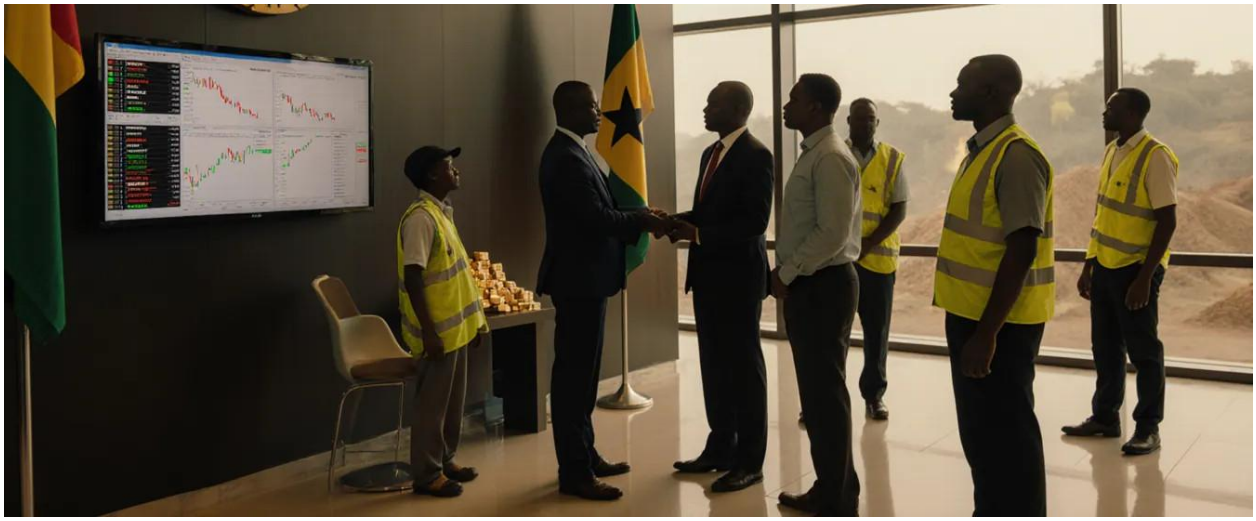
Mining companies must obtain WRC approval before using water for ore processing, washing, or cooling. The Commission also establishes water use regulations, develops river basin management plans, and monitors water quality to prevent pollution. It operates through catchment-based secretariats that work with the EPA and other agencies to ensure the sustainable use of water in mining areas. The Act recognises water as a finite national resource that must be managed in the public interest.

## f. Institutional Interaction and Coordination

The statutory frameworks described above create an interdependent system of institutions. The Minerals Commission administers mineral rights under the *Minerals and Mining Act*; the EPA regulates environmental impacts; the Forestry Commission manages forest reserves; and the Water Resources Commission controls water use and quality. These institutions are required to exchange information, provide technical advice, and participate jointly in the permitting process for mining operations.

In practice, a mining project in Ghana requires several approvals: a mining lease from the Minerals Commission, an environmental permit from the EPA, water use authorisation from the WRC, and in cases involving forest reserves, ministerial consent upon the recommendation of the Forestry Commission. Each institution maintains its own monitoring arrangements, reporting requirements, and compliance obligations. The combined effect is a multilayered regulatory environment.

# 12. The “GoldBod”: Between Innovation and Discontents



The passage of the Ghana Gold Board Act, 2025 (Act 1140) represents one of the most ambitious institutional reforms in Ghana’s mining sector since the liberalisation era of the 1980s. Enacted to replace the Precious Minerals Marketing Corporation (PMMC), the new Ghana Gold Board is presented as a modern, technocratic intervention designed to formalise gold trade, enhance traceability, and curb the growing menace of illegal mining and smuggling.

In principle, the Act signals an attempt by the State to reclaim control over gold flows and restore confidence in Ghana’s mineral marketing architecture. Its emphasis on digital traceability systems, due diligence standards, and structured oversight over artisanal and small-scale mining (ASM) appears to reflect a progressive policy shift towards transparency, accountability, and alignment with international responsible sourcing norms.

Yet, beneath this veneer of innovation lies a complex web of institutional contradictions and unresolved structural weaknesses. The Gold Board Act is not a radical break from past failures; but more accurately, a continuation of the same historical tendency to equate legality with legitimacy, and formal compliance with justice. The State’s fixation on legality, through licensing, certification, and enforcement, risks obscuring deeper questions of legitimacy that relate to fairness, environmental responsibility, and the equitable distribution of benefits within the gold economy.

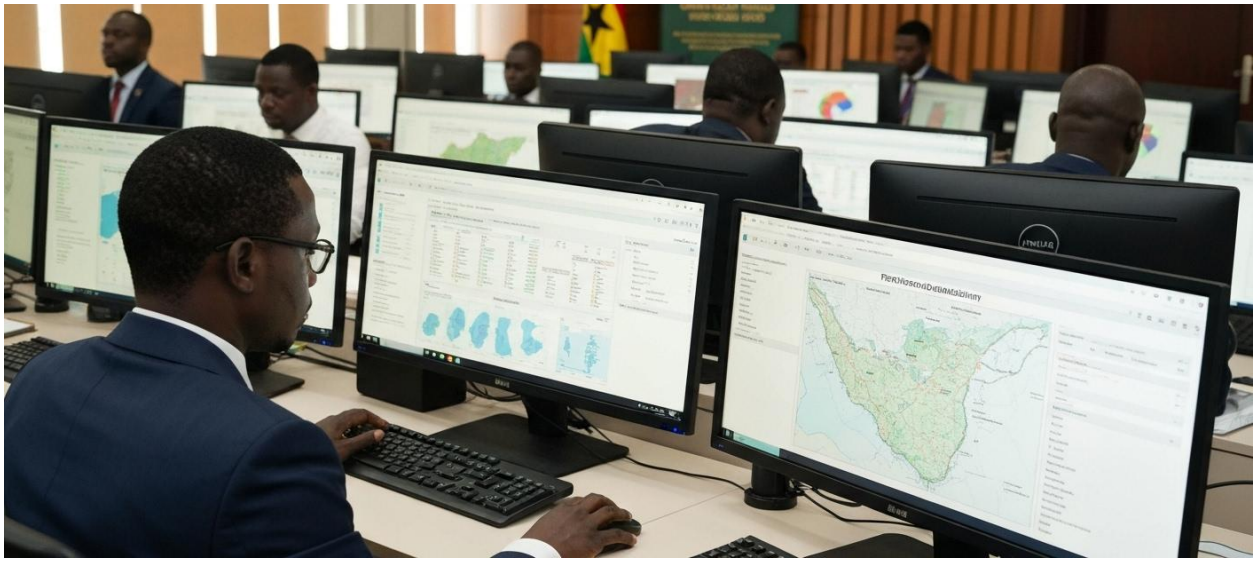
In a context where the distinction between legal and illegal gold is often blurred, formal institutions can inadvertently legitimise illicit practices, producing what may be termed a “veneer of legality.” Under this framework, gold extracted through ecologically destructive or socially exploitative methods may nonetheless be rendered “lawful” once it passes through certified export channels, thereby

reproducing the same moral and ecological contradictions that have long haunted Ghana's resource governance.

The Gold Board Act thus sits uneasily between *innovation and its discontents*. While it promises a new era of efficiency and oversight, its underlying institutional design raises old questions about concentration of power, market competition, and the uneven treatment of actors within the mining sector. The Act's focus on regulating and sanitising small-scale mining appears to sidestep the complicity of larger corporations, licensed dealers, and politically connected exporters in perpetuating illegal gold trade. By centring enforcement on the most vulnerable actors in the value chain, the law risks reproducing the same asymmetries that have historically marginalised artisanal miners and obscured elite capture at the upper echelons of the industry.

This paper critically examines the Gold Board Act through the twin lenses of innovation and legitimacy. It situates the Act within the wider institutional history of Ghana's mineral governance, interrogating how it seeks to reconfigure the relationship between legality, responsibility, and economic power in the gold sector. The analysis argues that while the Act embodies important innovations in regulatory design and digital traceability, it ultimately fails to resolve the fundamental governance dilemma of distinguishing lawful gold from legitimate gold. By reproducing the logic of centralisation and selective enforcement, the Act risks entrenching rather than transforming Ghana's gold economy. The discussion proceeds to explore the law's institutional architecture, its market implications, and the broader political economy of gold regulation, before advancing proposals for a more legitimacy-centred and developmental approach to mineral governance.

## a. The Promise of Innovation: Design and Institutional Architecture



The Ghana Gold Board Act, 2025 (Act 1140) is conceived as a flagship reform to restore credibility and control to Ghana's gold value chain. Its preamble presents an ambitious vision: to regulate, monitor, and promote trade in gold, to curb smuggling and illicit sales, and to ensure the traceability and integrity of all gold exported from Ghana. At its core, the Act replaces the Precious Minerals Marketing Corporation (PMMC), a parastatal long criticised for inefficiency, delayed payments, and weak market competitiveness, with a new institutional structure, the Ghana Gold Board (GGB). The Board is envisaged as a technically competent and commercially responsive entity that can bridge the longstanding gap between regulation and market efficiency.

Structurally, the GGB is granted extensive powers that blend regulatory and commercial functions. It is mandated to issue export licences, supervise gold assaying and valuation, regulate buying agents, oversee the export of refined and unrefined gold, and ensure compliance with traceability and due diligence standards. These provisions mark a shift from the purely transactional role of the PMMC towards a more integrated oversight function that extends across the gold supply chain.

The Board's statutory objectives also include supporting the formalisation of artisanal and small-scale mining operations, promoting responsible sourcing practices, and establishing a robust digital gold traceability system. In principle, these innovations signal a modern, technology-driven approach to mineral governance that aligns with global best practices such as the OECD Due Diligence Guidance for Responsible Supply Chains and the London Bullion Market Association (LBMA) standards.

A major innovation under the Act lies in its commitment to traceability and transparency. The introduction of digital gold tracking systems, combined with mandatory assaying and certification procedures, seeks to close the loopholes that have historically enabled illegal gold to enter formal markets. Through these measures, the Act aims to create an end-to-end digital trail that captures the origin, movement, and export of gold, thereby curbing smuggling and money laundering.

