The Public-Private Sector Dialogue on **Mining Governance in Ghana** series





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The Public-Private Sector Dialogue on Mining Governance in Ghana series Report
is a product of the African Center for Economic Transformation (ACET)
in partnership with
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About the 'Public-Private Sector Dialogue on Mining Governance in Ghana' series

The aim of the Public-Private Sector Dialogue on Mining Governance in Ghana activity was to establish a dialogue between representatives of relevant policy makers/regulators, industry, and civil society groups, with the goal of improving mining governance in Ghana. The project was supported by the Australian Government through the Australia-Africa Partnerships Facility (AAPF) and implemented by the African Center for Economic Transformation (ACET).

The specific objectives of this activity were to: deepen collective understanding of the nature of the challenges between policymakers, investors and the public; use examples to inform best practice and provide benchmarks; broker dialogue between policymakers and multiple constituents; broker dialogue between policymakers and multiple constituents; and lay the foundation for a long-term forum on governance issues on mining in Ghana.

The activity included the development and publication of four position papers on governance as it relates to: local content policies; artisanal and small-scale mining (ASM) sub-sector; management of revenue from mineral exploitation; and delivering public private partnerships (PPPs) benefits to mining communities. These position papers were used to convene three public dialogues.

The first of these dialogues was held in Accra on the 13th of November 2014 to discuss the management of revenue from mineral exploitation; the second dialogue session was held on the 25th of March 2015 to discuss governance in the artisanal and small-scale mining (ASM) sector and delivering public-private-private (PPP) benefits to mining communities and the third dialogue was held on the 23rd of June 2015 to discuss governance as it relates to local content.

The forums brought together policy makers, industry players, civil society groups, development partners, traditional leaders, academics, small-scale miners and mining experts. In all, over 200 participants attended the events.

The key themes that came out of the three dialogues were that:

- Ghana's mining policy, which has been in draft form for some time, is outdated and should be reviewed to take into consideration the current economic and social dynamics of the country, and the wide range of stakeholder views.

- There is a need to improve local content in the mining sector to bring on board other local private sector producers into the value chain. A huge opportunity exists but it has largely, to date, been missed.
- The Government should recognize small-scale miners as local investors and provide them with appropriate support to enhance their operations. Measures should also be put in place to absorb them into the tax system as tax payers.
- The Mineral and Mining Act 703 should be reviewed to bring it in line with the Article 268 of the 1992 Constitution of Ghana.
- Public Private Partnerships (PPPs) that are part of Corporate Social Responsibility (CSRs) should be developed within the larger framework of Ghana's national development plan – balancing national development priorities with local-level needs.
- A national policy on alternative livelihoods in mining communities is needed to ensure that community members are able to develop livelihoods besides the local infrastructure provided by mining companies.

At the end of each dialogue session, participants brainstormed ideas for the establishment of an ongoing mining forum in Ghana. The following suggestions came from the session, that the forum if established:

- Should involve all stakeholders and be funded by the Government of Ghana and the Chamber of Mines;
- Should include all stakeholders that receive and use royalties from mining;
- Should include the renewable natural resource sector;
- Be an action-based programme;
- Should involve a technical committee that meet and discuss the various issues;
- Should be accompanied by a 'Mining Communities Development Fund';
- Should be funded by mining companies, donors, and the Ministry of Mines; and
- Should be formally termed a "mining Industry Stakeholder Forum"

At a broader level, participants recommendations, garnered through participant debate during the sessions and participant surveys, include:

- **Decentralize mining fora to local communities:** Issues relating to mining, including policy decisions, must be discussed closer to the people at the mining areas whose lives are directly affected by mining activities. ACET and partners therefore must look at other models adopted by other civil society organizations to organize public engagements in local communities as a step towards sensitizing and building public concerns for policy and legal reforms and implementation. For instance, developing relationships with District Assemblies in mining areas to promote public-private dialogue on local issues on mining.
- **Research and Development:** This an area where the Chamber of Mines and other key actors in the mining value chain should work together with research and academic institutions. This could include the involvement of external partners, such as donors, to support the development of technical capacities of local people to play instrumental roles in influencing policy and contributing to development of the sector in the long-term.
- **Involvement of media:** Including building the capacity of the media to play a decisive role in educating the public and also mobilizing citizens' demand for accountability in the development and use of mining revenues.
- **Broad based consultations:** Ensure broad based consultations and consensus building in policy development and implementation. Particular attention should be given to traditional leaders and community members in the mining-impacted areas.
- **Effective oversight by public agencies:** Need for a coordinated inter-ministerial and multi-disciplinary approach on all issues in the exploitation of natural resources with a focus on minerals.
- **Role of women:** Women's involvement in mining and its effect on households needs to be considered in policy formulation as well as implementation of policies. Mechanisms or strategies that will reduce the negative impact of mining on women and children should always be looked and at the same time incentives should be provided to women in the value chains to enable them develop.

This document is a compilation of the four position papers that were used in the three policy dialogues. The working papers have been funded by the Australian Government through the Australia-Africa Partnerships Facility (AAPF). The views and opinions presented in these working papers are solely those of the authors and do not necessarily represent those of the Australian Government.

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Background

Given the unparalleled opportunity to stimulate growth and reduce poverty in resource-rich countries, there has been a concerted effort to develop guidelines and benchmarks to assist governments to enforce strong governance frameworks related to mining.

Governments, international organisations and civil society groups recognise that for resource rich countries to achieve broad, transparent, equitable and sustainable growth and socio-economic development, resource exploitation should be underpinned by the principle of responsible stewardship and supported by strong governance arrangements.

A prerequisite to responsible stewardship is good governance at the policy level, in the legal institutional framework, and at the community level where implementation of activities in the extractives sector takes place. The development and implementation of strong governance policies should be inclusive, and informed by public participation and inputs from all stakeholders, including the private sector.

Given the unparalleled opportunity to stimulate growth and reduce poverty in resource-rich countries, there has been a concerted effort to develop guidelines and benchmarks to assist governments to enforce strong governance frameworks related to mining. These include the UN Global Compact framework and a number of other initiatives led by UN agencies, Regional Economic Commissions (RECs), multilateral agencies and civil society groups. For example, the International Finance Corporation (IFC) has adopted the "Sustainable Development Framework" and the "Equator Principles" aimed at ensuring that IFC-funded investments are "socially responsible and reflect sound environmental practices".

In sub-Saharan Africa, African Union (AU) member states have adopted the Africa Mining Vision (AMV) which, "calls for transparent, equitable and optimal exploitation of mineral resources to underpin a broad-based sustainable growth and socio-economic development".

For its part, the extractive industry has instituted several initiatives to address the myriad of challenges faced. Led by the International Council on Mining and Metals (ICMM), industry (including many leading mining companies) has committed to strengthening the contribution of the mining industry to sustainable growth and development through the collective action of its members. Other private sector initiatives include the World Business Council on Sustainable Development (whose members include many fortune 500 companies) and industry associations such as the World Gold Council and the World Diamond Council - all advocates for the responsible extraction of natural resources.

Advocacy groups and civil society organisations (CSOs) calling for good governance in the natural resources sector have also gathered momentum, working at both the community and policy level to focus on issues such as: transparency in revenue management; public accountability; environmental protection; the right of citizens to contribute towards policy formulation' improved employment conditions; human rights and business ethics. Notable among the CSO's advocating for good governance in the extractives sector are Extractives Industries Transparency Initiative (EITI), Global Witness, Revenue Watch Institute (RWI), Publish What You Pay, Human Rights Watch and the World Wildlife Fund. Initiatives focused primarily on monitoring compliance with good governance best practices include the EITI, the Kimberley Process, the Dodd Frank Act, the World Bank Governance Report, the RWI Resource Governance Index and the Mo Ibrahim Governance Index.

Despite these initiatives, in many resource-rich countries poor governance still plagues mineral development projects, mine-impacted communities and the general public is excluded from important policy decisions, and the benefits from mineral resources (such as public revenue, job creation and ultimately poverty reduction) do not trickle down to the people who need them most. Many contend that good governance ought to be the common denominator without which these challenges cannot be adequately addressed.

Contents:

Position Paper on:

'Governance in the Management of Revenue from Mineral Exploitation[1]'

1 *Dr. Mohammed Amin Adam (African Center for Energy Policy, ACEP)*

1.Introduction

Ghana is blessed with mineral resources and for more than a century has been engaged in the production of solid minerals for export. The country produced an estimated 80 million ounces of gold between the first documentation of gold mining in 1493 and 1997 (Kesse, 1985; Ghana Chamber of Mines, 1998). The country is also the second largest producer of gold in Africa after South Africa, the third-largest African producer of aluminum metal and manganese ore and a significant producer of bauxite and diamond (Coakley, 1999).

The production value of mining in Ghana (mostly gold), has grown by 290% since 2000, and mining represents over 25% of the country's export trade (ICMM 2012). In spite of this, Ghana still suffers low levels of human development and high levels of poverty, including in rural areas where mining exists (IMF 2012).

This development has been attributed to lack of a comprehensive National Mining Policy and Mineral Revenue Management Policy. The criticism has led to the plan by Government to pass a Mineral Development Fund Bill to provide a legal mechanism to govern the management of ceded revenues (André, S. and Gavin, H., 2013). However, a National Mining Policy remains outstanding.

However, the challenge of mineral revenue management in Ghana goes beyond ceded revenues. Macroeconomic challenges associated with resource revenue management such as "Dutch disease" and commodity price volatility; and governance challenges including transparency and institutional issues have to be addressed.

The enactment of the Petroleum Revenue Management Act (PRMA) 2011 (Act 815) piqued interest in the management of resource revenues in general and mineral revenues in particular. This has in turn stimulated interest in the demands for a similar legal framework that will guide the collection, management and use of mineral revenues.

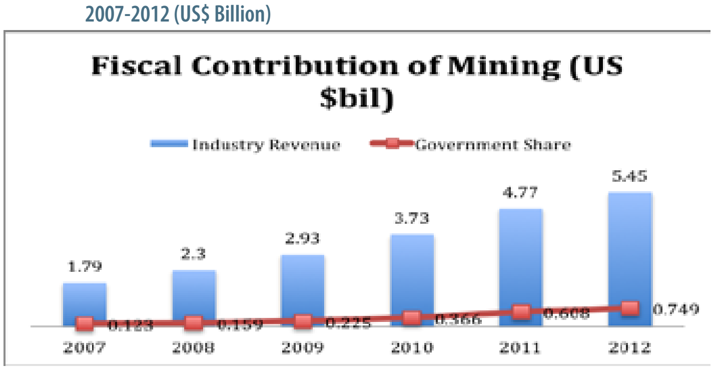
This paper advances arguments in favour of a mineral revenue management policy for Ghana and the mechanisms for citizens contribution to the policy making process. It also outlines policy measures for the transparent and productive management of mineral revenues.

Overview Of Fiscal Arrangement in Ghana's Mining Sector

While the direct contribution of mining to GDP has historically been relatively small (between 1 and 5 % of GDP in the 1990s), this has increased since the 2000s reaching 14 % in 2012. However, its contribution to government revenues and foreign exchange earning has been significant, and at one time was the backbone of the economy beside cocoa. Since 2007, Government share of mineral revenues increased from US$61 million (constituting about 7% of total industry revenues) to US$749 million in 2012 (about 14% of total industry revenues) – see Figure 1. The Government share of revenues has come from royalties, corporate taxes, property tax, and dividends from its equity interest. The contribution to foreign exchange earnings has increased from 14 % in 1990 to an average of 41 % since the mid 1990s.

The country is also the second largest producer of gold in Africa after South Africa, the third-largest African producer of aluminum metal and manganese ore and a significant producer of bauxite and diamond (Coakley, 1999).

