

Ghana Reviews Mining Law

By Frederick Asiamah

ACCRA, Ghana, April 12 (Public Agenda) - Ghana's Minerals and Mining Act, 2006 (Act 703), which has been described as a perfect example of a "neo-colonial law" is being reviewed by a committee put together by the Ministry of Environment, Science and Technology.

Though the Deputy Minister for Environment, Science and Technology, Dr. Omane Boamah disclosed this at a civil society parallel review of the natural resource and environment sector about a fortnight ago very few stakeholders, especially those within civil society, are aware of the review. According to the Deputy Minister, a committee has been put together, and has been meeting at the Ministry, but is yet to be inaugurated.

The committee, whose particular terms of reference and membership are unknown, is expected to overhaul the law, paying attention to environmental provisions contained therein. The review has been welcomed with the hope that it would help to raise standards for the mining industry and guard against exploitation of mining communities.

In an interview , Abdulai Darimani, Environmental Programs Officer of the Third World Network, welcomed the review but could not comment on its value because the committee's composition and terms of reference were not yet known.

Nonetheless, he spoke about areas that the TWN and other civil society groups expect attention to be directed to. According to him, the review should culminate in a provision that places environmental responsibility on mining companies; and a general environmental provision that will serve as guideline for the Environmental Protection Agency and the Minerals Commission to develop their own specific regulations.

In addition, Mr Darimani expects an explicit provision that "prohibits mining in forest reserves" and an obliteration of the stabilization clause provided under Section 48 of Act 703. Further, the TWN official believes a provision specifically addressing small scale mining will be desirable.

Some critics of Act 703 say the law impoverishes already poor and vulnerable mining communities but enriches already prosperous and powerful multinational mining companies. In addition, the law is generally said to be full of gaps. Particularly, Sections 2 and 46, which address compulsory acquisition of land and rights conferred by mining lease respectively, have been mentioned as hostile to mining communities.

Mr Augustine Niber, Director of Litigation, Centre for Public Interest Law (CEPIL), told Public Agenda that Act 703 was primarily fashioned to attract investors, thus its lack of protection for local communities.

He said issues around compensation, acquisition of land, and the ousting of the jurisdiction of the High Court in matters of compensation deserve critical attention in the review.

Section 75(1-3) of Act 703 stipulate that the "owner ...of land affected by a mineral right shall not apply to the High Court for determination of compensation to which the person is entitled unless the person is dissatisfied with the terms of compensation offered by the holder of the mineral right or as determined by the Minister..."

Though, Mr Niber welcomed the review, he was careful not to be over-excited because, as he argues, if the process was not self-driven and owned by the government, a prototype of the present legislation would emerge at the end of the day.

A consensual opinion is that the 2006 legislation, which was at the instigation of the Ghana Chamber of Mines, was passed in a bid to make Ghana the most attractive destination for foreign direct investors with particular reference to the extractive sector in the sub-region if not on the continent.

Mr Yaw Opoku, a legal consultant to WACAM, once said Act 703 has flaws that could best be described as "holes." According to him, Act 703 is a piece of legislation that "carries our resources out of this country" and also breaches the 1992 Constitution of Ghana.

In Section 2, the law provides for the compulsory acquisition of land, stating, "Where land is required to secure the development or utilization of a mineral resource, the President may acquire the land or authorise its occupation and use under an applicable enactment for the time being in force."

Mr Opoku believes the section violates the 1992 Constitution in many respects. Firstly, Article 257(6) only vests minerals in the President on behalf of the people and not the land.

Where compulsory acquisition becomes necessary, Article 20 (2) states that "Compulsory acquisition of property by the State shall only be made under a law which makes provision for - (a) the prompt payment of fair and adequate compensation; and (b) a right of access to the High Court by any person who has an interest in or right over the property whether direct or on appeal from any other authority, for the determination of his interest or right and the amount of compensation to which he is entitled.

The introduction of Act 703 in 2006 was met with intense protestations from civil society groups. Even though the groups had opportunities to make submissions to the Parliamentary Select Committee on Mines and Energy, most of their input according to them, were not factored in the final bill that was eventually passed into law.