This represents a departure from Ghana's previous reliance on manual record-keeping and discretionary reporting, which were vulnerable to manipulation and underreporting. In theory, such digital systems should enhance the credibility of Ghana's gold exports and improve compliance with international anti-money laundering frameworks.

The Act also aspires to foster greater efficiency in gold marketing. By consolidating multiple gold marketing functions under one statutory entity, it seeks to remove redundancies and streamline the permitting and export processes. This is complemented by the Board's power to establish subsidiaries and enter joint ventures, a provision that signals a more entrepreneurial orientation. The GGB is,

on paper, designed to be more agile than its predecessor, with the flexibility to partner with private entities, attract investment, and respond swiftly to market dynamics. This corporate-commercial hybrid model is presented as an institutional innovation aimed at reconciling public accountability with market competitiveness.

Governance provisions under the Act also attempt to introduce safeguards for professional management and oversight. The GGB is administered by a governing board comprising representatives from the Ministry of Lands and Natural Resources, the Bank of Ghana, the Minerals Commission, and the Ghana Revenue Authority, alongside industry experts.

This multi-stakeholder composition appears to promote inclusivity and coordination across key agencies involved in gold regulation and fiscal policy. It reflects an awareness of the need for inter-agency coherence, a chronic weakness in Ghana's mining sector governance. The inclusion of private sector and technical expertise on the board suggests an effort to balance bureaucratic oversight with industry knowledge, potentially enhancing institutional responsiveness and technical depth.

Beyond structure and oversight, the Act's policy intent resonates with the language of reform and renewal. By asserting control over the gold trade, the state seeks to restore fiscal integrity, secure foreign exchange earnings, and curb the smuggling networks that have drained national revenue for decades.

The creation of the GGB thus embodies the state's aspiration to transition from a reactive, fragmented approach to a system of integrated gold governance. It also reflects Ghana's ambition to align with emerging global discourses on ethical minerals, responsible supply chains, and sustainable resource governance. In its design, the Act gestures toward a vision of a transparent, technology-enabled, and accountable gold economy, one in which both the state and local actors benefit from the nation's mineral wealth.

However, even within this architecture of innovation, there are early signs of institutional tension. The dual role of the Gold Board as both regulator and participant in the gold trade introduces potential conflicts of interest that mirror the very inefficiencies that plagued the PMMC. The promise of integration and efficiency risks collapsing into administrative overlap and market concentration if not carefully managed.

Similarly, while the Board's mandate to formalise the small-scale mining sector is laudable, its institutional focus appears to privilege surveillance and control over empowerment and capacity-building. These contradictions foreshadow the deeper discontents explored in the next section, where the question is not whether the Gold Board is legal or functional, but whether it is legitimate, just, and transformative in the broader context of Ghana's gold economy.

## b. The Discontents: Legality, Legitimacy, and the Politics of Gold

Beneath the technical sophistication and institutional promise of the Ghana Gold Board Act, 2025 (Act 1140) lies a deeper conceptual dilemma that speaks to the heart of Ghana's mineral governance crisis: the conflation of legality with legitimacy. The Act projects a vision of order through legal compliance, certification, and traceability. It assumes that once gold passes through formal state-sanctioned mechanisms, whether by licensing, export documentation, or digital tracking, it automatically becomes "responsible" and "lawful." Yet, this approach ignores the moral, ecological, and distributive questions that determine whether an activity is socially legitimate. In doing so, it risks institutionalising a *veneer of legality*, a system in which the appearance of compliance substitutes for genuine accountability and ethical governance.

This veneer is sustained by the Gold Board's emphasis on *formalisation through control.* The Act treats legality as a technical condition to be met through registration, documentation, and digital traceability rather than as a component of a broader social compact between the state, miners, and affected communities. However, legality in a context of deep structural inequality and environmental degradation does not necessarily equate to justice.

A mining operation may comply with every procedural requirement under the law and still devastate local ecosystems, exploit labour, or dispossess communities. Conversely, many small-scale miners who operate outside the formal regime do so not out of criminal intent, but as a rational response to systemic exclusion from capital, technology, and licensing opportunities. The failure to recognise this distinction between legal compliance and moral legitimacy renders the Gold Board's regulatory vision fundamentally narrow.

The inability to distinguish between legal and illegal gold is not simply a matter of administrative weakness; it is a structural feature of Ghana's gold economy. In practice, much of the gold exported from Ghana is an indistinguishable blend of output from licensed operations and informally sourced ore that enters the legal supply chain through intermediaries and aggregators. The Gold Board's traceability provisions rely on declarations and documentation issued by licensed dealers; yet, these mechanisms are easily manipulated. Once illicit gold is declared, assayed, and certified, it assumes a legal identity indistinguishable from gold mined responsibly. The Board's systems, therefore, may succeed in tracing gold through paper or digital records, but not in verifying the legitimacy of its origin. What emerges is a paradoxical regime where illegality is not eliminated but laundered through the state's own instruments of legality.

This problem reflects a deeper institutional blindness in the architecture of the Act. The law assumes that illegality resides solely at the margins, among small-scale miners, informal traders, and unlicensed operators, while ignoring the complicity of larger, better-connected actors within the formal system. Licensed exporters, refineries, and concession holders often act as conduits for laundering gold sourced from illegal operations. Yet, the enforcement gaze of the Gold Board is primarily directed downward, towards the most visible and vulnerable actors in the supply chain. By disproportionately targeting the artisanal and small-scale mining sector, the Act reproduces a long-standing policy bias that criminalises poverty, while absolving elite participation in the illegal gold economy.

This selective enforcement also carries political undertones. The politics of gold in Ghana have long been shaped by the interplay between state control, patronage, and rent-seeking. By placing the Gold Board under ministerial oversight, Act 1140 reinforces the centralisation of discretionary authority that has historically compromised regulatory independence. The Board's decisions on licensing, export approvals, and traceability compliance can easily become entangled with political interests. In such a context, legality becomes contingent not on objective compliance but on proximity to power. The resulting system is one in which the state both polices and participates in the market, blurring the line between regulation and rent extraction.

Moreover, the moral and environmental implications of the Gold Board's approach raise questions about the legitimacy of state authority in the mining sector. Legitimacy cannot be derived from law alone; it must emerge from fairness, accountability, and the perceived integrity of institutions. When local communities see "legal" mining operations destroying forests, polluting rivers, or displacing farmers without adequate compensation, the distinction between legal and illegal loses meaning. The law, in such instances, becomes complicit in perpetuating injustice under the guise of order. The Gold Board's heavy reliance on compliance metrics, licences issued, exports tracked, and gold certified, obscures the

substantive outcomes of governance: ecological balance, livelihood security, and distributive justice.

The discontents of the Gold Board Act, therefore, lie not only in its implementation, but in its conceptual design. By privileging legality over legitimacy, it risks legitimising irresponsibility and embedding moral hazard within the very structure of gold governance. The deeper tragedy is that the law may succeed in formalising the illegal without transforming the unjust. In the absence of robust mechanisms to verify ethical sourcing, ensure community participation, and balance regulatory enforcement with developmental support, the Gold Board could become yet another institutional innovation that sustains, rather than disrupts Ghana's historical mining paradox, where legality thrives even as justice withers.

## c. Institutional and Market Contradictions

The Ghana Gold Board Act, 2025 is presented as a reformist measure aimed at harmonising gold regulation and marketing, yet its institutional design reveals a series of contradictions that blur the lines between regulator, market actor, and political instrument. The most fundamental of these contradictions lies in the Board's dual identity: it is simultaneously charged with regulating the gold trade and actively participating in it. This duality creates structural tension between the imperatives of market competition and the logic of state control; a tension that is neither resolved nor adequately managed within the framework of the Act.

The Gold Board's statutory powers encompass both regulatory and commercial functions. It is empowered to issue export licences, monitor compliance, and enforce standards across the gold value chain, while at the same time engaging in gold purchasing, refining, marketing, and export activities through subsidiaries or joint ventures. In essence, the same institution that sets the rules of the market is also a direct participant within it. From the perspective of competition law and market fairness, this arrangement undermines the principle of a level playing field. It grants the Gold Board privileged access to market information and regulatory discretion; advantages that no private trader can rival. The result is a quasi-monopolistic structure where the state acts as both referee and competitor, compromising transparency and deterring private investment.

This institutional hybridity reproduces the market distortions that the Act purportedly seeks to correct. One of the key failures of the former PMMC was its inability to compete effectively with private and informal gold traders, whose agility and pricing flexibility made them more attractive to small-scale miners. The Gold Board inherits the same commercial mandate, but without resolving the underlying tension between market competition and state intervention. The danger is that the new institution, under the banner of reform, may merely replicate the inefficiencies of the PMMC while expanding its regulatory authority. In effect, the Act risks

replacing an obsolete monopoly with a more sophisticated one; a "monopoly with algorithms", legitimised by the rhetoric of digital traceability and responsible sourcing.

Beyond its market role, the Gold Board's creation adds yet another layer to Ghana's already fragmented institutional landscape. The Act does not clearly define its relationship with existing regulatory and fiscal bodies such as the Minerals Commission, the Bank of Ghana, and the Ghana Revenue Authority. Each of these institutions has pre-existing mandates that overlap with aspects of gold regulation. The Minerals Commission issues mineral rights and monitors compliance; the Bank of Ghana regulates export receipts and repatriation of foreign exchange; and the Ghana Revenue Authority oversees taxation and customs. The introduction of the Gold Board, with powers that intersect all three, risks deepening bureaucratic overlap and administrative friction.

Instead of consolidating coherence, the Act may further fragment authority across an already crowded regulatory field. This pattern of institutional layering, creating new agencies without dismantling or clarifying the mandates of old ones, reflects a chronic pathology in Ghana's governance reforms: an obsession with innovation that multiplies bureaucracy rather than rationalises it.

The problem is not simply one of overlapping jurisdictions but of regulatory hierarchy and accountability. The Gold Board is placed under the supervision of the Minister for Lands and Natural Resources, who also oversees the Minerals Commission and influences the policy direction of the EPA. This arrangement concentrates power within a single political office while creating multiple semi-autonomous agencies with intersecting responsibilities.