Figure 1: Fiscal Contribution of the Mining and Quarrying Sector to GRA Total Revenues - 2007-2012 (US$ Billion)



Source: Ghana Revenue Authority, and Bank of Ghana

The size of the revenues reported above vary over the period largely due to increasing gold production and the fiscal regime that determined the revenue streams. Over the years, Ghana has operated a generous legal and fiscal regime with attractive terms aimed at attracting Foreign Direct Investments to the mining sector. Both Minerals Laws (PNDC Law 153 of 1986 and Act 703 of 2006) and subsequent amendments exempt mining companies from payment of customs import duty in respect of plant, machinery, equipment and accessories imported solely and exclusively for mining activities. This also covers the staff of mining companies who are exempt from the payment of income tax on furnished accommodation at the mine site. The fiscal regime further sanctions front-loading the amortization of capital spending through capital allowances for reconnaissance, exploration, and extraction.

Over the last five years, there have been significant reforms in the legal and fiscal regimes in the sector. In 2010, the Minerals and Mining Act of 2006 was amended to change royalty from a range of 3% to 6% to a fixed 5%. However, due to Stability Agreements signed with AngloGold and Newmont, the two largest companies operating in Ghana whose production constitutes 40% of total gold output, they continued to pay the royalty based on the old regime (Boakye et al, 2012).

In the 2012 Budget and Policy Statement of the Government of Ghana, the Government introduced new fiscal terms including an increase in corporate tax for mining companies from 25% to 35%, limited annual capital allowance to an equal installment of 20% for five years, a windfall tax of 10% and ring fencing of cost (Government of Ghana, 2012). Government further set up a team to re-negotiate the Stability Agreements. There have been protests from mining companies led by the Ghana Chamber of Mines following a decline in gold prices; and this has led to Government suspending the introduction of windfall taxes. The Windfall Tax Bill, which had been submitted to Parliament, was withdrawn.

There have been protests from mining companies led by the Ghana Chamber of Mines following a decline in gold prices; and this has led to Government suspending the introduction of windfall taxes. The Windfall Tax Bill, which had been submitted to Parliament, was withdrawn.

One of the major challenges of mineral revenue management is the revenue sharing formula between the Central Government, Local authorities, and communities. The current sharing arrangement allows statutory earmarking of mineral revenues. Total mineral revenues received by Government are shared between the Central Government (80%) and impacted communities and mineral agencies (20%). The total ceded revenue for distribution to communities is transferred to the Mineral Development Fund (MDF); and distributed as follows based on an Administrative Fiat.[2]

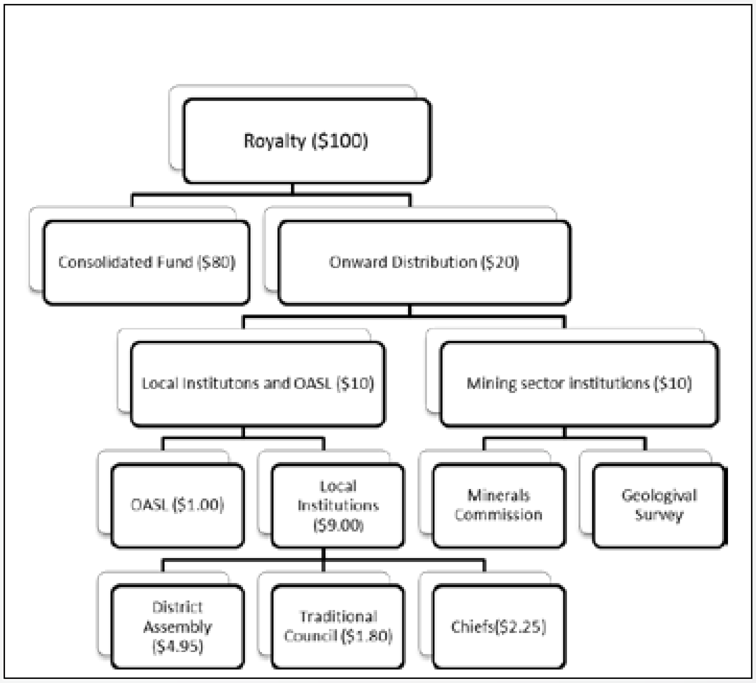
a. 10% (i.e. 50% of the ceded 20%) is shared to mining agencies such as the mineral commission, the Geological Survey Department and the University of Mines in Tarkwa.

b. 1% of the remaining 10% (i.e. 10% of the balance in the MDF) is allocated to the Administrator of Stool Lands.

c. The remaining 9% (i.e. 90% of the balance in the MDF) is then converted into 100%, is distributed as follows – 25% to the Stools, 20% to the Traditional Authorities and 55% to the District Assemblies.

The following Figure 2 is a schematic outline of Mineral Revenue Sharing between the Central Government and other beneficiaries.

Figure 2: Schematic outline of Mineral Revenue Sharing in Ghana for every $100



Source: Joe Amoako-Tuffour, "Mineral Fiscal Regime: Technical Report" Prepared for African Centre for Economic Transformation, 2012.

2 Administrative Fiat of 1991 (letter no. AB.85/156/01)

Minerals Commission has issued guidelines on the utilization of ceded revenues, the lack of a comprehensive law for this purpose has made the implementation of the guidelines ineffective.

At the national level, there are equally very serious challenges such as tracking mineral revenues through the budget due to the fungibility of money, lack of an instrument for smoothing spending when commodity prices fluctuate; and the lack of a framework for meeting inter-generational equity objectives.

Impacted communities have raised concerns about the size of ceded revenues relative to the social, economic and environmental threats they are confronted with from mining.

However, there are a number of factors that challenge the reasonableness of fiscal arrangements between the central government and local communities and the overall management of mineral revenues.

At the community level, one of the factors accounting for these challenges is the inappropriateness of the application of the formula for emerging mining communities in the North. The formula for distributing mineral revenues applies to stool land revenues and can therefore not be applicable to areas where traditional authority is not linked to land ownership,[3] the suitability for applying the Administrative Fiat in some parts of Northern Ghana where land is not owned by the traditional authority will pose a challenge to emerging mining communities in the North. Thus, the formula for distributing mineral revenues is not comprehensive.

Another factor relates to the fairness of the formula for sharing benefits to communities. Impacted communities have raised concerns about the size of ceded revenues relative to the social, economic and environmental threats they are confronted with from mining. For instance, the World Bank (2003) reports that, "Local people feel no perceptible benefit from the resources extracted from "their" land, despite the sharing of royalties between the central government and the mining communities." This has increased community contestations for more benefits.

Further, there is no comprehensive law for guiding the utilization of ceded mineral revenues. Local authorities have not demonstrated significant absorptive capacity in the utilization of ceded revenues. Consequently, they have used mineral revenues to finance recurrent budgets, which have no direct development impact on communities. Even though the

The above arguments provide a strong basis for Ghana to develop a comprehensive mineral revenue management policy and legislation. This paper addresses the following specific questions:

- Does Ghana need a mineral revenue management policy?
- What is the most appropriate way of ensuring that the general public has the opportunity for meaningful contribution towards revenue management policy formulation and implementation in Ghana?
- What standard of accountability and disclosure should exist in relation to the management of mineral revenues by Ghana's public institutions?
- What lessons can the minerals sector in Ghana learn from the policy formulation and implementation of the Petroleum Revenue Management Law (Act 815)?

3 *Mahama and Baffour (2009) state that "Constitutionally, stool occupants hold land on behalf of and in trust for the entire subjects of the stool. The stool is regarded as an immortal entity and therefore represents the spiritual and physical embodiment of the people. Stool lands are pre-dominant in areas of the country which have a strong centralized political system as exists in most part of the Akan areas in southern Ghana. In these areas, traditional authority is inexplicably linked to land ownership and the stool holds the allodial title in land. In Ghana, eighty percent (80%) of land is under customary (non state sec- tor) ownership".*

Question 1:

Does Ghana need a mineral revenue management policy?

Ghana's economy is faced with fiscal challenges as a result of excessive spending and low revenue generation. Ghana's mineral resources however offer significant opportunity for transforming the economy if the resources are managed well.

Ghana's mineral resources however offer significant opportunity for transforming the economy if the resources are managed well.

A mineral revenue management policy has become imperative in Ghana because the country's main challenge for transforming mineral revenues to development is hinged on the ability of the Government to initiate policies that addresses the fundamental effects of resource revenue management. The most compelling reasons that make a mineral revenue management policy inevitable for Ghana are:

- Mineral resources are exhaustible, hence there is need to have a policy that ensures the allocation of benefits between current and future generations. The Ghanaian Constitution grants the right of ownership of mineral resources to current and future generations, yet there is no framework for meeting inter-generational equity objectives. Also as an exhaustible resource, it is important to have a policy that guides the transformation of resources into assets for the medium- to-long term development of the country.
- Commodity prices are volatile, which could introduce cyclicality into the economy. However, there is no instrument for smoothing spending when commodity prices fluctuate; and this has been recognized as one of the causes of Ghana's twin-deficits over the years[4]. This requires counter-cyclical measures for managing the volatility effects.
- Also, the effect of exchange rate volatility on the economy could be fuelled by the inflow of mineral revenues or its shortage thereof. Real exchange appreciation (often referred to as "Dutch disease") makes the country's exports non-competitive (IMF, 2007). This leads to dwindling non-resource "tradable" sector such as agriculture and manufacturing (Boakye et al (2012)). Policies to increase productivity gains in the tradable sector and for facilitating diversification beyond the mineral boom could help address exchange rate pressures.
- There is also the need for a comprehensive revenue sharing policy, which effectively compensates impacted communities without compromising fiscal sustainability of the state.
- Institutional frameworks for managing mineral revenues including for instance the assessment, collection and administration of mineral revenues will introduce discipline and efficiency in the management of mineral revenues.
- Good governance in the management of mineral revenues has become an important requirement for ensuring that revenues deliver development to the people. The nature of resource revenues are such that they can be controlled by an elite class; and its utilization used to perpetuate vested interest rather than seeking the interest of the public. Policies that insulate government functionaries from undue control over the use of mineral resources could introduce integrity in the management of resources and predictability in the use of revenues for productive development. This also requires that there are strong standards of transparency and accountability governing the management of the resources. Transparency is an important requirement for ensuring public accountability and management of public expectations.

4 *Amadou Sy and Temesgen Deressa (2014), "Ghana's Request for IMF Assistance", Brookings, August 15, 2014.*

Question 2:

What is the most appropriate way of ensuring that the general public has the opportunity for meaningful contribution towards revenue management policy formulation and implementation in Ghana?

There are both formal and informal platforms for public participation in the policy formulation process, to ensure that policy development does not take place in a 'silo'. In terms of formal processes, Parliament's law making process is the most important, whereby the Committees in Parliament responsible for the subject matter invite public memoranda into the Bill when it is submitted to Parliament. Parliament also holds public hearings when a Bill is presented to it.

There are other mechanisms for facilitating public inputs into the policy making process. For example, it is appropriate and important for public contribution to be recognized from the inception of the policy design, the translation of the policy to legislation and the implementation of the policy. This requires the adoption of semi-formal and informal mechanisms such as public forums organized by Government and public-sponsored advertisements inviting public views through very accessible means (sms; petitions, emails, etc).

Public awareness forums on policies could address the information gap between citizens and policy makers, a major constraint to citizens' contribution to policy. Many citizens are unable to contribute meaningfully to policy development because of poor appreciation of the issues involved. Others contribute from uninformed positions. It is therefore imperative that these semi-formal and informal mechanisms reach a wide range of stakeholders, including Traditional Authorities and those communities that will be directly impacted by mining developments, so that they can adequately understand the policy, and how it will impact them both directly and indirectly. Another important element of this is ensuring that technical language relating to policy formulation and implementation is translated into language that is understandable to all stakeholders. The views expressed at such forums are then translated into a resolution and submitted to both Government and Parliament. Both local and international Civil Society Groups can be involved in this process, including local Ghanaian CSOs and coalitions such as ISODEC and the National Coalition on Mining; and global CSOs such as Oxfam.