The resulting system is one of administrative dependence disguised as institutional pluralism. In practice, the Minister retains the capacity to influence both policy and enforcement, perpetuating the same executive dominance that has historically undermined regulatory independence in the mining sector.

Another contradiction lies in the Act's market orientation and distributive logic. The Gold Board's stated purpose is to ensure fair and transparent marketing of gold, yet its operational focus is directed primarily at the ASM sector. It is this segment of the market that is subject to the Board's traceability systems, export monitoring, and licensing oversight. Large-scale mining companies and established gold refineries, which already dominate Ghana's formal gold exports, are largely exempted from the same level of scrutiny.

This asymmetry creates an uneven regulatory landscape where the most economically powerful actors operate with minimal interference, while small-scale miners face heightened surveillance and compliance costs. The policy emphasis on

disciplining the ASM sector thus functions as a symbolic gesture of enforcement that leaves systemic inequities in the gold market untouched.

From a developmental perspective, this selective focus exposes the class and political economy biases embedded in Ghana's mining legislation. The Gold Board's interventions are framed as measures to sanitise the ASM sector; yet, they do little to challenge the market concentration and capital dominance that shape the broader gold economy.

The law targets the visible, fragmented, and politically weak actors while neglecting the opaque networks of financiers, exporters, and refineries that mediate both legal and illegal gold flows. This reproduces a regulatory culture that criminalises informality while insulating elite networks from meaningful accountability. The danger is that the Gold Board's institutional power will be used to legitimise exclusion rather than to create a more equitable and developmental mining order.

These contradictions raise deeper questions about the philosophy of reform that underpins Act 1140. By centralising authority, expanding state participation in the market, and entrenching selective enforcement, the law continues Ghana's long-standing pattern of technocratic reforms that address symptoms rather than structures. The creation of a new institution is celebrated as evidence of progress, even as the fundamental problems of coordination, competition, and distributive justice remain unresolved. The innovation, therefore, lies not in the reconfiguration of power but in its rebranding; a continuation of old logics under the guise of new governance.

In the end, the Gold Board Act exposes the tension between state innovation and institutional inertia. It represents a government seeking legitimacy through legal reform, but unable or unwilling to dismantle the power asymmetries that sustain illegality and inequality in the gold sector. The next section turns to this paradox more directly by examining how the Board's focus on small-scale miners reproduces exclusion rather than integration, and how Ghana's gold governance remains caught between formalisation and marginalisation.

## d. Between Formalisation and Exclusion: The ASM Paradox

The Ghana Gold Board Act positions itself as a key instrument for the formalisation of ASM; a sector long viewed by policymakers as the epicentre of illegality, environmental degradation, and lost state revenue. In the official narrative, the Act represents a decisive state intervention to bring discipline, transparency, and accountability to small-scale gold production through traceability systems, export certification, and digital monitoring.

Yet, a closer examination reveals that the law's design and implementation reproduce a deeper paradox: the pursuit of formalisation becomes a vehicle for exclusion. By framing the ASM sector primarily as a problem to be controlled rather than as a livelihood system to be developed, the Act perpetuates a regulatory order that polices the poor while leaving the structures of elite accumulation intact.

The Gold Board's approach to formalisation is rooted in an administrative logic that privileges surveillance over support. Its traceability framework focuses on documentation, registration, and data capture rather than on the social and economic conditions that sustain informality. Miners are required to register, sell only to licensed buyers, and comply with environmental and safety standards, yet the institutional mechanisms to enable such compliance are weak or absent.

Access to credit, modern technology, and technical assistance as conditions essential for the transition from informal to formal operations, remain beyond the reach of most small-scale miners. As a result, the law imposes obligations without providing capacity, turning compliance into an economic burden. Those unable to meet the high cost of formalisation are rendered illegal by default, reinforcing the divide between "good miners" who can afford to be compliant and "bad miners" who cannot.

This exclusionary dynamic mirrors the long-standing asymmetry in Ghana's mining economy. Small-scale mining sustains hundreds of thousands of livelihoods across rural Ghana, often in regions where alternative economic opportunities are scarce. Yet, it is persistently framed within policy discourse as a threat to national development rather than as a legitimate component of it.

The Gold Board Act, while rhetorically affirming the importance of ASM, operationalises this ambivalence through restrictive compliance mechanisms that criminalise survivalist mining. The state's response to the ASM economy remains disciplinary rather than developmental, characterised by raids, confiscations, and bureaucratic hurdles rather than capacity-building, cooperative models, or market access support. In this sense, the Gold Board functions less as a facilitator of inclusion and more as an extension of the state's coercive apparatus in the gold economy.

Moreover, the Act's selective focus on the ASM sector masks the broader political economy of illegality. By concentrating regulatory enforcement on artisanal miners, the law deflects attention from the larger, systemic networks that sustain illegal gold flows; networks that often involve licensed dealers, politically connected intermediaries, and export houses.

The Gold Board's traceability systems, while presented as tools of transparency, are most stringently applied to small-scale miners, while large-scale and corporate operators remain largely exempt from comparable scrutiny. This selective

enforcement reinforces the perception that legality is contingent on scale and status, not on conduct. It criminalises the visible poor while rendering invisible the illicit practices of the powerful.

The Board's market design also reproduces structural inequalities in access and pricing. By granting itself and its subsidiaries significant authority over gold purchasing and export certification, the Gold Board effectively centralises the marketing of ASM gold. This consolidation limits the bargaining power of small-scale miners, who are compelled to sell within officially sanctioned channels at prices determined by state or quasi-state institutions. In an economy where gold price fluctuations directly affect livelihoods, such centralisation risks replacing the exploitative middleman with an equally unaccountable bureaucracy. The promise of fair pricing and transparency thus becomes elusive, as miners continue to operate at the margins of a market structured to favour institutional actors and politically connected traders.

At the normative level, the formalisation agenda of the Gold Board Act reflects a deeper misunderstanding of informality itself. Informality is not merely a state of legal non-compliance but a rational response to structural exclusion. For many miners, entering the formal economy entails costs, licensing fees, taxes, and environmental obligations, that far outweigh the benefits, especially when state support and enforcement are unreliable.

A genuine formalisation policy would therefore require rethinking the relationship between the state and small-scale miners, moving from coercion to collaboration. This would mean designing participatory models of governance in which miners, local communities, and civil society organisations have a voice in policy implementation, environmental management, and market regulation.

By failing to embed such participatory structures, the Gold Board Act risks reinforcing the social marginalisation of the ASM sector. It creates an appearance of order without addressing the historical injustices that have long excluded artisanal miners from equitable participation in Ghana's mineral wealth. The language of "sanitisation" and "traceability" thus functions as a new form of state rationality; one that legitimises control while masking structural inequality. In this sense, the Act embodies the paradox of formalisation without empowerment, legality without legitimacy, and regulation without justice.

In the broader context of Ghana's mining governance, the Gold Board's approach to small-scale mining reveals the persistence of what may be termed extractive paternalism: a belief that the state must discipline and correct the behaviour of miners rather than partner with them in creating a fair and sustainable gold economy. This paternalism not only undermines social trust but also erodes the very legitimacy that the Act seeks to build. By continuing to view small-scale miners as subjects of regulation rather than as stakeholders in development, the state

reproduces the same patterns of dependency, exclusion, and environmental degradation that previous reforms failed to resolve.

Ultimately, the Gold Board Act's attempt to formalise the ASM sector reflects both an innovation in form and a stagnation in substance. It introduces new technologies and bureaucratic processes but remains captive to old logics of control, centralisation, and exclusion. The paradox of formalisation lies in its double effect: it promises integration while producing marginalisation, and it seeks order while deepening inequality.

Unless the state redefines its relationship with small-scale miners, anchoring governance in inclusion, legitimacy, and justice; the Gold Board will stand not as a transformative innovation but as a sophisticated continuation of Ghana's long history of regulatory paralysis dressed in the language of reform.

## e. The Paradox of Legitimisation. Artisanal Mining Between Necessity and Illegitimacy

The most revealing contradiction in the Act 1140 lies in the government's evolving relationship with ASM. Once denounced as a national crisis that polluted rivers, destroyed forests, and symbolised lawlessness, ASM has now been rebranded as "critical" to the economy. This rhetorical reversal marks not a change of conviction but a shift of necessity. Having failed to eliminate the practice through enforcement, and facing mounting economic pressures, the state has found itself tethered to the very activity it still condemns half-heartedly. The Gold Board's creation therefore reflects a deeper institutional accommodation: a reluctant legitimisation of ASM not out of belief in its virtue, but out of dependence on its output.

The legitimisation of ASM under the Gold Board Act is not primarily normative but "pragmatic" - not to be confused with rational. With the closure of the PMMC and the consolidation of state control over gold marketing, ASM has become the principal source of gold flowing into the Gold Board's value chain. Official data indicate that approximately 52 percent of the gold purchased or exported under the Gold Board framework originates from ASM sites. This reality exposes a fundamental truth: Ghana's gold economy is now structurally reliant on the very informal sector it claims to reform. In practice, the state's gold marketing infrastructure cannot survive without ASM, even as its policy rhetoric positions small-scale miners as the problem rather than the foundation of the system.

This dependence is not incidental. Official data indicate that over 52 percent of the gold exported through the Gold Board originates from ASM operations. The state's gold marketing infrastructure, therefore, is now materially sustained by the same informal practices it set out to discipline. In effect, ASM has become the economic backbone of the formal gold trade, blurring the boundary between legality and

illegality. What the state once framed as environmental delinquency has become indispensable to its fiscal stability. The irony is striking: the Gold Board, created to sanitise gold trading, is now institutionally dependent on the very sector whose practices have rendered Ghana's water bodies toxic and its forest reserves endangered.

This dynamic has produced what may be described as a moral retreat masked as policy innovation. Confronted by the impossibility of eradicating ASM, the state has chosen to domesticate it, folding it into legality while downplaying the scale of its environmental devastation. The language of "critical" now substitutes for the language of "illegal." Yet this shift does not resolve the legitimacy crisis surrounding ASM; it only displaces it. The state's embrace of legality, through traceability systems, certification processes, and export documentation, creates a thin veneer of order over a practice that remains ecologically and socially destructive. The government's survival strategy, therefore, has become one of managing illegitimacy rather than transforming it.

The paradox runs deeper. The concept of ASM, and citizens participating in resource extraction rather than leaving it to foreign corporations, carries powerful *social legitimacy*. It resonates with historical demands for economic inclusion and national ownership. For many Ghanaians, small-scale mining represents a democratic claim to the nation's mineral wealth; a corrective to the postcolonial pattern of foreign domination in extractives.

In this sense, ASM as an idea embodies a legitimate aspiration: that Ghanaians, not multinationals, should benefit from Ghana's gold. The problem lies not in this aspiration, but in its practice. The methods through which ASM is conducted, river dredging, unregulated mercury use, deforestation, and land degradation, have stripped it of its moral and ecological legitimacy. The distinction between the legitimacy of *concept* and the illegitimacy of *practice* is precisely what the Gold Board Act fails to confront.

This dependence on ASM also exposes the fragility of state authority. The government's sudden reversal, from waging a moral crusade against *galamsey* to embracing ASM as "critical", signals not a triumph of reform, but a capitulation to political and economic realities. The state's regulatory posture has shifted from prohibition to preservation, not because ASM has become cleaner or more responsible, but because the state itself has become entangled in its survival.

The inability to enforce environmental compliance while relying on ASM for foreign exchange earnings and rural employment has trapped the government in a cycle of moral contradiction. It must defend the practice it cannot reform, legitimise the actors it cannot control, and sanitise an economy it cannot sustain. In this context, the Gold Board performs an act of institutional theatre. It offers the appearance of governance, issuing licences, certifying exports, and proclaiming traceability, while

masking the persistence of widespread illegality and environmental collapse. The state's claim to authority rests increasingly on the management of appearances rather than the transformation of realities.

It can scarcely name even five ASM concessions that are fully compliant with environmental and safety standards; yet, continues to export gold certified as legitimate. The paradox is that the more ASM destroys the environment, the more the state depends on its output to prove that its reforms are working.

The Gold Board thus embodies the contradictions of Ghana's current mining moment: a government clinging to legality for dear life while legitimacy slips away. What began as a campaign to rescue the environment has evolved into an exercise in institutional self-preservation. The law has become both shield and trap, shielding the state from the moral implications of its dependence, while trapping it in the same cycle of environmental harm, social injustice, and regulatory pretence that it sought to end.

## f. Rethinking Legitimacy: Beyond Legal Formalism

The contradictions exposed by the Ghana Gold Board Act illuminate a broader malaise within Ghana's resource governance architecture: a deep-seated faith in legal formalism as a substitute for legitimacy. Successive mining laws and institutional reforms have proceeded from the assumption that governance failures can be corrected through the multiplication of statutes, permits, and compliance systems.

Yet this faith in legal instruments has produced diminishing returns. Legality, while necessary, has not been sufficient to command trust, produce justice, or protect the environment. The result is a system that performs law without embodying legitimacy; a legal order that regulates the appearance of compliance while concealing the persistence of injustice.

To move beyond this impasse requires a reorientation of Ghana's mining governance from a law-centred to a legitimacy-centred paradigm. Legitimacy, unlike legality, cannot be conferred solely by the state; it must be earned through fairness, accountability, and social consent. It demands not only that the law be obeyed, but that it be experienced as just. In the context of gold mining, legitimacy encompasses ecological stewardship, equitable participation, and the protection of community interests. It asks a more fundamental question than legality does: not simply *Is this mining operation authorised by law?,* but, *Is it fair, sustainable, and socially defensible?*

A legitimacy-based framework would require three major shifts in the philosophy and practice of mineral governance.

First, the basis of accountability must expand beyond procedural compliance to include *substantive justice*. Environmental licences, traceability systems, and export certifications should not merely verify paperwork, but should measure the real impacts of mining on water bodies, land use, and community welfare. This could be operationalised through the introduction of a "Legitimacy Index" a composite metric that integrates social, environmental, and governance indicators into the evaluation of mining operations. Mines that meet legal requirements but fail legitimacy tests on environmental integrity or community benefit would be subject to corrective measures or exclusion from certified supply chains.

Second, legitimacy requires inclusive governance. The Gold Board and other regulatory bodies should institutionalise mechanisms for community and civil society participation in decision-making, monitoring, and enforcement. Legitimacy grows when those most affected by mining, local communities, traditional authorities, women's associations, and youth groups, can influence the rules that govern their environment and livelihoods.

This participatory approach would transform mining governance from a hierarchical system of control into a deliberative framework of shared responsibility. The introduction of community-based monitoring committees, supported by transparent data platforms, would make it possible for citizens to track compliance, report violations, and contribute to environmental oversight in real time.

Third, a legitimacy-based framework must redefine the relationship between the state and small-scale miners. Rather than treating ASM as a problem to be policed, the state must recognise it as a developmental constituency. This means designing policies that integrate small-scale miners into the formal economy through access to credit, technical training, and environmentally responsible technology. Cooperative models should be encouraged, where groups of miners operate within shared concessions under collective environmental and safety standards. The state's role should shift from punitive enforcement to facilitative partnership, providing incentives for compliance rather than punishment for failure. By doing so, formalisation becomes a pathway to empowerment, not exclusion.

At the level of market governance, legitimacy also demands a new ethic of traceability. The current system privileges documentary legality, the possession of certificates, licences, and assay reports, without interrogating the social or environmental conditions under which the gold was produced. Ghana could pioneer a second-generation traceability regime that links documentation to field verification, community validation, and environmental audits.

Each certified batch of gold should carry a "social and ecological passport," detailing not just its legal source but its legitimacy credentials: absence of mercury contamination, restoration of mined land, fair labour conditions, and community

development contributions. Such a model would align Ghana's gold governance with global movements toward ethical minerals and responsible supply chains, while restoring integrity to the notion of legality itself.

The broader implication is that legitimacy must become both the metric and the method of governance. A mining regime that aspires to sustainability cannot rely solely on the coercive power of law; it must cultivate moral authority and social trust. This requires transparency in contract negotiation, publication of beneficial ownership data, and accessible reporting on royalty disbursement and environmental compliance. Institutions like the Gold Board should be evaluated not by the volume of gold exported, but by the degree of ecological restoration achieved, livelihoods sustained, and conflicts prevented.

Ultimately, the shift from legality to legitimacy is not an abandonment of law but its redemption. It seeks to restore coherence between what is lawful and what is just, between state authority and social accountability.

The Gold Board Act, in its current form, represents an innovation in design but not in philosophy. Its promise will remain hollow until Ghana's mineral governance is grounded not merely in compliance, but in conscience, a system where the right to mine is inseparable from the duty to protect, and where legality serves legitimacy rather than replacing it.

## g. Towards a Developmental Gold Regime

If Ghana's gold sector is to escape its cycle of regulatory paralysis and moral ambivalence, it must move beyond the current fixation with legality toward a developmental vision anchored in legitimacy, justice, and sustainability. The Ghana Gold Board Act, 2025 (Act 1140) presents a structural opportunity, but whether it becomes a transformative reform or yet another bureaucratic shell will depend on the philosophical direction the state chooses to pursue. The challenge is not merely to manage the gold economy more efficiently, but to reimagine it as a vehicle for national renewal: one that restores ecological integrity, redistributes value, and redefines citizenship in relation to natural wealth.

The starting point for this transformation is institutional coherence. The proliferation of agencies with overlapping mandates, the Gold Board, Minerals Commission, EPA, Forestry Commission, and Bank of Ghana, has produced fragmentation without accountability. A developmental regime would require the establishment of a Unified Minerals Governance Council (UMGC) to coordinate strategy, planning, and data integration across the sector. This Council should not replace existing institutions but harmonise their roles, eliminate duplication, and ensure a single transparent chain of accountability from licensing to export. Such coherence would strengthen oversight and end the institutional competition that has made regulation vulnerable to manipulation and delay.

Equally crucial is a reform of gold marketing and pricing to prevent the re-emergence of monopolistic structures under the Gold Board. The state should withdraw from direct commercial participation and instead position the Board as a *facilitator* of a competitive and transparent gold market. This can be achieved by licensing independent aggregators, mandating price transparency through a digital trading platform, and publishing real-time buying rates indexed to the London Bullion Market price. Rather than functioning as a monopolistic buyer, the Board should guarantee market integrity, setting standards, verifying compliance, and arbitrating disputes, while allowing fair competition to drive efficiency and innovation.

A developmental gold regime must also integrate the informal and formal economies in a way that turns formalisation into inclusion rather than punishment. This requires a comprehensive support system for small-scale miners: access to credit through a *Gold Development Fund*, technical assistance for mercury-free technologies, and structured training in safe and environmentally responsible practices. These interventions should be designed as collective infrastructure investments rather than individual handouts, delivered through community mining cooperatives that share equipment, training, and environmental responsibility. Over time, this cooperative model could transform ASM from a fragmented survivalist activity into a professionalised, socially legitimate, and environmentally sustainable sector.

At the moral core of this new regime should be a Gold Responsibility Compact (GRC), a national social contract between the state, mining companies, small-scale miners, communities, and civil society. The Compact would define shared ethical commitments: respect for ecological limits, fair labour conditions, gender inclusion, transparency in revenue management, and local benefit-sharing. Each participant in the gold value chain would be required to sign and uphold the Compact as a condition for licensing or certification. Public reporting on adherence to the Compact could be institutionalised through annual *Gold Responsibility Reports* audited by independent bodies and made available to citizens. This would convert legitimacy from an abstract principle into a measurable social expectation.

To operationalise legitimacy as a governance principle, Ghana could also pioneer a National Legitimacy Framework for Extractives (NLFE). This framework would set minimum benchmarks for transparency, community participation, environmental recovery, and equitable benefit-sharing across all mining activities. It would link compliance not only to domestic law but to international commitments on climate, biodiversity, and human rights. Mining entities that exceed baseline legitimacy standards could be rewarded with preferential access to credit, tax incentives, and international certification, while repeat violators would face restrictions or exclusion from export markets. In this way, legitimacy becomes both a moral and economic asset.