Civil Society Groups at the national level who have policy focus and have capacity to analyze complex policies can develop analytical papers and submit to the Government and Parliament. Some civil society groups have lobbied parliament by organizing workshops for relevant committees where such analytical works are discussed. Although such workshops have often been clothed as capacity building workshops for members of Parliament, they inherently have policy lobbying objectives. The advantage associated with this way of contributing to the development of policy and legal frameworks is that it combines technical analysis with advocacy. CSOs must therefore be supported to organize such forums as they present significant opportunities to directly influence Parliament.

Public awareness forums on policies could address the information gap between citizens and policy makers, a major constraint to citizens' contribution to policy.

Question 3:

What standard of accountability and disclosure should exist in relation to the management of mineral revenues by Ghana's public institutions?

Ghana therefore has a window of reforming the governance of mineral resources through the development of a mineral revenue management policy (law), revision of the Minerals and Mining Act; and the development of EITI legislation

Ghana signed onto the Extractive Industries Transparency Initiative (EITI) in 2003 and was declared EITI compliant in 2010 for mining activities. Whilst transparency in mineral revenue flows is important, significant gaps remain in governance of mineral resources in Ghana. The management of mineral resources in Ghana is characterized by a number of governance challenges, which undermine public accountability of how mineral revenues are distributed and utilized.

There are however international governance initiatives and best practices that broadly define the important disclosure and accountability standards that must underpin Ghana's mineral sector. These include:

- The adoption of open and competitive bidding process for mineral concessions;
- Mandatory disclosure of mineral licenses;
- The establishment of a public register for the disclosure of beneficial information;
- Disclosure of data based on company-by-company and project-by-project reporting covering production volumes, production costs, cost recovery, sales prices; taxes and other revenues; and;
- Regular publication of expenditure from mineral revenues by sector and geographic area.

These disclosure standards must be observed at national ad sub-national levels. Apart from these, there are statutory initiatives backed by legislation for enhancing payments and contract disclosure. These include the United States Dodd Frank Reforms Act (Section 1504), and the European Union Transparency Law.

It is important to note that the requirement for providing citizens with information on public resource management is a constitutional one. Article 21 of the 1992 Constitution confers on every citizen the right to be informed. Thus, the Constitution provides a strong transparency standard for the governance of public resources. However, the constitutional requirement for disclosing information is limited to such "laws and qualifications as are necessary in a democratic society". To ensure that such constitutional qualifications are not abused, this standard has been strengthened in recent constitutional revisions in some African Countries. For example, in Kenya, the new Constitution adopted in 2010 specifically requires the Government to "publish and publicize any important information affecting the nation".[5] Also, in Niger, contract disclosure is a requirement in the nation's constitution approved in 2010.

In most resource rich countries, requirements for disclosure are expressed in industry legislation (Sierra Leone, South Sudan). In Liberia, the EITI law requires contract and payment disclosures. Nigeria's EITI law also sanctions payment disclosure.

There are many examples of good practices in the transparency and accountability of natural resources, which Ghana can learn from in establishing strong disclosure and accountability standards in the mining sector. Ghana therefore has a window of reforming the governance of mineral resources through the development of a mineral revenue management policy (law), revision of the Minerals and Mining Act; and the development of EITI legislation.

5 *Section 35(3) of the 2010 Constitution of Kenya*

Question 4:

What lessons can Mineral Revenue Management Policy Formulation and Implementation Processes draw from the Petroleum Revenue Management Law (Act 815)?

The Government of Ghana in formulating the law on petroleum revenue management adopted a transparent and participatory approach based on broad public consultations for the purpose of building public consensus on key policy parameters of the legislation. This process ensured that public inputs were actively solicited and incorporated into the final legislation. The process of formulating the petroleum revenue management law included; the publication of draft proposals for managing petroleum revenues; nationwide survey on the proposals; regional consultations on the proposals; putting the proposals into a Bill and submitting to Parliament; invitation of public memoranda on the Bill by the Joint Committees on Finance; and Energy and Mines; public hearing on the Bill by the Joint Committees on Finance; and Energy and Mines; and the eventual enactment of the Law and Presidential Assent.

The PRMA also contains important policy lessons which could be introduced in a mineral revenue management policy. The following policy proposals should be considered for the development of a mineral revenue management policy (or legislation).

The Government should develop proposals for the formulation of a Mineral Revenue Management Law with clear rules for revenue assessment, collection and accountability, depositing revenues, withdrawals, spending and savings. The proposals, which should be subject to public consultations similar to the PRMA should include:

- Develop a National Mining Policy with a component on mineral revenue management – A comprehensive national mining policy will lay the foundation for the strategic management of mineral revenues and its attendant effect on national development. The policy on mineral revenue management should be transformed into a Mineral Revenue Management Law.
- Establish stabilization mechanisms for insulating the economy from the effects of commodity price volatility – Create a Fund with stabilization objectives. In the Petroleum Revenue Management Act, there are separate funds for addressing stabilization and inter-generational equity objectives. However, as in Norway, the alternative is to set up one consolidated Fund addressing the two objectives. This requires clear rules to ensure that the intergenerational equity objective is not compromised in favour of stabilization.
- Establish mechanism for insulating the economy from the effects of exchange rate pressures – This can be done by sterilizing mineral revenues or increasing productivity. Since international interest rates are lower; and given that mineral revenues are modest, productivity enhancement is preferable. This can be achieved by efficiently investing mineral revenues in social and economic infrastructure, agriculture, and education. As done in Chile, public investment funded with mineral revenues must pass a cost-benefit test.
- Develop a comprehensive formula for the distribution of mineral revenues between the Central Government and communities affected

The Government should develop proposals for the formulation of a Mineral Revenue Management Law with clear rules for revenue assessment, collection and accountability, depositing revenues, withdrawals, spending and savings.

There should be mandatory requirements for disclosing production volumes, commodity prices, sales revenues, mineral taxes, cost of production, deposits into and withdrawal from the Sovereign Mineral Fund and the Community Development

by mining - The formula for distributing mineral revenues should take into account the interest of communities affected by mining. These transfers should be put in a Community Development Fund backed by law; and must be used for specific capital projects rather than for recurrent expenditure.

- Develop principles for the transparent and accountable governance of mineral revenues - The management of mineral revenues must be guided by the highest standards of transparency and accountability. There should be mandatory requirements for disclosing production volumes, commodity prices, sales revenues, mineral taxes, cost of production, deposits into and withdrawal from the Sovereign Mineral Fund and the Community Development Fund. The new EITI standards now require the publication of contracting processes, contract disclosure, disclosure of beneficial ownership information, and information on the utilization of resource revenues. The Ghana EITI should be expanded to cover these new standards. The Public Interest and Accountability Committee (PIAC) should be given an extended mandate in any mineral revenue management legislation to provide forum for public scrutiny of the management of mineral revenues. Although, the Committee is confronted with funding challenges, it remains an important forum for enhancing public accountability. Government must therefore adequately resource the Committee to enable it execute its mandate.

- Build national consensus on broad policies for managing mineral revenues - Government must subject proposals for developing a Mineral Revenue Management Law to public discussions similar to the process followed in the formulation of the PRMA; by consulting key stakeholders including civil society organizations, communities affected by mining, private sector operators, academia, traditional authorities and political parties.

Box 1: Copper Revenue Management – examples taken from Chile

The Chilean Government developed mechanisms for managing copper revenues, outlined below:

1. Copper Price Estimation

The reference price is a long-term forecast adjusted annually and conducted by a Committee of External Experts.

2. Transfers to the Armed forces

The law requires that 10% of export sales by Codelco, the state mining company, is transferred to the armed forces. The expected minimum contribution is US$180 million annually adjusted to variations in US Producer Price Index (PPI). Where transfers fall short of the minimum amount, the treasury is required to supply the difference.

3. The Copper Stabilization Fund

There is also a Stabilization Fund established in 1987 as part of the structural adjustments program of the World Bank, meant to stabilize budget spending.

Deposit and withdrawal rules - The Fund receives revenues from the excess based on predetermined copper reference price deposited quarterly in the fund's Central Bank accounts. A drop in copper price by more than 4 cents below the market base reference price requires a withdrawal from the Fund. If the quarterly average drop in copper price is between 4-10 cents, the equivalent of 50% of the lost revenue is withdrawn from the Fund. On the other hand, when copper price exceeds the reference price by more than 4 cents, 50% of the difference is deposited into the Fund. Any amount exceeding the 10 cents ceiling deposited or withdrawn fully. This stabilization measure is to insulate the budget from the effects of price fluctuations and other external shocks.

4. The Economic and Social Stabilization Fund (ESSF)

This replaced the Copper Stabilization Fund. It was established as part of the mechanism for implementing the structural balance rule formulated in the Chilean Fiscal Responsibility Law.

Deposit and Withdrawal rules - Unlike the Copper Stabilization Fund, the ESSF provides stability to the government finances by "saving transitory windfalls for use in years of fiscal deficits". This is because whilst with the Copper Stabilization Fund, savings was based on fluctuations in copper prices, in the case of ESSF, savings takes place when surplus earnings exceed 1% of GDP. The surplus earning is saved. However, spending takes place when there is a fiscal deficit.

Sterilization - Savings of the money in the Fund is done abroad in order to insulate the economy from foreign exchange pressures. Accrued interest from these investments is then earmarked for social spending.

Management - The Fund is managed by the Ministry of Finance and the Central Bank.

Transparency - All administrators of the Fund are required to submit quarterly reports on the state of the funds and submit themselves to periodic, independent auditing. All reports must then be sent to the relevant committees in Congress.

References

Amadou Sy and Temesgen Deressa (2014), "Ghana's Request for IMF Assistance", Brookings, August 15, 2014.

Bauer, A., (2013) Subnational Oil, Gas and Mineral Revenue Management, Briefing, Revenue Watch Institute cited at www.revenuewatch.org.

Boakye, D., Dessus, S., and Oppong, F. (2012) "Investing the Mineral Wealth in Development Assets: Ghana, Liberia and Sierra Leone" the World Bank.

Coakley, G.J. (1999) The Mineral Industry of Ghana, Minerals Yearbook, Vol. III, United States of the Interior, Geological Survey.

Ghana Chamber of Mines (1998) Annual Chamber of Mines Report: Accra, Ghana.

Government of Ghana, Budget and Policy Statement, 2012.

ICMM. 2012. The role of mining in national economies, International Council on Mining and Metals, London, UK.

International Monetary Fund (2007) Guide on Resource Revenue Transparency, Washington D.C.

International Monetary Fund (2012) Ghana poverty reduction strategy paper, International Monetary Fund, Washington D.C.

Joe Amoako-Tuffour, "Mineral Fiscal Regime: Technical Report" Prepared for African Centre for Economic Transformation, 2012.

Kesse, G. O. (1985) "The Mineral and Rock Resources of Ghana", Journal of African Earth Sciences, 7, 601-610.

Republic of Ghana - the 1992 Fourth Republican Constitution of Ghana.

Republic of Ghana, Minerals and Mining Act, 2006 (Act 703).

Republic of Ghana, Petroleum Revenue Management Act, 2011 (Act 815).

Republic of Kenya, the 2010 Constitution.

World Bank (2003) Project performance Assessment report: Ghana Mining Sector Rehabilitation Project, Mining Sector Development and Environment Project. World Bank. Washington DC.

André Standing and Gavin Hilson (2013) Distributing mining wealth to communities in Ghana - Addressing problems of elite capture and political corruption, U4 Anti-Corruption Resource Centre, Issue No.5.

Position Paper on:

"Delivering Public-Private Partnership Benefits to Mining Communities in Ghana[6] "

6 Dr. George Adu (Kwame Nkrumah University of Science and Technology), Dr. Kenneth Ofori Boateng (GIMPA Business School) and Ouborr Kutando (African Center for Economic Transformation)

1. Introduction

The mining sub-sector of the Ghanaian economy makes important contributions in the areas of employment, government revenue, foreign exchange earnings, and gross domestic product (GDP). For instance, in 2009, the mining sector contributed 19.8% of government revenues, 7% of corporate income tax receipts, 45% of total export revenues, and 6% of GDP.[7] Recent statistics from the Ghana Chamber of Mines indicate further increases in the mining sector's contribution to GDP, government revenue, and foreign exchange. For example, in 2012 and 2013, the mining sector's contribution to GDP was 9.5% and 9.8%, respectively, while contributing 43% and 36.7% to total merchandize exports. The contribution of the mining sector to government revenue in 2012 and 2013 was also significant; in 2012, the sector contributed 27% of total domestic collections while in 2013 it contributed 18.7% of direct tax receipts and 14.3% of total domestic revenue mobilized. The contribution to employment has also seen significant growth. Available statistics drawn from the Draft National Mining Policy Document of Ghana show that large-scale mining and the mine support services sub-sector employ about 27,000 people, while an estimated 500,000 people are engaged in small-scale gold, diamond, sand winning, quarry, and salt industries.

Despite these statistics, mining communities in Ghana are lagging behind in terms of economic and social development in comparison with non-mining communities (referred to commonly as the "local resource curse"). Many of the local development challenges related to the extractives sector of the Ghanaian economy have been blamed on poor governance of the sector by both the central government, local governments in mining areas and mining companies; a charge that is not easily discounted, and not unique to Ghana.

An important question facing policy makers and stakeholders in Ghana is: "What measures can Ghana take to turn the apparent local or community curse of natural resources into a blessing?" One mining sector governance strategy or model capable of overcoming these development challenges is Corporate Social Responsibility (CSR) of which public-private partnerships (PPPs) have strongly been imbibed in. Public-private partnerships (PPPs) have recently emerged in many countries as a means to organize activities in the overlapping space between the public and private sectors, involving partners from government, private sector and civil society in an attempt to improve joint decision-making and sharing of responsibilities, opportunities and risks.

The term "PPP'(s)," while universally used, has different meanings. Differences in PPP models stem from context-specific considerations that affect their operations in different jurisdictions over time and, in turn, their nature, purpose, characteristics, implementation, and oversight.[8] The Government of Ghana defines PPP as a contractual arrangement between a public entity and private-sector party, with clear agreement on shared objectives for the provision of public infrastructure and services traditionally provided by the public sector.[9] Ghana's national policy on public investment management increasingly sees PPP as the preferred approach for providing public infrastructure. While the national policy document on PPP (2011)[10] does not outline specific arrangements for the extractives industry, it welcomes specific sector partnership arrangements that are consistent with the overall Government of Ghana's PPP Policy. This opens up the rationale for this paper, focusing on the prospects of "Public-Private Partnership Benefits to Mining Communities in Ghana."

Can PPP models improve extractives sector governance in Ghana, particularly in regards to improving the benefits to mining communities? This position paper addresses the following five main questions:

1) How can the government of Ghana and investors structure public-private partnerships to benefit communities in mining areas in Ghana?

2) What should be the role of the government (local, regional, national) and investors in financing and managing PPPs at the community level?

3) What social and economic activities should community PPPs target and whose choice should this be?

4) Who should be accountable for managing PPPs?

5) How can the public sector and mining companies' structure investment and decision-making in PPPs to ensure sustainability beyond the life of mines?

By responding to these governance questions, the paper aims to do the following:

- Deepen the understanding of the nature of the challenges between policy makers, investors, and the public.
- Use case studies to inform best practice and provide benchmarks; broker dialogue between policy makers and multiple constituents.
- Lay the foundation for a long-term forum on governance issues in mining in Ghana.

The paper is structured as follows: Section 2 presents a brief description of the present institutional and governance structure of the extractives sub-sector of the Ghanaian economy; Section 3 discusses alternative PPP models; Section 4 presents evidence of successful PPP models based on case studies drawn from within Ghana and other sub-Saharan African countries (but not limited to mining sector governance). Policy recommendations structured to address the key governance questions posed above are presented in Section 5. Finally, Section 6 presents concluding remarks.

The contribution of the mining sector to government revenue in 2012 and 2013 was also significant; in 2012, the sector contributed 27% of total domestic collections while in 2013 it contributed 18.7% of direct tax receipts and 14.3% of total domestic revenue mobilized.

7 *Draft National Mining Policy of Ghana, (undated).*

8 *Linda, M. English (2006), Post performance evaluation of public private partnerships ('PPPs'), UNSW Law Journal, Volume 29(3), pp. 250-262.*

9 *(Section I of, Page 2 of the Ghana National Policy Document on Public Private Partnership (2011), Private Participation in Infrastructure and Services for Better Public Services Delivery, Ministry of Finance and Economic Planning, GOG.*

10 *Document was developed by the Ministry of finance, since 2007, was approved by parliament in 2011.*

2. Governance and Institutional Framework of Ghana's Mining Industry

The Environmental Protection Agency (EPA) is responsible for setting guidelines for the compliance of environmentally permissible activities.

2.1 Exploration, Contracting, Enforcement, and Regulatory Institutions

The Ministry of Lands and Natural Resources (MLNR), complemented by the Ministry of Environment, Science and Technology and the Ministry of Local Government and Rural Development, is the main agency responsible for the management of mineral resources in Ghana. The ministry is responsible for overseeing and ensuring judicious exploration, exploitation, and processing of mineral resources with minimum adverse environmental impacts, and for the maximum benefit to society.

The Minerals Commission (MC) supports the MLNR by promoting, regulating, and managing the utilization of mineral resources, and coordinates Government policies relating to minerals. The principal function of the MC is to encourage the ongoing development of Ghana's mineral resources by attracting foreign investors, negotiating leases with investors, and bringing small-scale miners into legal channels through the establishment of Precious Minerals Marketing Company (PMMC) buying offices and licensed traders. The MC works in tandem with its Inspectorate Division to undertake environmental, health, and safety inspections to ensure compliance with existing regulations.

The Environmental Protection Agency (EPA) is responsible for setting guidelines for the compliance of environmentally permissible activities. It liaises with the MC to ensure that the latter's promotional, regulatory, and superintending roles over the mining operations are consistent with the country's environmental requirements. Aside from the EPA, three key commissions (Forestry, Water Resources, and Land Commissions) play key roles in the mining institutional setup.

The Forestry Commission liaises with the MC to ensure that mining operations are carried out in compliance with laws and regulations governing the forestry sector. The Water Resources Commission is responsible for ensuring sustainable use of water resources while the Lands Commission (LC) is responsible for land use management. The Valuation Division of the LC helps to determine levels of compensation to individuals affected by mining operations. The Survey and Mapping Division of the LC is responsible for the demarcation, mapping, and certification of land boundaries while the Land Registration Division manages land titles.

2.2 Revenue Collection and Management

The Ministry of Finance and Economic Planning (MoFEP) is responsible for managing and disbursing government revenue from the mining sector. MoFEP has overall responsibility in formulation of national economic policy, is the custodian of all public finances, and oversees the Ghana Revenue Authority (GRA), which assesses and collects all mineral revenues.

2.3. District Assemblies and Traditional Leaders

The Administrator of Stool Lands (AOSL) is the body through which some payment of royalties and rents for surface rights accruing to mining communities are made. District Assemblies are the major stakeholders responsible for the provision of social and economic infrastructure to the mining communities, including utilization of mineral royalties, and as such they have the responsibility to ensure that mining operations are carried out in an environmentally acceptable manner. Traditional Leaders are the overseers of lands on which mineral rights are acquired. Since they are themselves direct beneficiaries of mineral royalty revenues, they are expected to use such funds on social infrastructure projects and to raise the dignity of their high offices.

2.4. Private and Civil Society Organizations in the Mining Industry

The Ghana Chamber of Mines represents mining companies operating in Ghana and as such, pursues the common interest of its members. Non-Governmental Organizations (NGOs) work closely with mining communities, empowering them to understand their rights in hosting mining operations and ultimately improve their living conditions. NGOs with a mining sector focus in Ghana include: Wassa Association of Communities Affected by Mining (WACAM); Third World Network – Africa (TWN Africa); Integrated Social Development Centre (ISODEC); and the National Coalition on Mining.

3. PPP Definitions and Models

Models of PPP abound. The Government of Ghana defines PPP as a contractual arrangement between a public entity and private sector party, with clear agreement on shared objectives for the provision of public infrastructure and services traditionally provided by the public sector. In South Korea, PPP refers to a project to build and operate infrastructure such as roads, ports, railways, schools, and environmental facilities.[11] In the United Kingdom, PPPs are "arrangements typified by joint working between the public and private sectors." [12] In Australia, a PPP relates to the provision of infrastructure and any related ancillary service that involves private investment or financing with a present value of payments for a service to be made by the government (and/or by consumers) of more than AUD 10 million during the period of a partnership that does not relate to the general procurement of services.

PPPs have become necessary with the provision of public infrastructure and services as one of the prime mandates of Governments all over the world. Infrastructure projects such as roads, power, rail, water and sanitation, sea and airports are fundamental prerequisites for economic growth and development. However, fiscal constraints experienced by countries have resulted in the development of new, innovative approaches to the provision and financing of public infrastructure and services.

The projects include the dualisation of the Accra-Takoradi highway and the Accra-Tema Motorway overlay - See more at: http://graphic.com.gh/business/business-news/17837-ppp-projects-gather-steam.html#sthash.34APV4ST.dpuf

Source http://graphic.com.gh/business/business-news/17837-ppp-projects-gather-steam.html

The adoption of PPP frameworks reflects the desire of Governments to improve the quality of services that is provided to citizens.

The adoption of PPP frameworks reflects the desire of Governments to improve the quality of services that is provided to citizens. PPPs are particularly useful and necessary in communities affected by extractives activities because of the impact on livelihoods, land use, water safety, and other environmental amenities. Moreover, the community development literature argues that Corporate Social Responsibility (CSR) alone does not go far and deep enough to support mining communities[13] after the life of the mine. To the extractives communities, PPPs are therefore a way to ensure that even when the mining companies are gone, there are established institutional mechanisms in are in place to ensure the sustainability of projects.

11 OECD (2008), "Enhanced Engagement: Towards a Stronger Partnership Between Major Emerging Economies and the OECD", meeting of the Council at Ministerial Level, 4-5 June, C/MIN(2008)5/Final, OECD, Paris.

12 Treasury, HM (2008), Progress on the HM Treasury Group Departmental Strategic Objectives and Public Service Agreements the Autumn Performance Report 2008, http://www.hm-treasury.gov.uk.

13 Stephen P. Osborne (2002): Public Private Partnerships: The theory and Practice in International Perspective. https://books.google.com.gh/books?isbn=113461506X.

A summary of PPP models, their description and benefits/drawbacks are shown in the Table 1.

Table 1: Summary of PPP models

No.	PPP Category	Description	Benefits	Drawbacks
1	**DBFOT** (Design, Build, Finance, Operate and Transfer) model	A private company designs and constructs an asset using private funding, provides a service with a responsibility to operate the newly constructed facility.	A public agency assumes ownership of the asset Immediately the contract expires.	Not compatible with the extractives
2	**DBFOOT** (Design, Build, Finance, Operate, Own and Transfer) model	This is the same as the DBFOT with exception of the asset ownership portion. After the whole PPP project is complete, the government assumes full ownership of the asset.	The asset's private ownership appears to be temporary (although long-term). Government is the long-term owner.	Not compatible with the extractives
3	**BOT** (Build, operate and transfer)	Focuses on contracts where the private sector takes primary responsibility for funding (financing), designing, building and operating the project.	Control and formal ownership of the project is then transferred back to the public sector.	Not compatible with the extractives
4	**Tripartite Partnership**	Is a project, program, or task force organized with people, organizations, skills and financial resources from government, the private sector, and the community to address a specific issue.	People and organizations from some combination of public, business, and civil constituencies engage in voluntary, mutually beneficial, innovative relationships to address common societal aims through combining their resources and competencies.	May not necessarily need the community involvement
5	**Operations or management contracts**	The private sector is only partially involved. For example, it provides a service or manages the operation.	Allows the private sector to provide infrastructural-related services for specified periods of time. Ownership belongs to the Public entity.	A PPP model but not seen so far in the extractives.
6	**The Multi-Partnerships or multi-stakeholder partnership**	An arrangement in a form of PPP that establishes partnership among several groups such as business, government, communities, NGOs and aid agencies.	These partnerships enable the support and implementation of sustainable development projects. Designed to increase funds from the corporate community	May not necessarily involve the community
7	**Public-Private-Community-Partnerships (PPCP)**	PPCP is part of Multi-Partnership arrangements, but it emphasizes the role of partnerships between communities, the private sector, the public sector, NGOs, and other groups. Multi-partnership can be established without community involvement.	The benefits of this partnership model include involvement of all stakeholders as a broader base for development, and enhanced social responsibility for the private sector	No specific Funding structure known

Source: Authors Construct, 2015.