The state's role, in such a system, must evolve from command-and-control to partnership and stewardship. Instead of governing through coercion and crisis management, the state should enable a self-regulating ecosystem of responsibility, where citizens, markets, and communities co-produce governance. This would require cultivating civic trust through transparency. All data on gold production, export, and royalty distribution should be published in open formats accessible to citizens and journalists. The secrecy that currently shrouds mining contracts and export figures must give way to a culture of radical openness. Legitimacy grows where information flows freely.

Finally, the moral horizon of reform must confront the ecological devastation that underpins Ghana's current gold economy. Environmental recovery should no longer be treated as an afterthought to extraction. The state must adopt a Restoration First Policy, requiring mining revenues to be reinvested in reforestation, river remediation, and the rehabilitation of degraded lands before they are used to finance recurrent expenditure. This is not only a moral imperative but an economic one: the future of gold is inseparable from the survival of the environment that sustains it. The legitimacy of mining, therefore, will depend not on how much gold Ghana extracts, but on how much life it restores.

In the final analysis, a developmental gold regime is not defined by the efficiency of institutions but by the integrity of outcomes. The challenge before Ghana is not to legalise extraction, but to humanise it; not to multiply laws, but to rebuild trust. The Gold Board Act, in its current form, is an important institutional innovation, but its promise will remain unfulfilled unless it is guided by a new moral and political imagination, one that treats legitimacy as its foundation, rather than as a by-product. Only then can Ghana's gold economy evolve from a site of contradiction into a model of justice, stewardship, and shared prosperity.

# 13. Inferences and Implications

The Gold Board Act, 2025 (Act 1140) stands at the intersection of ambition and ambivalence; a reform that promises to modernise gold governance yet exposes the unresolved contradictions of Ghana's extractive state. In form, the Act represents a decisive institutional innovation: a bid to centralise oversight, formalise artisanal mining, and restore credibility to gold trading. In substance, however, it illustrates the limits of governance by legality. By clinging to legal formalism as a substitute for moral and political legitimacy, the state risks institutionalising the very contradictions it set out to overcome. The Act thus embodies both the hope of reform and the fatigue of repetition; a technocratic response to a moral crisis.

Across Ghana's mining history, legality has served as the grammar of control; legitimacy, by contrast, has been its missing vocabulary. The Gold Board Act reproduces this historical pattern. It codifies procedure but struggles to command faith. It regulates the trade in gold but leaves unaddressed the trade in trust. The state's dependence on artisanal and small-scale mining, the same sector it once condemned, reflects both its economic vulnerability and its political accommodation.

The rebranding of ASM from "illegal" to "critical" symbolises a deeper transformation: the retreat of the state from moral authority to administrative survival. The Gold Board's traceability and certification systems, while progressive on paper, risk transforming law into ritual and documentation into disguise; legalising what remains illegitimate in practice.

What emerges from this analysis is the imperative to restore legitimacy as the organising principle of mineral governance. Legitimacy demands more than compliance; it demands conscience. It asks not only that the law be enforced, but that it be just; not only that mining be legal, but that it be responsible. The future of Ghana's gold economy therefore lies not in the proliferation of new statutes or agencies, but in the cultivation of ethical institutions; institutions that derive their authority from fairness, transparency, and moral credibility rather than from coercion or convenience.

A developmental gold regime must thus rest on three pillars: coherence, inclusion, and restoration. Coherence will require an integrated institutional framework that eliminates duplication and restores accountability across the gold value chain. Inclusion will mean transforming small-scale mining from a tolerated necessity into a legitimate and empowered sector, anchored in cooperative enterprise, technological innovation, and environmental care. Restoration will demand that Ghana reimagine mining as an act of stewardship, that every ounce of gold extracted carries with it a measure of ecological renewal and social investment.

Ultimately, the question is not whether Ghana can regulate gold, but whether it can govern it justly. The measure of success will not be found in export volumes or compliance statistics, but in the rivers that run clear again, the communities that share in prosperity, and the trust that returns to public institutions. When legality and legitimacy finally converge, when mining becomes not only lawful but rightful, Ghana will have achieved what this generation's reforms have long sought but never secured: a gold economy that reflects the country's highest values rather than its deepest contradictions.

## a. Legal Abundance, Developmental Deficit: Understanding the Paralysis of Ghana's Mining Regime

As this report has shown, Ghana's mining sector has long stood at the intersection of law, politics, and economic aspiration. From the early post-independence nationalisation of mineral wealth through the liberalisation reforms of the 1980s and 1990s to the proliferation of sector-specific statutes in the twenty-first century, the country has accumulated one of the most elaborate legal and institutional architectures in sub-Saharan Africa. Yet the proliferation of laws has not produced a commensurate transformation in developmental outcomes. The contradiction is stark: Ghana is rich in mining legislation but poor in mining governance results. This chapter characterises that contradiction as the paralysis of mining laws; a condition in which the continuous expansion of the legal framework masks a persistent incapacity to translate law into sustainable, equitable, and accountable development.

The paralysis of Ghana's mining regime is not the result of legislative neglect, but of institutional excess without coherence. Each reform, from the Minerals and Mining Act, 2006 (Act 703) and its amendments to the Minerals Income Investment Fund Act, 2018 (Act 978) and the recent Gold Board Act, 2025 (Act 1140), has sought to modernise, formalise, or redistribute control. Yet these reforms have too often multiplied authorities, reinforced executive dominance, and prioritised short-term fiscal or political objectives over systemic transformation. The outcome is a form of regulatory fatigue: laws accumulate, institutions proliferate, but enforcement weakens; coordination falters, and policy coherence dissolves. What emerges is a regime that functions energetically at the level of enactment but sluggishly at the level of execution.

This chapter concludes the study by unpacking the developmental implications of this paralysis. It analyses how irresponsible and poorly aligned mining laws and policies undermine economic development, through lost revenues, environmental degradation, weak community welfare, and an unstable investment climate. It then interrogates the institutional and political challenges that continue to frustrate responsible mining governance, despite decades of legal reform. Drawing on both domestic and global experiences, the chapter argues that Ghana's developmental deficit in mining governance stems less from a lack of legislation than from a lack of legitimacy and institutional purpose.

The discussion proceeds in three parts. First, it examines the economic consequences of legal and policy irresponsibility in the mining sector, including the fiscal, social, and environmental costs of regulatory inertia. Second, its explores the structural and political constraints that impede the emergence of responsible mining governance, ranging from ministerial overreach and institutional fragmentation to data opacity and policy inconsistency. The final section outlines strategic recommendations for realigning Ghana's mining regime with global trends in responsible resource governance. It proposes a legitimacy-centred, developmental approach that integrates transparency, environmental stewardship, and community participation as core pillars of mining law and policy.

In sum, this chapter situates Ghana's mining experience within a broader global dilemma: the coexistence of legal abundance and developmental scarcity. By tracing the disconnect between the country's expansive legal architecture and its modest developmental returns, it calls for a new generation of reforms grounded not in legal proliferation, but in moral coherence, institutional discipline, and developmental purpose.

## b. The Nature of Legal Paralysis in Ghana's Mining Sector

The concept of legal paralysis captures a paradox central to Ghana's mineral governance experience: the existence of numerous, well-intentioned mining laws and institutions that nonetheless fail to deliver coherent regulation or developmental outcomes. In essence, the paralysis is not a product of legislative absence but of legislative *over-activity*; a continuous process of reform and amendment that multiplies frameworks without resolving the underlying dysfunctions of enforcement, coordination, and accountability. Ghana's mining regime exemplifies what may be termed "regulatory congestion": too many rules, too little clarity, and an ever-widening gap between normative aspiration and administrative reality.

*1.1 The Architecture of Excess*

From the Minerals Act of 1962 (Act 126) to the Minerals and Mining Act, 2006 (Act 703) and its subsequent amendments in 2015 (Act 900) and 2019 (Act 995), the legal evolution of Ghana's mining sector has been driven by a recurring impulse to consolidate, modernise, and attract investment. Each legislative cycle has introduced new mechanisms, from small-scale mining regulation to environmental assessment, royalty distribution, and sovereign wealth management. However, rather than achieving systemic coherence, this cumulative layering has created a fragmented institutional order where multiple agencies share overlapping responsibilities with limited coordination or unified strategy.

Key statutes such as the Minerals Development Fund Act, 2016 (Act 912) and the Minerals Income Investment Fund Act, 2018 (Act 978) sought to address revenue management and community benefit gaps but instead expanded bureaucratic complexity. The recent Ghana Gold Board Act, 2025 (Act 1140) continues the trend, adding yet another institution to manage small-scale gold trade and traceability, without clearly rationalising its relationship with the Minerals Commission, the Precious Minerals Marketing Corporation, or the Bank of Ghana. This cumulative proliferation has produced a state of institutional crowding, in which mandates overlap, accountability blurs, and policy coherence erodes.

*1.2 The Persistence of Centralised Discretion*

Despite its complex architecture, Ghana's mining regime remains heavily centralised. The Minister for Lands and Natural Resources, acting on the advice of the Minerals Commission, retains extensive discretionary powers to grant, suspend, or revoke mineral rights. This concentration of authority, a colonial inheritance maintained through successive constitutions, has often subordinated institutional autonomy to political expediency.

While parliamentary ratification under Article 268 of the 1992 Constitution was designed as a democratic check, in practice it has become procedural rather than substantive. Mining agreements are frequently approved with limited scrutiny, reflecting a deeper pattern of executive dominance and institutional deference.

Such concentration of discretion undermines predictability for investors and weakens the moral legitimacy of the regulatory process. Decisions regarding mineral concessions, environmental permits, and community resettlement often appear ad hoc, negotiated through political patronage rather than transparent criteria. The result is a regime that formally operates under the rule of law but substantively functions through administrative discretion; a defining feature of Ghana's legal paralysis.

*1.3 Fragmentation and the Erosion of Coherence*

Beyond executive dominance, the paralysis of mining laws also manifests in fragmented institutional mandates. The Minerals Commission regulates licensing and inspection; the EPA oversees environmental compliance; the Forestry Commission manages forest reserves; the Water Resources Commission governs water use; and local assemblies are expected to monitor community impacts. Yet these bodies seldom coordinate effectively.