4. Case Studies

This section draws on and discusses PPP case studies from Ghana and Zambia. In Ghana, the authors conducted interviews with representatives of mining companies (Golden Star, Goldfields, Chirano Gold Mines Ltd., Newmont and the Ghana Chamber of Mines), Geologists, opinion leaders in mining communities, government officials in the mining sector and leaders in three mining communities – Bogoso/Prestea, Wassa, Tarkwa, Abirim and Sefwi Chiraa. All mining companies in Ghana have contractual arrangements with their host mining communities as part of their CSR programs. In more formal settings, the agreements spell out the obligations of all parties, particularly modalities for conflict resolutions. These agreements outline several community-driven sustainable development projects that may be categorized broadly as: human resource development; provision of infrastructure; provision of social amenities; protection of natural resources; and, support for cultural heritage. There are also local employment agreements, sustainable livelihood agreements as well as CSR agreements.

All mining companies in Ghana have contractual arrangements with their host mining communities as part of their CSR programs. In more formal settings, the agreements spell out the obligations of all parties, particularly modalities for conflict resolutions.

Samples of the existing PPP arrangements are outlined in Table 2:

Table 2: Existing PPP arrangements in Ghana

Mining Company	Location/Mine Community	CSR/ PPP Period	Prioritised Activities	Partners Involved	Funding Arrangements
Gold Fields GH Ltd	Tarkwa Gold Mines & Damang Gold Mines 9 primary stakeholder Communities	Originally, 2005-2010 but expanded to-date	• Health • Water and Sanitation • Education • Agriculture - Income enhancement/ livelihoods • Infrastructure development	DAs, MOH, MOE, MOA Metallurgy Department, Community	Gold Field Foundation as a vehicle: $1 per ounce & 0.05 pretax profits.
GOLDEN STAR	Bogoso/Prestea & WASA	Most programs started in 2000 to date	• Health • Water and Sanitation • Education • Agriculture (Oil palm Plantation-Bogoso) • Skill Training and Employability Program • Number of agreements signed on employment and Community Development	European Aid Organization (GIZ), MOE, MOH, Das, Community Mine Consultative Committee	Golden Star Development Foundation as: $1 per ounce & 0.1% pretax profits.
NEWMONT GH LTD	10 Akyem Mine Communities (Birim North District Assembly)	July 2012 to date	• Human Resource development • Provision of Infrastructure • Socio- economic empowerment • Support for Cultural Heritage • Sports and Youth Development • Natural Resource Projects etc.		Newmont Akyem Development Foundation (NakDeF): $1 per ounce & 1% pretax profits.
CHIRANO GOLD MINES LTD	Sefwi Chiraa	2006 to date	• Education • Sanitation	MOE, MOH, DAs	Trust Fund is established: $1 per ounce & specific budget allocation for CSRs.

Source: Authors Construct, 2015.

In sharing of the available funds, 10% is shared equally among the ten host communities, 15% by the population size of the communities, 20% by the concession volume in gold, 30% by activity area and the final 20% by commitment.

4.1 The Newmont Ghana Gold PPP Model: Newmont Akyem Development Foundation

Newmont Ghana Gold Limited made a commitment in 2005 that US$1 per ounce of gold sold and 1% of net profit from its operations would be deposited in a Community Development Fund for sustainable community development. In 2006 it formed the Ahafo Social Responsibility Forum (ASRF), a 55 member multi-stakeholder group with representatives of both the company and the community that includes Newmont staff, youth, women, farmers, NGO's, political leaders and Traditional Authorities to discuss modalities on the use of the funds. The Newmont Ahafo Development Foundation (NADef) was established in 2008 as a mechanism to manage Newmont's sustainable community development commitment to its host communities. This arrangement was replicated with Newmont Akyem Development Foundation (NAkDeF) with their Akyem operations.

Sources of funds and support

The main source of funding for PPP projects is the $1 Newmont pays for every ounce of gold produced payable quarterly and 1% of profit from gold produced every year. In addition, contractors directly employed by Newmont in the supply chain are expected to support the initiative. The NADedf (foundation) lobbies development partners, donor agencies, NGOs, District Assemblies and Central Government for support. Traditional Authorities and central government donate land for projects whenever necessary and the community provides voluntary skilled or unskilled/or unpaid communal labor. The interest accruing from the investment the Fund is ploughed back into the fund. Table 3 outlines key areas where funding from the PPP model is focused:

These arrangements gave birth to a unique Public Private Community Partnership (PPCP) model with a high level of community

Table 3: Areas of funding and percentage allocated

Human Resource Development	Provision of Infrastructure	Social Amenities	Economic Empowerment	Cultural Heritage and Sports
Scholarships, training	Water, electricity, roads, clinics, health centers, schools, toilet facilities, incinerators	Community centers, police posts, libraries	Skilled/unskilled jobs, factories and cottage industries, credit facilities, market stalls	Festivals, maintenance of palaces, cross-cultural activities, sporting events

Based in Englewood, Colo., Newmont Mining Corporation has 31,000 employees worldwide, and is primarily involved in gold mining. Its division in Ghana, Newmont Ghana Gold Limited, is determined to avoid mining gold without properly re-seeding and re-investing in communities there ownership and participation in choice of project, execution and management. In sharing of the available funds, 10% is shared equally among the ten host communities, 15% by the population size of the communities, 20% by the concession volume in gold, 30% by activity area and the final 20% by commitment. Development projects benefit as follows: 24% on human resource development, 23% infrastructure development, 18% on social amenities, 17% on economic empowerment, 12% on natural resources and 6% on cultural heritage.

Newmont has, since 2006, invested approximately US$20m as of the first quarter 2012 and completed about 50 key infrastructural and non-infrastructural projects across its host communities. The Newmont model provides two key lessons: commitment to host communities should be backed by concrete actions, and community consultation and their involvement in projects provides the buy-in needed for success and sustainability.

4.2 The Golden Star PPP Model: Golden Star Development Foundation

Golden Star Limited holds interest in the Bogoso and Wassa open-pit gold mines, both situated within the prolific Ashanti Gold Belt. The company in 2005 established the Golden Star Development Foundation (GSDF) to provide opportunity for longer term development for the communities in which they operate. The GSDF is funded with US$1 for every ounce of gold produced plus 0.1% of pre-tax profit. It funds a variety of community projects, including health, education, and community infrastructure initiatives that are selected by a consultative group, the local Community Mine Consultative Committees (CMCC) that represent over 80,000 local stakeholders. CMCCs are made up of local community leaders and serve as the focal point for community partnerships, allowing communities to select the types of projects they see as important for their socio-economic development.

One notable PPP project under the GSDF is the Golden Star Oil Palm Plantation (GSOPP) that was initiated 2006 in partnership with local communities (Traditional Authorities and affected farmers), the agro-forestry industry and the Minerals Commission of Ghana. This program was initiated after a review of the skills and abilities within local communities, with results indicating that the predominant skills in the region were based on agriculture and that large tracts of land were not being used by Traditional Authorities. It was also determined that large areas of land previously disturbed by mining activities could be rehabilitated through agriculture initiatives.

Presently, the initiative has benefitted from over US$4.3 million in funding from GSDF. The GSOPP program adopts the smallholder concept of sustainable agribusiness. The initial development of the plantations is sponsored by GSDF on land provided by Traditional Authorities. Participating farmers receive start-up loans in addition to training in plantations management, plant husbandry, and business management. For each plantation, a smallholders farmers' association is formed that provides support for the farmers and liaises with GSOPP management.

After a period of roughly four years, the farmers become beneficiaries of an approximately four hectare plot. When yields increase (by about six years), the farmers receive 70% of the proceeds from fruit sales as income and 30% is used to pay back the start-up loans to allow for further development. Some 5% of the total proceeds are allocated to the Traditional Authorities as a royalty for the use of traditional lands. The harvest is then available for purchase by local businesses producing palm oil. Because employment opportunities in the mining industry are predominantly targeted towards males, special consideration is given to women as beneficiaries of the project. GSOPP maintains a target of 40% of beneficiaries being women.

To date, over 820 hectares of oil palm plantations have been established in addition to 100 hectares of out-grower plantations. At the end of 2013, GSOPP supported 273 smallholder farmers and 243 contract laborers, and had produced an annual yield of over 5,850 tonnes of oil palm fruit bringing total production to over 11,200 tonnes since the program's inception in 2006. In recognition of the company's efforts on this program, Golden Star was awarded the 2008 Nedbank Capital Green Mining Award, the first non-South African mining company awarded. The GSOPP model offers valuable lessons on alternative livelihoods, women's empowerment, community consultation and involvement and more importantly, critical review of local opportunities and interests in developing partnerships.

Because employment opportunities in the mining industry are predominantly targeted towards males, special consideration is given to women as beneficiaries of the project. GSOPP maintains a target of 40% of beneficiaries being women.

Their extensive CSR program is closely aligned with national development goals and four key areas for social development cover: health, education, sustainable livelihoods, and sports.

4.3 Konkola Copper Mines Plc (KCM) model in Zambia

In Zambia, Konkola Copper Mines Plc (KCM) one of Africa's largest integrated copper producers, provides an interesting case study. KCM seeks to provide employment, develop local enterprise, and deliver social services and support to communities around the mines. Their extensive CSR program is closely aligned with national development goals and four key areas for social development cover: health, education, sustainable livelihoods, and sports.

Relating to partnerships, most of KCM's social and community development programs are planned and executed in partnership with government (87.6% shareholder of the remaining 20.6% in KCM); the World Bank Group, through the International Finance Corporation (IFC); and other organizations and corporate partners, such as British Petroleum (BP) [14]. This model is best described as a Public-Private Community Partnership (PPCP) arrangement. Specific projects implemented under this partnership model include the creation of small and medium enterprises (SMEs), and community incentives and technical assistance for growing cash crops as an economic diversification program.

This model promotes a culture of participation, social responsibility, and philanthropy, as well as providing a platform for collaboration between government and civil society sectors. Benefits of the PPCP model include the involvement of all stakeholders as a broader base for development and enhanced social responsibility for the private sector. In KCM's case, funding is provided predominately from the company, including part of its pretax profits.

4.4 FQM Kansanshi Foundation in Zambia

Another important but program-specific case study in Zambia that has strong PPP arrangement in the extractives sector is operated by First Quantum Mining Limited (FQM). FQM's CSR strategy is designed to ensure compliance with national laws and is focused on five areas: governance, economic, environment, social and labor. The Kansanshi Foundation was established by FQM in 2006 and has mainly focused on support for infrastructure projects in Solwezi community. These projects were decided by the Foundation/FQM Board with little or no consultation with local communities.

Beyond CSR, the company has a PPP arrangement that targets the health needs of its mining communities, but also assists with worker health and well-being.

The Malaria PPP is between FQM, Comprehensive HIV AIDS Management Program (CHAMP), the District Health Management Team (DHMT), Ministry of Health, European Union (EU), and communities in Solwezi. Under the PPP arrangement, a first aid post and Kansanshi Mine Clinic (15-bed) has been built on the mine site and is open to employees and their families on an opt-in basis. Employees register themselves and their family members through the mine, and pay a premium deducted from their salaries. On a national level, FQM supports the national malaria program to fill identified gaps, which is indicative of a larger movement among the Copperbelt/ North Western Province mining companies to support the malaria program with private industry resources – financially or in-kind.

CHAMP and the Solwezi DHMT are FQM's most visible and active partners. CHAMP has a large implementation responsibility and capacity, as well as extensive experience in developing, implementing, and managing health PPPs in Zambia. Mutual respect and partnership between CHAMP and FQM is evident, and capacities are largely matched. CHAMP is FQM's main private-sector partner in the implementation of outside-the-fence health interventions (HIV/AIDS and malaria). CHAMP's work is divided into three areas: workplace programs and policies; company work in communities; and mobile health unit direct care and services. CHAMP provides all of these services to FQM through a MoU, which covers work directly within FQM as well as trainings, program development, and implementation in communities.

14 *Josè G. Vargas-Hernàndez, (2009), Partnerships between governments, firms, communities, and new social movements, International NGO Journal Vol. 4 (1), pp. 007-011.*

5. Recommendations

Although Ghana's National policy on PPP does not directly have an arrangement for community involvement as envisaged under Public-Private Community Partnership (PPCP) the national policy document (section IV, number 15 and p.5) offers room to accommodate the needs of specific sector partnership arrangements that are consistent with the overall Government of Ghana's PPP Policy. These arrangements in Ghana's mining communities may be viewed as an extended or modified form of CSRs, largely funded by the mining companies, but delivered through mechanisms led by the communities. Unlike the case of Zambia where the PPP program has a national orientation and is closely aligned with national development plans, a greater number of PPP arrangements in Ghana's mining sector are typically local community based. They are organized around the community, informed by community circumstances rather than by the broad national development agenda. The responses to the questions raised in the introduction are intended to inform long-term policy dialogue in delivering PPP benefits to mining communities in Ghana.

Question 1:

How can the government of Ghana and investors' structure public-private partnerships to benefit communities in mining areas in Ghana?

- When designing partnership, there is no 'one-size fits all' model because community circumstances are unique. As demonstrated in Table 2, not only are proposed activities different, but so are the nature of the partners and the funding arrangements. Much depends on the culture of communities, the range of alternative livelihoods, the role of Traditional Authorities who hold the authority over land, and the size and scale of the mining operation. If the Government of Ghana were to restructure the current PPP policy framework to explicitly take the form of PPCP's for mining communities, it should do so with the understanding that Government can only provide a broad framework and guidelines that should be adapted to fit community circumstances. Policy frameworks should consider all interest groups and guidelines for appropriate practices must be clear, manageable, and inclusive. The experience of Newmont is instructive – the Ahafo Social Responsibility Forum provided a platform both for ideas and also an opportunity for all stakeholders to deepen their understandings, align their interests, and understand what needs to be done and how to effectively tackle tasks at hand. No less important is the need to manage expectations of all stakeholders.
- Principal partners in the proposed PPCPs arrangement should be the government (represented by the local government authority), investors (business entity interested in the local mining resource), and the community (represented by the chief or representative of a traditional constituted authority). When communities partners with the public authority and private investors, it leads to joint-decision-making that helps the community.
- A formal institutional body set up by the sector ministry together with the Minerals Commission and the Public Investment Division (PID) of the Ministry of Finance could serve as a nodal agency on delivering this objective. This body should also be charged with the responsibility of creating a PPCP database, documenting best practice for the various sectors of the extractive industry and facilitating the coordination of all parties under these types of partnership arrangement.

Unlike the case of Zambia where the PPP program has a national orientation and is closely aligned with national development plans, a greater number of PPP arrangements in Ghana's mining sector are typically local community based.

The in-kind contributions of local authorities in the form of land (as in the Golden Star Oil Plantation project) are valuable, as is volunteer labor provided by community members to develop community infrastructure such as schools and clinics.

Question 2.

What should be the role of the government (local, regional, national) and investors in financing and managing PPPs at the community level?

- As the case studies in Ghana and Zambia illustrate, funding arrangements should not be left to mining companies alone – that is an unrealistic expectation. In Ghana, all mining companies have already committed resources to the development of mining communities with some enhanced form of contractual agreements and funds being managed by Steering Committees. The in-kind contributions of local authorities in the form of land (as in the Golden Star Oil Plantation project) are valuable, as is volunteer labor provided by community members to develop community infrastructure such as schools and clinics. District Assemblies, local authorities, and the Office of Stool Lands can provide supplementary funding through allocations of part of the royalty payments. It is proposed that the current revenue distribution formula should be altered to allow some funds to be channeled to community development funds.
- The Government, through the local government, should be part of community development project Steering Committees within mining communities, but should not be overbearing and overshadow the voice of local community members. In the case of Goldfields, the Members of Parliament in those mining areas are part of the committee, but oversight arrangements should carefully guard against an over-bearing role of local government at the expense of broad community involvements and Traditional Authorities.
- Importantly, the model and delivery mechanism should be defined early in the process (as demonstrated in the Newmont case study), with clearly defined responsibilities.

Question 3.

What social and economic activities should community PPPs target and whose choice should this be?

- As demonstrated in Tables 2-3, community development activities range from human resource development to the provision of social and physical infrastructure, and the development of alternative livelihoods. AngloGold Ashanti has been involved in combating malaria in Obuasi. Zambia's Konkola PPP arrangements have been more ambitious in seeking to identify projects that align with broad national development plans. One thing is clear though; the final choice of activities should be community-specific, recognizing community priorities. PPPs are not a substitute for the broader responsibility of government to provide social amenities, rather they are complimentary. Managing the expectations of all stakeholders early in the design and implementation of these initiatives is therefore vital.
- In some cases, communities need assistance to determine and articulate their needs. Such assistance can be provided by the institutional body outlined in response to question 1 and delivered by both the sector ministry and the Minerals Commission. District Assemblies, the investor/s, and the community can also form joint committees to undertake initial needs assessments and baseline studies to help prioritize needs accordingly. During this process, specific targets should be set and then monitored and evaluated throughout the life of the arrangement via objectively verifiable indicators.
- Once social and economic needs and priorities are identified, comprehensive development plans can be developed and activities sequenced. These should be community-driven in order to strengthen ownership that will extend beyond the life of the mine. Projects that are designed should explicitly consider the circumstances and preferences of the poor and marginalized within the community, particularly women.
- Consultative forums should also be used as vehicles for ongoing engagement with community members about existing PPCPs. Forums can be used to harvest ideas, provide feedback during the implementation process and act as regular coordinating mechanism to plan and monitor progress towards goals.

Question 4.

Who should be accountable for managing PPPs?

- Communities are encouraged to establish committees involving all stakeholders (including representatives of marginalized and disadvantaged groups) to steer the implementation of PPCPs. The Newmont Akyem approach could be adopted with some modification, where a Board of Trustees (comprising community representatives, mining companies, and the local government) could manage funds for community developments. Specific projects could have different project management teams to steer the affairs of the agreed projects based on their level of knowledge.

Question 5.

How can the public sector and mining companies structure investment and decision making in PPPs to ensure sustainability beyond the life of the mine?

- Roadmaps should be developed by stakeholders to train and up-skill community members by way of education in sustainable community development practices (including reclamation of land and other practices). This would not only increase skills in this area, but also build a continuity of development interventions after the life of the mine. Golden Star has a comprehensive arrangement and percentage distribution for employing the inhabitants of these mining communities. This approach could be expanded or modified for all mining communities.
- Ongoing research and development and dissemination of case studies outlining regulatory systems and identify helpful approaches for establishing an enabling environment (with a focus on equity and marginalized populations) is also recommended. This can be done by examining existing efforts and projects funded by the proposed PPCP, analyzing the impacts of these projects, and identifying which social and economic challenges remain and need further attention.
- There should be an established grievance mechanism for conflict resolution between the investor partner and the community as well as the government in the event of conflict arising from breach or departure from the agreed partnership.

6. Concluding Remarks

In spite of the numerous benefits (social and economic) that can potentially accrue from mining, there is a widespread view that mining communities in Ghana have succumbed to the local natural resources curse. The ways and means to reverse the local resource curse has been less obvious. PPPs have emerged in many countries in different applications to explore partnerships in spaces where neither government nor private sector alone can meet social expectations. This paper has explored how PPPs can advance extractives sector governance in Ghana and improve the circumstances of mining communities whether in providing alternative livelihoods or in ameliorating potential adverse environmental effects from mining activities. While PPP application in the extractive sector is novel, the numbers of partnerships are growing, even if less documented.

One thing is clear; the variety of approaches and forms that the PPP arrangements may take depends on the ultimate purpose whether it is in human resource development, provision of infrastructure, social amenities, economic empowerment or ameliorating adverse environmental hazards emanating from mining activities. The case studies presented are instructive and provide valuable lessons for other mining communities, especially for government and mining companies.

The following findings emerge: the nature of partnerships matter, so do the funding arrangements, the commitment by communities, the ability of the mining companies to turn its initial leadership role to the community once the modalities are in place for project implementation, the in-kind contributions from local authorities, the community setting of priorities and providing oversight and learning to align the expectations of all stakeholders. The PPCP model should occupy an open middle ground in the spaces where neither government nor company alone can respond effectively to community needs, even if exaggerated. The outcome of this study is to deepen understanding and lay the foundation for further forum on governance issues in mining in Ghana.

The ways and means to reverse the local resource curse has been less obvious. PPPs have emerged in many countries in different applications to explore partnerships in spaces where neither government nor private sector alone can meet social expectations

References

Aga Khan Foundation. (2008), Non-state providers and public–private community partnerships in education, Background paper, UNESCO, Paris.

Alchian, Armen A. (2008), "Property Rights". In David R. Henderson. Concise Encyclopedia of Economics (2nd ed.). Indianapolis: Library of Economics and Liberty. ISBN 978-0865976658. OCLC 237794267.

APEC (Asia-Pacific Economic Cooperation) (2008), "Joint Ministerial Statement: 2008", 15th Finance Ministers' Meeting, 5-6 November, Trujillo, Peru.

Asian Development Bank (2007) Public-Private Partnership Handbook

Ayee, J., Soreide, T., Shukla, G. P. Minh Le, T. (2011), Political Economy of the Mining Sector in Ghana, Policy **Research Working Paper, No. 5730**, The World Bank

Beauregard RA (1998). 'Public–Private Partnerships as Historical Chameleons: The Case of the United States.' In: J. **Pierre (Ed.),** Partnerships in Urban Governance – European and American Experience, New York: St. Martin's Press.

Claire H & E Reeves, (2004),"An economic analysis of Ireland's first public private partnership",

Eisenhardt, K. (1989). "Agency theory: An assessment and review". Academy of Management Review 14 (1): 57–74. doi:10.5465/amr.1989.4279003. JSTOR 258191

Confederation of Indian Industry (2006), "PAANI", (brochure), Confederation of Indian Industry, Hyderabad.

Confederation of Indian Industry (2010), PPCP Guidebook on Water, Confederation of Indian Industry, Jaipur.

European Commission (2003), "Guidelines for Successful Public-Private Partnerships", European-Commission,-Brussels, http://ec.europa.eu/regional_policy/sources/docgener/guides/ppp_en.pdf.

Daily Trust (2006) FCDA to spend N8bn on District Market Developments, http://www.dailytrust.com/Archives2/Monday31%20July2006/city4.html

Dansereau, S. (2005), Win-win or New Imperialism? Public-private Partnerships in Africa Mining, Review of African Political Economy, 103, 47 – 62

Farrugia, C., T. Reynolds and R.J. Orr (2008), "Public-Private Partnership Agencies: A Global Perspective", Working Paper No. 39, Collaboratory for Research on Global Projects, Stanford University, California, United States.

Ghana Chamber of Mines (2012) Performance of the Ghana Mining Industry in 2012, Annual Report

Gordon Tullock, (1987 & 2008), "public choice," The New Palgrave Dictionary of Economics.