Permitting processes are sequential rather than integrated, resulting in duplication, delays, and blurred lines of accountability. In many cases, institutional mandates collide rather than complement each other, creating gaps that opportunistic actors exploit through regulatory arbitrage and forum-shopping.

This fragmentation extends to data and policy alignment. Different agencies maintain separate databases, often using incompatible formats, which obstructs information-sharing and strategic planning. Without a centralised repository for mineral rights, environmental permits, and compliance records, the state struggles to monitor cumulative impacts or enforce sanctions consistently. Consequently, enforcement becomes selective, compliance becomes transactional, and the integrity of regulation collapses under its own procedural weight.

*1.4 Policy Inconsistency and Developmental Drift*

The proliferation of mining legislation has also generated policy inconsistency, especially between economic and environmental objectives. While one set of policies promotes aggressive mineral exploitation to boost foreign exchange earnings, another seeks to protect forests, water bodies, and local livelihoods.

The absence of a clear national hierarchy of objectives means that regulatory decisions oscillate between these competing imperatives. This oscillation

undermines long-term planning, deters responsible investment, and erodes trust among communities.

Moreover, the state's fiscal dependence on gold revenues and its political dependence on small-scale mining constituencies have produced a pattern of reactive governance; policy by crisis rather than design. This was evident in the shifting stance on *galamsey*: from the "war on illegal mining" to the subsequent embrace of artisanal mining as "critical" to national development. Such reversals illustrate the deeper governance fatigue at the heart of Ghana's mining regime a system caught between moral posturing and political pragmatism, unable to sustain a coherent developmental vision.

*1.5 The Developmental Cost of Paralysis*

The consequences of this paralysis are profound. Regulatory uncertainty discourages long-term investment in exploration and value addition; inconsistent enforcement weakens deterrence and emboldens non-compliance; and fragmented institutions inflate transaction costs while diluting accountability.

Communities bear the brunt of environmental degradation and social displacement, while the state forfeits revenue and legitimacy. The outcome is a developmental deficit: a mining sector that generates wealth without transformation, exports minerals without building capacity, and enacts laws without enforcing them.

Thus, the paralysis of Ghana's mining laws is both structural and philosophical. It reflects a governance model where law is treated as an end rather than a means, a ritual of reform that substitutes for substantive change. Overcoming this paralysis requires more than technical amendments; it demands a fundamental re-alignment of legal purpose with developmental intent, so that mining law becomes not merely a framework for extraction, but an instrument of justice, stewardship, and shared prosperity.

## c. Economic Implications of Irresponsible Mining Laws and Policies

The economic consequences of Ghana's mining law paralysis are neither abstract nor peripheral. They manifest in lost revenues, weakened institutional credibility, degraded environments, and stunted local economies. The failure to operationalise mining laws as effective instruments of governance has produced a pattern of irresponsible regulation laws that exist to signal order but that, in practice, perpetuate disorder.

This irresponsibility is not rooted in the absence of legal standards, but in the state's inability to enforce them consistently and to align mineral governance with broader

developmental priorities. The result is a paradoxical economy: rich in mineral output, poor in developmental returns.

*2.1 Fiscal Leakages and the Mirage of Mineral Wealth*

At the macroeconomic level, weak regulatory enforcement and opaque fiscal regimes have curtailed the state's ability to mobilise revenue from mining. Ghana's tax and royalty structures under the Minerals and Mining Act, 2006 (Act 703) and its subsequent amendments were designed to attract investment by providing flexibility in royalty rates and fiscal terms. Yet the same flexibility has undermined predictability and accountability. The discretionary authority of the Minister to vary royalty rates and approve stability agreements has produced wide disparities in effective taxation across operators.

These structural weaknesses, coupled with the poor monitoring of gold exports and under-declaration by some large-scale producers, have resulted in significant fiscal leakages. The Minerals Income Investment Fund (MIIF), intended to capture and invest a portion of mineral revenues for intergenerational benefit, has faced legitimacy challenges due to weak governance safeguards and political contestation.

Consequently, Ghana's mineral wealth continues to generate short-term fiscal inflows without long-term developmental conversion. The inability to transform royalties into productive capital reinforces the country's dependence on primary extraction, perpetuating a cycle of *resource abundance without prosperity*.

*2.2 The Local Development Deficit*

At the subnational level, the disconnect between mineral extraction and community welfare remains stark. The Minerals Development Fund Act, 2016 (Act 912) sought to ensure that a share of royalties benefits mining-affected communities through local development projects. In practice; however, disbursements have been irregular, delayed, and inadequately monitored. Local Mining Community Development Schemes (LMCDS), though envisioned as vehicles for participatory development, often lack the technical capacity and fiscal transparency to manage funds effectively.

This weak redistribution mechanism has deepened local inequalities. Mining districts contribute substantially to national output but remain characterised by poor infrastructure, unemployment, and environmental degradation.

The absence of clear accountability for royalty utilisation has also eroded community trust, fuelling social tensions and resistance to mining operations. The developmental deficit, therefore, is not simply a matter of inadequate revenue generation, but of failed revenue governance, a breakdown in the moral and institutional compact between the state and its citizens.

*2.3 Environmental Degradation and the Cost of Ecological Neglect*

The paralysis of mining law is most visibly inscribed on Ghana's landscape. Regulatory failures have allowed extensive environmental degradation, particularly through unregulated small-scale and illegal mining. The EPA and other enforcement agencies remain chronically under-resourced, limiting their ability to conduct regular inspections, enforce reclamation bonds, or prosecute violations. This has resulted in widespread deforestation, siltation of rivers, and mercury contamination ecological externalities that impose long-term economic costs far exceeding the short-term benefits of extraction.

The economic implications of this degradation are profound. Polluted water sources increase public health expenditure, reduce agricultural productivity, and burden local governments with remediation costs. Studies suggest that the cumulative cost of environmental damage from mining in Ghana rivals, if not exceeds, annual royalty inflows. This inversion, where the costs of extraction are socialised and the benefits privatised, epitomises the irresponsibility of existing mining laws and policies. Environmental neglect thus becomes not just an ecological crisis, but a fiscal one.

*2.4 Institutional Credibility and Investor Confidence*

A further dimension of the economic impact lies in the erosion of institutional credibility. Investment thrives on predictability, transparency, and the even-handed application of rules. Yet Ghana's mining laws, while outwardly modern, operate within a political economy marked by discretionary enforcement and regulatory opacity.

Disputes over licensing, contract renegotiations, and environmental compliance have increasingly found their way to courts or arbitration, reflecting investors' mistrust in administrative resolution.

This credibility deficit increases the country's risk premium, discourages long-term capital investment, and diverts resources toward legal and bureaucratic negotiation rather than productive activity. The paradox is that while Ghana's legal frameworks were designed to attract foreign investment, the weak enforcement of those very frameworks has made responsible investors wary and opportunistic ones emboldened.

The law's paralysis thus perpetuates a dual economy: one governed by informal networks of access and influence, and another constrained by procedural inertia.

*2.5 The Opportunity Cost of Policy Incoherence*

Finally, the cumulative effect of fiscal leakages, weak redistribution, environmental degradation, and institutional erosion is a vast opportunity cost, the lost potential

of mineral wealth to catalyse structural transformation. Ghana's mining laws have historically prioritised extraction over value addition, resulting in an enclave economy disconnected from manufacturing, technology, and human capital development. While legislative reforms such as the Local Content and Local Participation Regulations aimed to reverse this trend, inconsistent implementation and weak monitoring have limited their impact.

The failure to align mineral policy with national industrial strategy has left Ghana trapped in the low-value segment of the global mineral value chain. Export earnings fluctuate with commodity cycles, fiscal buffers remain thin, and industrial linkages are minimal. This developmental stasis is the ultimate expression of legal paralysis: a governance system that continuously regulates but rarely transforms.

In sum, the economic implications of irresponsible mining laws and policies are systemic and self-reinforcing. Fiscal losses weaken public investment; environmental degradation erodes the resource base; institutional mistrust deters responsible capital; and social discontent undermines stability. What emerges is a developmental paradox, a mining sector that sustains the economy without developing it, and a legal regime that commands authority without producing accountability.

## d. Challenges in Achieving Responsible Mining Governance

Efforts to build a responsible mining framework in Ghana have been repeatedly undermined by a deeper crisis of governance, a crisis that is institutional, political, and moral all at once. The proliferation of laws has not produced a culture of responsibility, largely because the institutions entrusted with enforcing those laws remain fragmented, under-resourced, and politically dependent. What has evolved is a regulatory order that performs legality but struggles to embody legitimacy. The challenge, therefore, is not the absence of responsible mining policy, but the inability of the state to sustain integrity in its practice.

One of the central barriers lies in the design of Ghana's mineral administration. Overlapping mandates between the Minerals Commission, the Environmental Protection Agency, the Forestry Commission, and the Water Resources Commission create a maze of authority without clear hierarchy. Each institution operates within its own legal silo, with limited coordination and diffuse accountability. As a result, permitting processes are protracted, enforcement is inconsistent, and regulatory gaps become opportunities for exploitation. The political economy of mining thrives in this confusion; actors learn to navigate between agencies, securing favourable decisions from one to offset restrictions from another. Over time, this institutional cacophony normalises non-compliance and rewards political influence over procedural fairness.

Equally debilitating is the pervasive shortage of capacity at the subnational level. Most mining activities occur in districts that lack adequate technical expertise, logistics, or staffing to monitor compliance. District assemblies and local offices of the Minerals Commission often operate with a handful of officers responsible for hundreds of active sites. The state, in effect, is absent from where mining actually happens. This spatial and administrative disconnect means that illegal operations flourish under the radar, environmental degradation goes unreported, and communities have little recourse when their lands or livelihoods are affected. The law's reach ends where its enforcement should begin.

Political dynamics further complicate the pursuit of responsible mining. The authority to grant or revoke licences remains concentrated in the hands of the Minister for Lands and Natural Resources, whose decisions are inevitably influenced by political calculations. Successive governments have treated mineral rights as instruments of patronage, rewarding allies or financiers while ignoring procedural safeguards. This culture of discretion undermines both investor confidence and public trust. It also weakens the autonomy of the regulatory agencies, which are pressured to align enforcement with political interests rather than statutory mandates. When the institutions meant to guard the integrity of the sector are themselves enmeshed in partisan considerations, the idea of "responsible mining" becomes more slogan than policy.

Transparency, or the lack of it, is another thread running through the paralysis. Ghana's licensing regime, despite rhetorical commitments to openness, continues to operate in relative obscurity. Details of mineral rights, beneficial ownership, and contract terms are not routinely published. Even parliamentary ratifications under Article 268 of the Constitution often occur without prior disclosure, reducing oversight to ritual rather than scrutiny. This opacity is costly: it fuels public suspicion, erodes investor predictability, and conceals the extent of rent-seeking within the sector. Without transparent data, civil society oversight remains weak, and communities cannot meaningfully hold the state or companies accountable for promises of development or environmental restoration.

The deeper challenge, however, is philosophical. Mining governance in Ghana remains trapped in a twentieth-century mindset that equates legal enactment with progress. Every crisis, whether environmental, fiscal, or social, has been met with the drafting of yet another law or the creation of another agency. Yet the structural logic of enforcement has remained unchanged: centralised, politicised, and reactive. This legal inflation gives the illusion of reform while reproducing the same pathologies of discretion, fragmentation, and inertia. What passes for progress is often a rebranding of the status quo.

Responsible mining governance, in contrast, requires a different temperament, one that values coherence over proliferation, and moral authority over bureaucratic expansion. It demands a shift from reactive lawmaking to anticipatory regulation;

from secrecy to radical transparency; from coercive enforcement to partnership with communities and responsible investors. Until that shift occurs, Ghana's mining laws will continue to multiply while their credibility declines, and the promise of responsible mining will remain suspended between rhetoric and reality.

## e. Global Trends and Lessons for Responsible Mining Governance

Across the world, the conversation about mining has shifted from the arithmetic of extraction to the ethics of governance. Countries that once measured success by output now measure it by legitimacy, by how mining contributes to human development, respects ecological limits, and distributes benefits fairly across generations. In this emerging consensus, responsible mining is no longer a voluntary aspiration but a defining standard of credibility in the global economy. Ghana's legal and policy trajectory sits uneasily within this evolution: its frameworks are increasingly elaborate, but its governance culture has yet to internalise the values that make those frameworks meaningful. Understanding global trends therefore helps to reveal both what Ghana has achieved and what remains unfinished in its reform journey.

The past two decades have seen a reorientation of international mining standards around three intersecting principles, transparency, sustainability, and participation. The Extractive Industries Transparency Initiative (EITI) has become the normative baseline for resource governance, requiring the publication of payments, contracts, and ownership data. Countries such as Mongolia and the Philippines have gone further by integrating EITI standards directly into domestic law, turning disclosure from a moral gesture into a legal obligation. Parallel to this, the OECD Due Diligence Guidance for Responsible Mineral Supply Chains has recast the responsibility of states and companies alike, extending accountability beyond borders to include the entire value chain of mineral sourcing, trade, and consumption. Under this framework, legality is not sufficient: the provenance of minerals must be demonstrably free from human rights abuses, conflict financing, and ecological harm.

In the environmental sphere, responsible mining has been defined increasingly through the lens of sustainability. The International Council on Mining and Metals (ICMM), representing some of the world's largest mining companies, now requires members to align with global environmental, social, and governance (ESG) performance standards. This has influenced jurisdictions such as Canada, Chile, and Botswana, where mining laws are explicitly tied to sustainability objectives and periodic performance audits. In these countries, environmental licences are not mere procedural hurdles but dynamic instruments that track compliance throughout the life of a mine. The implication is clear: modern mining governance

treats the environment not as an externality but as a co-owner of the law's legitimacy.

Equally transformative has been the rise of participatory governance. Latin American states, in particular, have embedded community consultation and free, prior, and informed consent (FPIC) into their legal frameworks, a principle now recognised as customary in international law. Peru's 2011 Prior Consultation Law and the regional court decisions interpreting it have reshaped how extractive projects are authorised, shifting decision-making power closer to affected populations.

The result has not been the end of conflict, but the creation of new democratic spaces where contestation can occur within the boundaries of legality and mutual respect. In contrast, Ghana's mining governance still relies heavily on top-down engagement and post hoc compensation, a model that preserves state control but sacrifices legitimacy at the community level.

These global developments underscore an important lesson: responsible mining is not merely about technical compliance, but about moral coherence. Laws must reflect the values they claim to protect. A mining regime that guarantees disclosure but tolerates impunity, or that celebrates formalisation while enabling environmental devastation, cannot claim responsibility. Many of Ghana's current challenges, from weak enforcement to politicised discretion, would not withstand the scrutiny of these emerging global norms. The gap is not one of knowledge but of commitment: the willingness to align domestic institutions with the moral and procedural standards that now define responsible resource governance.

At the same time, Ghana possesses advantages that could be harnessed to close this gap. Its democratic tradition, independent judiciary, and civil society activism provide a foundation for participatory oversight and institutional accountability. The country's adherence to the EITI and its relatively robust legislative base offer starting points for deeper reform. What remains is to translate these commitments into a new social contract around mining that internalises transparency, sustainability, and inclusiveness as binding obligations rather than rhetorical ambitions.

Learning from international experience does not require imitation, but adaptation. Ghana need not reproduce the institutional models of Chile or Canada; it must, instead, cultivate a distinctly Ghanaian framework of responsible mining, grounded in its constitutional principles and social realities. That means integrating global due diligence standards into domestic licensing, establishing independent monitoring mechanisms for environmental performance, and ensuring that communities are not passive observers but active participants in governance. It also means reframing mining not as a fiscal instrument for short-term revenue

generation but as a developmental enterprise, a sector whose legitimacy depends on how responsibly it sustains the nation's natural endowment.

The global trajectory of mining governance points toward convergence around one truth: that the right to extract carries an equal duty to protect. Countries that have embraced this ethos are redefining competitiveness, attracting investment not through permissiveness but through credibility. For Ghana, the lesson is simple yet profound. The world no longer rewards those who mine the most, but those who mine best. To remain relevant, the country must move from legal abundance to responsible coherence, aligning its mining laws with the ethics, expectations, and accountability mechanisms that shape the global mining frontier.

## f. Recommendations for Rebuilding a Responsible and Developmental Mining Framework

Reversing the paralysis of Ghana's mining laws requires more than legislative ambition. It calls for a deliberate redesign of how institutions function, how power is exercised, and how trust is built. The future of Ghana's mining governance will depend on whether it can produce coherence where there has been fragmentation, predictability where there has been discretion, and fairness where there has been exclusion. The following recommendations outline broad directions for reform that would restore purpose and credibility to the country's mining framework.

The first priority is institutional coherence. Ghana's mining sector operates through a patchwork of agencies that pursue overlapping mandates with limited coordination. A unified governance architecture is essential. The establishment of a National Minerals Governance Council, or an equivalent inter-agency body, could provide the strategic alignment currently missing. Such a council should not add another layer of bureaucracy but serve as a central platform for planning, data integration, and cross-agency accountability. Its role would be to ensure that mineral licensing, environmental permitting, and community engagement occur within a shared national framework rather than as isolated administrative acts.

A second reform area concerns local capacity and accountability. Mining laws often assume enforcement capacity that does not exist at the district level. The Minerals Commission and the Environmental Protection Agency should be resourced to establish fully functional district inspectorates, equipped with technical staff and real-time monitoring tools. Local authorities must be able to inspect sites, verify compliance, and respond to community complaints within defined timelines. Publicly accessible reporting on inspections, infractions, and corrective measures would strengthen deterrence and signal that the law operates where extraction occurs.

Reform must also address transparency and public oversight. Ghana has made progress through participation in the Extractive Industries Transparency Initiative, but disclosure remains selective. The country should move toward an open data regime in which all mineral rights, ownership details, and environmental performance records are routinely published. A digital cadastre linked to the Ghana Revenue Authority, the EPA, and the Lands Commission would allow citizens, investors, and oversight bodies to track compliance and payments in real time. Transparency should no longer be treated as a voluntary courtesy to the public but as a structural requirement of governance.

The redistribution of mineral revenues deserves renewed attention. The Minerals Development Fund Act promised to channel benefits to mining communities, yet the share of royalties remains modest and transfers are frequently delayed. The Fund's allocation formula should be reviewed to guarantee predictable funding to host districts, with a minimum share reserved for social infrastructure and environmental rehabilitation. Community development agreements should be legally enforceable, not left to corporate discretion. These measures would help align national extraction with local development and reduce the resentment that fuels conflict in mining areas.

Another essential dimension is environmental stewardship. Mining legislation should establish clear ecological boundaries and cumulative impact thresholds that cannot be waived by ministerial fiat. Sensitive ecosystems such as forest reserves, headwaters, and biodiversity corridors should be explicitly declared off-limits to mining. Environmental performance must be tracked through continuous monitoring and periodic audits conducted by independent experts. Offenders should face mandatory remediation obligations backed by reclamation bonds large enough to discourage negligence. Protecting Ghana's natural capital is an economic necessity, not a moral accessory.

Attention must also turn to the artisanal and small-scale mining sector, which now provides a large share of Ghana's gold exports but operates with minimal oversight. The state's approach should evolve from episodic crackdowns to structured inclusion. Cooperative licensing, access to mercury-free processing technology, and technical extension services would create pathways to formalisation that are viable and attractive. Artisanal miners should be treated as development partners whose success depends on environmental responsibility and adherence to collective standards, rather than as adversaries to be policed.

At the macro level, fiscal and investment policy should reinforce integrity. Stability agreements and tax incentives must be limited to transparent, time-bound terms approved by Parliament. The Minerals Income Investment Fund should be restructured to function as a genuine sovereign investment vehicle, managed under clear rules of public accountability and independent valuation. Future securitisation of mineral royalties must follow open parliamentary debate and full publication of

transaction documents. The goal is to ensure that Ghana's mineral wealth finances long-term national assets rather than short-term fiscal expediency.