Government of Ghana (2010) Draft National Mining Policy of Ghana

Grimsey D, Lewis MK (2004), Public Private Partnerships; the Worldwide Revolution in Infrastructure Provision and Project Finance, Edward Elgar, Cheltenham, UK, Northampton, MA, USA.

Grimsey D, Lewis MK (2004), Public Private Partnerships; the Worldwide Revolution in Infrastructure Provision and Project Finance, Sphinx Publishing an Imprint of Source Books, Inc Sphinx Legal.com the Complete Partnership Book, the United States of America.

Hammerschmid G, Angerer DJ (2005), Public Private Partnership between Euphoria and Disillusionment Recent Experiences from Austria and Implications for Countries in Transformation. Romanian J. Polit. Sci., 129-159.

Hartwell, A. (2004), Ghana case study: School for Life (draft) EQUIP2. Washington, DC: USAID.

HM Treasury (2008), Progress on the HM Treasury Group Departmental Strategic Objectives and Public Service Agreements the Autumn Performance Report 2008 http://www.hm-treasury.gov.uk.

Hodge, G. (2007), "The regulation of public services in OECD countries: an overview of water, waste management and public transport , discussion paper for OECD Group on Regulatory framework, Paris, 53 pp,. International Journal of Public Sector Management, Emerald Insight, Vol. 17 Iss 5 pp. 379 – 388.

Institute for International Cooperation & Japan International Cooperation Agency (2005), Progress with Public-Private Partnership Projects in Developing Countries, Draft Report.

José G, & M. Noruzi (2011), A literature review of the characteristics of firms, communities and multiparty partnerships and challenges of firm-community partnerships with cases, African Journal of Business Management Vol. 5(6), pp. 2006-2016, http://www.academicjournals.org/AJBM.

Ibrahim A D., A. D. F Price., A. R. J., Dainty, (2006),"The analysis and allocation of risks in public private partnerships in infrastructure projects in Nigeria", Journal of Financial Management of Property and Construction, Vol. 11 Iss 3 pp. 149 – 164 http://dx.doi.org/10.1108/13664380680001086

Josè G. Vargas-Hernàndez, (2009), Partnerships between governments, firms, communities, and new social movements, International NGO Journal Vol. 4 (1), pp. 007-011, Available online at http:// www.academicjournals.org/INGOJ

Kagami M (2002). 'The Third Sector's Failure in Japan', in SV Berg, MG Pollitt, M Tsuji (eds) Private Initiatives in Infrastructure –Priorities, Incentives and Performance, Cheltenham: Edward Elgar.

Kwame Akyeampong (2009), Public–private partnership in the provision of basic education in Ghana: challenges and choices, Compare: A Journal of Comparative and International Education, 39:2, 135-149, DOI: 10.1080/03057920902750368

Linda M, English, (2006), Post performance evaluation of public private partnerships ('PPPs'), Written for the Australian Research Council,(Faculty of Economics and Business, University of Sydney), UNSW Law Journal Volume 29(3), pp. 250-262, Australia.

Manteaw, S. (2010), Ghana's EITI: Lessons from mining and policy implications for oil, Ghana Policy Journal, 4, 96 – 109

Mathu, K. (2014), The Need for Public Private Partnership Model in the South African Coal-Mining Industry, Mediterranean Journal of Social Sciences, 5, 224 - 235

Miller-Grandvaux, Y., and K. Yoder. 2002. A literature review of community schools in Africa. Washington, DC: USAID Bureau for Africa, Office of Sustainable Development.

Morallos, D. and Amekudzi, A. (2008), "The state of the practice of value for money analysis in comparing public private partnerships to traditional procurements", Public Works Management and Policy, Vol. 13 No. 2, pp. 114-25.

OECD (2008), "Enhanced Engagement: Towards a Stronger Partnership Between Major Emerging Economies and the OECD", meeting of the Council at Ministerial Level, 4-5 June, C/MIN(2008)5/Final, OECD, Paris.

OECD (2010), Dedicated Public Private Partnership units: a survey of institutional and governance structure, OECD publications, www.oecd.org/publishing/corrigenda. relations with civil society, Accountability, London

Perks, R. (2012), How can public-private partnerships contribute to security and human rights policy and practice in the extractive industries? A case study of The Democratic Republic of Congo (DRC), Resources Policy, 37, 251-260

Rondinelli D (2002), 'Public–Private Partnerships', in C Kirkpatrick, R Larke, C Polidano. Handbook on Development Policy and Management, Cheltenham: Edward Elgar.

Sadka, E. (2007), "Public-private partnerships – a public economics perspective", CESifo Economic Studies, Vol. 53 No. 3, pp. 466-90.

Sangeeta Sharma Sabyasachi Nayak, (2013),"Public private community partnerships: an isodynamic model in water management", International Journal of Public Sector Management, Vol. 26 Iss 2 pp. 135 – 145, http://dx.doi.org/10.1108/09513551311318004

Shughart II, William F. (2008). "Public Choice". In David R. Henderson (ed.). Concise Encyclopedia of Economics (2nd ed.). Indianapolis: Library of Economics and Liberty. ISBN 978-0865976658. OCLC 237794267.

Todaro, M. P. & C.S. Smith (2009), Economic Development; 10th Edition, Addison Wesley, New York.

Tuffour B. (2010), Public-Private Partnership Model in Small Towns (O&M Contract in Bekwai, Atebubu and Wassa Akropong), TREND Report, submitted to GTZ and the Atebubu-Amantin District Assembly under the Community Managed Solid Waste Management in Project in Atebubu.

United Nations (2007), Guidebook on Promoting Good Governance in Public-Private Partnerships, United Nations, New York, United States.

Watkins, K. 2004. The Oxfam education report. Oxford: Oxfam.

Williams, T. (2003), Moving to Public-Private Partnerships: Learning from Experience Around the World, IBM Endowment for the Business of Government, Arlington, VA, pp. 1-40, available at: www.businessofgovernment.org (accessed 4September, 2014).

World Bank and Public-Private Infrastructure Advisory Facility (2007), Public-Private Partnership Units: Lessons for their Design and Use in Infrastructure, World Bank, Washington DC, www.ppiaf.org.

World Bank (2004),"Bringing Power to the Poor in the Pamirs: Tajikistan Pamir Private Power

Project.", Projects-and operations. http://lnweb18.worldbank.org/eca/eca.nsf/0/66201C6DC20F591785256C32006D471A?

Ysa, Tamyko (2007), Governance Forms in Urban Public-Private Partnerships, International Public Management Journal, 10:1,pp.35-57.

Zadek, S (2003), Partnership Futures, prepared for the UN Eminent Panel on the future of UN.

Position Paper on:

"Improving Governance of Artisanal and Small-scale Mining Sector in Ghana[15]"

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01. Introduction

In Ghana, as in many parts of Africa, mineral extraction by artisanal and small-scale mining (galamsey in local parlance - to wit "gather them and sell") remains an important developmental issue. The sector makes important contributions to the development process, but at the same time produces various negative social and environmental effects. For mineral-rich Ghana, Artisanal and Small-scale Mining (ASM) is an age old business which produced about 36 per cent of total world gold output between 1493 and 1600,[16] making the country the largest gold producer at the time.[17] According to the Minerals Commission, the ASM sector contributed more than a third of Ghana's annual gold production in 2012. There has been no official census nor enterprise surveys therefore the exact numbers are not known, but guesstimates are that the number of people directly involved in the sector could be well in excess of one million. And the primary triggers behind these numbers are the ease of entry and the lack of alternative livelihoods in most of these areas where we find artisanal mining.

Despite the employment and income contributions and the prospects that ASM operations hold for local inclusive economic growth, there have been growing concerns about the absence of properly defined, or the abundance of improperly defined, guidelines and regulations. ASM conjures images of illegality, tax evasion and avoidance, unsafe operations and negative environmental impacts. From pollution and destruction of various water bodies and farm lands to increased use of firearms, increased number of foreigners illegally involved in ASM and mine accidents, there is the perception that the prevailing governance regime is weak and failing or has already failed the sector. Further, the ASM sector and its operators continue to pose significant existential challenge to the Large Scale Mining (LSM) sector by way of invading their concessions. These concerns and challenges raise important questions about the sustainability of Ghana's gold mining sector as a whole, but more importantly the ASM sector which ironically holds significant prospect for more inclusive economic growth.

It is in response to these challenges that an Inter-Ministerial Task Force was established by the President of Ghana in May 2013 in an effort to "bring sanity into the mining sector". Further, an Amendment Bill to the Minerals and Mining Act (Act 703) was introduced in Parliament in September 2014 with the aim of increasing the penalty units for operators who flout the law as well as offering the Executive the power to confiscate equipment used in illegal mining activities. Almost two years on, the task force seems to have made modest gains. The number of foreigners directly engaged in the ASM sector has fallen and some heavy duty equipment seized by the task force. Suffice to say that these reported gains must have been short-lived because the core challenges of the ASM sector remain, with some stakeholders (including operators) worried that the sector seem to be returning to where it used to be prior to the setting up of the task force.[18]

Against this background, this study reviews the ASM sector and the governance frameworks within which it operates. The focus of the paper is on gold and diamond artisanal and small scale mining and we will use two case studies to throw light on cross cutting issues within the mining sector. The case studies shall focus on the socio-economics impact of ASM activities, the specific instances of their operations, the potential environment effects, the interactions with local authorities and national regulators, the source of inputs and financing, their price determination and marketing, challenges and corporate social responsibility, and finally the prospects of the sector. The conclusions and recommendations will be relevant to other ASM mining activities such as salt mining, sand wining and quarry. The paper will address the questions below and provide specific actionable recommendations.

- How can the Ghanaian authorities harmonize land tenure systems with the need to regulate access to minerals in the ASM sector, and translate this into a coherent regulatory framework?

According to the Minerals Commission, the ASM sector contributed more than a third of Ghana's annual gold production in 2012.

16 *Akabzaa, T and Darimani, A., 2001 "Impact of Mining Sector Investment in Ghana: A Study of the Tarkwa Mining Region*

17 *Ben Aryee et. al (2003) provide a historical perspective of artisanal small-scale mining Ghana.*

18 *An interview with Edward Akuoku. He is an executive member of an Accra-based Artisanal and Small-scale Mining Africa Network (ASMAN) and PRO for Solar Mining, an ASM firm based in Obuasi. Owners are said to be making payments at the various Regional Coordinating Councils and retrieving their equipment. The payments are expected to be used for reclamation, yet there do not seem to be any reclamation taking place and it is unclear how the monies being collected will be accounted for.*

As a matter of fact all the foreign exchange earnings by the ASM sector is returned to the country and when ASM operators need to import some equipment, they procure foreign exchange from the open market just as virtually all other economic agents in the country do.

- How can ASM and Large-Scale Mining (LSM) in Ghana co-exist in a mutually beneficial arrangement?
- What is the nature of the current ASM value chain in Ghana and how can it be best regulated to ensure protection of worker's rights and delivery of fair value to citizen traders and to the State?
- What are the current impediments to enforcing globally accepted environmental (social and physical) management practices on Ghana's ASM?

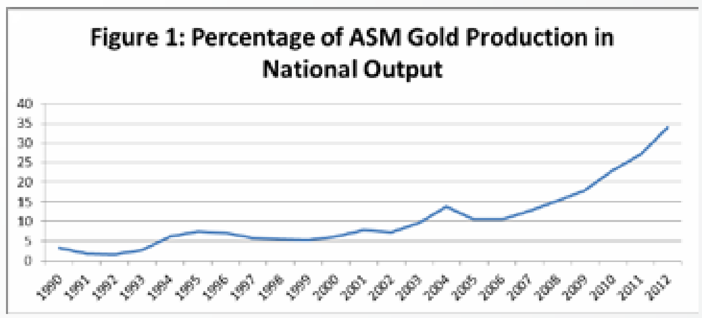
1. ASM in Ghana: Significance and Modus Operandi

The socio-economic significance of ASM in Ghana can be seen both at the local and the national levels. A visit to any of the regions or communities in Ghana where ASM activities are widespread such as Dunkwa-on-Offin in the Central Region, Obuasi and Amansie in the Ashanti Region, Tarkwa and Prestea in the Western Region and Konongo in the Eastern Region reveals the community level socio-economic significance. In these regions and communities, ASM activities along with farming, represent the key growth pole activities with strong linkages to other sectors in the local economies. As a dominant occupation in these communities, most residents earn a living either by working in the farm or on the mining site. These in turn support other economic activities such as trading, food vending, housing, and other related livelihood activities.