Finally, the country's mining governance needs a new ethical foundation. Law can command compliance, but it cannot command respect unless it is seen as fair and consistent. The legitimacy of mining institutions will grow when they act predictably, share information openly, and treat communities as equal stakeholders in national development. A national conversation about mining and the public interest, involving traditional authorities, civil society, industry, and government, could lay the groundwork for a social compact that binds economic ambition to environmental and human integrity.

A responsible and developmental mining framework, therefore, is not one defined by the number of statutes in force, but by the coherence of the institutions that apply them and the trust they inspire. The reforms proposed here seek to restore balance between authority and accountability, efficiency and justice. If implemented with seriousness, they would transform Ghana's mining sector from a site of contention into a cornerstone of sustainable national development.

# 12. Conclusion

The story of Ghana's mining laws is one of ambition restrained by inertia. Over time, the country has built an impressive body of legislation that appears, on the surface, to reflect modern regulatory standards. Yet behind this architecture lies a governance system that has struggled to turn legal progress into material transformation. The problem is not that Ghana lacks laws, but that its laws have not generated the discipline, fairness, and foresight that development requires. This chapter has described that condition as the paralysis of mining laws, a state in which regulation proliferates while purpose dissipates.

The economic consequences of this paralysis are visible in every layer of the sector. Fiscal leakages drain public revenue. Communities near mining sites remain underdeveloped and distrustful of state institutions. Environmental degradation continues to erode the foundations of agriculture, water security, and public health. These outcomes are symptoms of a deeper failure of governance: a failure to treat law as an instrument of justice rather than as an ornament of administration. When legal systems prioritise procedure over substance, enforcement becomes selective, responsibility diffuses, and the very idea of sustainable development loses credibility.

Across the world, mining governance is being redefined by new expectations of transparency, ethical conduct, and environmental accountability. Responsible mining is no longer measured only by compliance with national law but by alignment with global norms of fairness and sustainability. Ghana stands at a

crossroads within this evolving landscape. It has the democratic institutions, professional expertise, and social awareness needed to lead, yet its policies remain bound to habits of discretion and short-termism that belong to an earlier era of extraction.

The reforms outlined in this chapter are intended to break that cycle. Institutional coherence, local capacity, transparency, fair revenue distribution, environmental stewardship, and the dignified inclusion of artisanal miners together form the scaffolding of a responsible and developmental mining regime. Achieving these reforms will demand political restraint as much as technical design. It will require leaders who are willing to limit their own discretion, empower regulatory institutions, and open the sector to public scrutiny. Development will begin not when new laws are passed, but when existing ones are applied with integrity and consistency.

In the end, the measure of Ghana's mining regime will not be the number of statutes it contains, but the trust it earns from its citizens and the confidence it inspires in the global community. The country's mineral wealth is finite, but its capacity for institutional renewal is not. If Ghana can transform its mining governance from a system of legal abundance into one of developmental purpose, it will have achieved something far more enduring than economic growth. It will have proven that law, when grounded in legitimacy and guided by justice, can become a genuine instrument of national progress.

# References


A. Constitutional and Foundational Instruments

1. Constitution of the Republic of Ghana, 1992

B. Colonial and Pre-Independence Legislation

2. *Gold Coast Mining Ordinance*, 1907
3. *Gold Mining Protection Ordinance* (Cap. 149), 1905
4. *Mercury Ordinance*, 1905
5. *Minerals Ordinance*, 1936 (as amended in 1926, 1938, and 1947)

C. Early Post-Independence Statutes (1960s)

6. *Administration of Lands Act*, 1962 (Act 123)
7. *Concessions Act*, 1962 (Act 124)
8. *Minerals Act*, 1962 (Act 126)

D. PNDC Era Legislation (1980s)

9. *Mining and Minerals Law*, 1986 (PNDCL 153)
10. *Mercury Law*, 1989 (PNDCL 217)
11. *Small-Scale Gold Mining Law*, 1989 (PNDCL 218)
12. *Precious Minerals Marketing Corporation Law*, 1989 (PNDCL 219)
13. *Minerals (Royalties) Regulations*, 1987 (L.I. 1349)

E. Institutional and Environmental Statutes (1990s–2000s)

14. *Minerals Commission Act*, 1993 (Act 450)
15. *Environmental Protection Agency Act*, 1994 (Act 490)
16. *Water Resources Commission Act*, 1996 (Act 522)
17. *Forestry Commission Act*, 1999 (Act 571)
18. *Environmental Assessment Regulations*, 1999 (L.I. 1652)
19. *Kimberley Process Certificate Act*, 2003 (Act 652)
20. *Minerals and Mining Act*, 2006 (Act 703)

F. Amendments and Subsidiary Legislation under Act 703

21. *Minerals and Mining (Amendment) Act*, 2010 (Act 794)
22. *Minerals and Mining (Amendment) Act*, 2015 (Act 900)
23. *Minerals and Mining (Amendment) Act*, 2019 (Act 995)
24. *Minerals and Mining (General) Regulations*, 2012 (L.I. 2173)
25. *Minerals and Mining (Support Services) Regulations*, 2012 (L.I. 2174)

26. *Minerals and Mining (Compensation and Resettlement) Regulations*, 2012 (L.I. 2175)
27. *Minerals and Mining (Licensing) Regulations*, 2012 (L.I. 2176)
28. *Minerals and Mining (Explosives) Regulations*, 2012 (L.I. 2177)
29. *Minerals and Mining (Health, Safety and Technical) Regulations*, 2012 (L.I. 2182)
30. *Minerals and Mining (Ground Rent) Regulations*, 2018 (L.I. 2357)
31. *Minerals and Mining (Mineral Operations – Tracking of Earth Moving and Mining Equipment) Regulations*, 2020 (L.I. 2404)
32. *Minerals and Mining (Local Content and Local Participation) Regulations*, 2020 (L.I. 2431)
33. *Income Tax (Minerals Income Investment Fund Exemptions) Regulations*, 2020 (L.I. 2433)
34. *Environmental Protection (Mining in Forest Reserves) Regulations*, 2022 (L.I. 2462)

G. Fiscal, Developmental and Revenue Acts

35. *Minerals Development Fund Act*, 2016 (Act 912)
36. *Minerals Income Investment Fund Act*, 2018 (Act 978)
37. *Minerals Income Investment Fund (Amendment) Act*, 2020 (Act 1024)
38. *Public Financial Management Act*, 2016 (Act 921)
39. *Ghana Gold Board Act*, 2025 (Act 1140)

H. Key Secondary Literature and Scholarly Sources

40. Adu, S. A., *The History and Politics of Mining in Ghana* (Ghana Publishing Corporation, 2010), pp. 15–20.
41. Anin, T. E., *Gold in Ghana* (4th edn Selwyn Publishers, Accra 1994).
42. Arhin, Kwame, 'Gold-Mining and Trading among the Ashanti of Ghana' (1978) 48(1) *Journal des Africanistes* 89–100.
43. Asumda, David, Situma, Francis, and Muigua, Kariuki, 'Ghana's Regulatory Framework and Sustainability in the Mining Sector' (2024) 4(1) *UCC Law Journal* 158–189.
44. Ayelazuno, J. and Mawuko-Yevugah, L., 'The World Bank and the Politics of Mining in Ghana' (2019) 37(1) *Journal of Contemporary African Studies* 65–82.
45. FS Tsikata, 'The Vicissitudes of Mineral Policy in Ghana' (1997) 2 *Resources Policy* 9–14.
46. Ofosu-Mensah, Emmanuel Ababio, 'Historical Overview of Traditional and Modern Gold Mining in Ghana' (2011) 1(1) *International Research Journal of Library, Information and Archival Studies* 6–22.
47. Päivi Lujala and John Narh, 'Ghana's Minerals Development Fund Act: Addressing the Needs of Mining Communities' (in press) *Journal of Energy and Natural Resources Law*.
48. Sewordor, K., 'Decolonising Ghana's Small-Scale Gold Mining Industry' (2020) 7(3) *The Extractive Industries and Society* 904–913.

49. Wright, Clive, 'Tackling Conflict Diamonds: the Kimberley Process Certification Scheme' (2004) 11(4) *International Peacekeeping* 697–708.
50. Aubynn, A., 'Sustainable ASM in Ghana' (2017) *Mining Journal of Ghana.*
51. Hilson, G., 'Small-Scale Mining, Poverty and Economic Development in Sub-Saharan Africa' (2009) 34(1) *Natural Resources Forum* 15–26.
52. Hilson, G. and Potter, C., 'Why Is Illegal Gold Mining so Common in Ghana?' (2005) *African Development Review.*
53. Parliament of Ghana, *Memorandum to the Bill* (2015).
54. GNA, 'Parliament Passes Minerals and Mining Amendment Bill' (2015) https://www.graphic.com.gh/news/general-news/parliament-passes-minerals-and-mining-amendment-bill.html accessed 16 July 2025.
55. GBC Ghana, 'New Minerals Law Imposes Stiffer Penalties for Illegal Miners' (2019) https://www.gbcghanaonline.com/general/minerals-and-mining-act-amended-to-give-stiffer-punishment-to-illigal-miners/2019 accessed 16 July 2025.

I. Institutional and Policy Reports (Referenced or Implied)

56. Parliament of Ghana, *Memorandum to the Minerals Commission Bill*, 1993.
57. Minerals Commission, *Annual Reports* (various years).
58. Environmental Protection Agency, *National Environmental Action Plan* (1994).
59. Ministry of Lands and Natural Resources, *Mining Policy Framework for Ghana* (2015).
60. World Bank, *Structural Adjustment and Mining Sector Reform in Ghana* (1989).
61. United Nations University/INRA, *Policy Reforms and Sustainability in the Ghanaian Mining Sector* (1997).

**MEDIA FOUNDATION FOR WEST AFRICA**
Aar-Bakor Street, Ogbojo
Telephone: +233 (0) 302 555 327
Twitter: @TheMFWA
Facebook: Media Foundation for West Africa
info@mfwa.org
www.mfwa.org


@themfwa


www.mfwa.org


themfwa