The economic importance notwithstanding, the negative impacts of ASM are also evident and well documented. Among them there is the involvement of under-aged children and a large number of young women in much of the activities with negative effects on their health and education. While there is as yet any systematic documentation, the long-term negative health effects due to exposure to mercury can be considerable. Around the communities within a radius of 20 kilometres of Obuasi the local politicians have launched a campaign against children who drop out of school to engage in mining. The dominance of young girls as carriers at mine sites are predictors of teenage pregnancy and their vulnerability to HIV/AIDS. Secondly, there are heavy environmental tolls on ASM communities as these miners disregard environmental protocols with deadly effects. Third, revenue collection both at the local and national levels is complicated "by the informal structures that seem to govern the ASM sector, by the large numbers involved, and by the structures of the artisanal mining value chain. Informality means that miners cannot be easily identified and traced for tax purposes".[19]

At the national level, the contributions of the sector to the national output and foreign exchange earnings are worthy of note. While the numbers and claims are always difficult to verify partly because of the informal nature of their activities, the relative contribution made by ASM to national gold output has increased steadily from less than five per cent in early 1990s to almost 35 per cent in 2012 (Figure 1).

Fig 1: Percentages of ASM Gold Production in National Output



Source: Minerals Commission

Same development can be said of foreign exchange contribution. Unlike large scale mining (LSM) which retains significant proportion of foreign exchange earnings, far greater proportion of foreign exchange earned by the ASM is returned home. As a matter of fact all the foreign exchange earnings by the ASM sector is returned to the country and when ASM operators need to import some equipment, they procure foreign exchange from the open market just as virtually all other economic agents in the country do.

Modus Operandi

ASM activities have evolved over the period. Starting from merely gathering gold bearing rocks from the earth's surface through to digging for such substances with hand tools such as axe and shovel, today much of ASM activities are heavily mechanized. Like mechanized LSM activities, ASM operations can be categorized into two: surface and underground. The surface type is of two types: those that take place on or along water

19 *"Managing oil, gas and minerals" Chapter 7 in 2014 African Transformation Report: Growth with Depth.*

bodies (alluvial) and those that take place farther away from water bodies. The surface mining type usually involves the use of relatively more water in the recovery process. Chinese-made Changfeung, a processing plant has become popular in surface type operations. The underground method involves sinking a deep hole in the earth to extract gold bearing substances. At the level where the gold is actually mined, the pit is wider and can accommodate hundreds of people. The deep holes are supported with logs and other tree cuttings. Relevant images are presented in the appendix.

Over the past decade, a number of changes have taken place in the ASM sector with regards to operations. One such change has to do with the scale of operations (now on larger tracts of land) along with increased activities on or very close to water bodies. This has led to significant water pollution with adverse consequences on nearby communities and those farther downstream. Three main rivers in Ghana severely affected by this development are River Offin, River Birim and River Pra and their tributaries. Related to this development is the increased use of dangerous chemicals such as mercury and cyanide in the processing of gold ore. Most of these activities, as indicated earlier are undertaken outside of the regulatory framework. Health and safety conditions in these mines continue to deteriorate. In the case of underground mine, the scale (or the depth and increased size of pit down the hole) and manner in which tree cuttings or logs are arranged at the inner walls of the hole to safeguard it from possible collapse are some major changes that have taken place. One such mine operated in the early 2000s in Obuasi could accommodate about 500 miners at a time.[20]

Some changes that have taken place are common to both types of operation. For example, the involvement of foreigners (and the number of foreigners involved), largely operating surface mines against the law. The involvement of foreigners has been evolving over the period. From the provision of financial resources, through to the provision of equipment (on rental basis and other related arrangements), they are now directly involved in mining activities clearly flouting applicable laws in the sector. At a national stakeholders' forum in Accra in 2012, the Minister remarked that "activities of foreign illegal miners had taken on a new dimension because they carried weapons and security dogs to terrorise locals who dared to challenge them". Worse, they operate close to local communities with the support of traditional leaders, landlords and farmers.

In all the nine mining districts where the Minerals Commission operates district offices, there are associations or co-operatives of ASM operators. There also exists a Ghana National Association of Small Scale Miners (GNASSM). These associations and co-operatives, however, appear not to have been able to engage policy makers in substantive ways the way the Ghana Chamber of Mines (of the mechanized LSM sector) does. The Chamber has deeper engagements with policy institutions (as well as other arms of government including parliament) and is therefore able to bring some influence to bear on issues of policy and law. With most ASM operators operating illegally, it is not surprising that they have not had much engagement with government institutions. Focus of these associations and co-operatives have usually been on self-help and sometimes knowledge sharing, and very little of engaging public institutions.

2. ASM in Ghana: Governance Framework and Challenges

The current governance framework within which ASM operators conduct their activities (or more appropriately are supposed to conduct their activities) was established as part of the mining reforms in late 1980s. Those reforms, starting with the 1986 Minerals and Mining Law (PNDC Law 153), were aimed at "modernizing" and "liberalizing" the mining sector,[21] and were skewed largely in favour of mechanized LSM and the attraction of foreign capital into the mining sector with generous incentives. The reforms created an alternate regime to move the ASM sector from operating as "illegal" entities in an informal economy to a formal one.

In 1989, three laws were passed in relation to the ASM sector. The first was the Mercury Law (PNDC Law 217) which repealed the 1933 ban on mercury, which had been at the heart of the illegal characterization of the ASM sector. The law granted licenced ASM operators the right to buy "a reasonable quantity of mercury" and use them in a manner that respects "good mining practices". This was followed by the 1989 Small-Scale Mining Law (PNDC Law 218) which aimed at formalizing and legalizing the ASM sector and hopefully to ensure that ASM operators respect "good mining practices". The third law was the 1989 Precious Minerals Marketing Corporation Law (PNDC Law 219) which established a government agency and charged it with the responsibility of buying gold from the ASM sector. Thus, a fairly robust framework was created to govern the sector. This

Three main rivers in Ghana severely affected by this development are River Offin, River Birim and River Pra and their tributaries. Related to this development is the increased use of dangerous chemicals such as mercury and cyanide in the processing of gold ore.

20 This was reported by Mr Nabari, one of the first leaders of an ASM association established in Obuasi in late 1990s.

21 Hilson, G.(2004), "Structural Adjustment in Ghana: Assessing the Impacts of Mining Sector Reform. In Africa Today, vol. 51, No. 2, pp. 53-77

Designed to be implemented collaboratively by four government agencies (Minerals Commission, PMMC, Mines Department and Geological Survey Department), only the Minerals Commission continued to work on the project, with the rest abandoning their responsibilities a couple of years into the project on grounds of lack of resources .

framework, despite difficulties in addressing challenges in the sector, is identified as best practice by United Nations Economic Commission for Africa.[22]

PNDC Law 218 provided for the establishment of District Small-scale Gold Mining Centres (Clause 8) and charged them with the responsibilities of registering ASM operators, monitoring operations, providing training and submitting reports to the Minerals Commission. In the conduct of these activities, the centres were to be supported by Small-scale Mining Committees, which comprised of representatives of key institutions at the local level. The committee is chaired by the District Chief Executive and currently includes the following members: District Officer (at the Small-scale Gold Mining Centre) and one representative each from the relevant District Assembly, relevant Traditional Council, Inspectorate Division of the Commission and the Environmental Protection Agency Further, the Small-Scale Mining Project (SSMP) was initiated soon after these laws had been passed and tasked with the provision of requisite institutional support to the ASM sector. Designed to be implemented collaboratively by four government agencies (Minerals Commission, PMMC, Mines Department and Geological Survey Department), only the Minerals Commission continued to work on the project, with the rest abandoning their responsibilities a couple of years into the project on grounds of lack of resources.[23] In 2006, PNDC Law 153 (amended in 1994) and PNDC Law 218 were combined into the Minerals and Mining Act (ACT 703).

Box 1: Typical Licensing Procedures for an ASM Operator

The very first step to securing permits and licenses for an ASM operator is the location of a site and procurement of site plans covering the area. Unlike LSM operators who can procure reconnaissance and prospective licenses (to confirm the feasibility of an area), the ASM operator skips these steps and obtains site plans covering the area where he or she plans to undertake mining activities. This is very important in understanding the conduct of the ASM operators. The site plans together with business registration documents and completed application documents are then submitted to relevant district office of Minerals Commission. Inspection is undertaken by the Minerals Commission district officer and documentation checked for completeness.

The relevant District or Municipal Assembly is then notified and a request placed for a publication to be made at the Assembly regarding he proposed project for a period of 21 days. If "no objection" is raised over the project then the process moves to Accra. In the meantime, the proponent must initiate a process of procuring Environmental Permit by registering the proposed project at the office of the Environmental Protection Agency (usually at the region), which then goes through screening and then Environmental Impact Assessment processes set in. The Minerals Commission awaits response from the EPA and if both agencies are satisfied, then the process moves to the Ministry of Lands and Natural Resources for a license to be issued upon the recommendation of then Minerals Commission.

Once issued, the license is supposed to be returned to the district office (through the Minerals Commission) where the application process started but it usually takes months and sometimes years for the license to be sent to the district office. Prospective ASM operators therefore make the follow ups at the various institutions in Accra themselves, which add to the frustrations. Thereafter, mining permit must be procured from the Inspectorate Division of the Minerals Commission before mining operations can legally begin. All these now take up to 12months or more in many cases, against the three months that the process is designed to take.

The entire governance framework for the ASM sector has not been successful in moving the ASM sector into the legal framework because the sector is dominated by those operating outside the established legal framework. Even the implementation and regulation of those operating within the established legal framework have not been smooth. In recent past, some stakeholders (including ASM operators and ASMAN (Artisanal and Small-scale Miners Africa Network) have requested regulatory agencies

22 *United Nations Economic Commission for Africa, 2002 "Compendium on Best Practices in Small-scale Mining in Africa", United Nations Economic Commission for Africa, Addis Ababa, Ethiopia*

23 *Hilson G. and Potter, C., 2003 "Why is illegal mining activity so ubiquitous in rural Ghana?", African Development Review-Revue Africaine De Developpement, vol. 15, no. 2-3, pp. 237-70*

(especially the EPA) to extend their regulatory nets to cover their activities. The agencies (MC and EPA) do not seem responsible for the activities of dominant ASM sector which operates outside the legal framework.

Several factors explain the near failure of the regime to regularize the ASM sector. Chief among these is the licensing regime (largely indifferent from that of mechanized LSM) which has been described as burdensome and overly time-consuming. In addition, the licensing procedure of the ASM sector can take a year or more to complete.[24] Some support the view that licensing is bureaucratic and an important reason why most operators in the ASM sector have not been moved onto the legal framework . According to some ASM operators, obtaining an environmental permit alone (one of several steps to become legal ASM operator) usually takes several months and sometimes over a year.

Apart from the licensing requirements and lack of institutional support, the conduct of LSM operators and other state actors has been noted as further reason most ASM operators continue to operate outside the established framework. It is sufficient for them to get a cooperating traditional authority. There are reports that some of the areas offered to LSM operators as concessions are already being mined by ASM operators, usually those operating outside the framework and therefore without license.[26] The moment such areas are leased out to LSM operators, it is difficult (in fact impossible) for ASM operators to secure a license. Further, the concessions of LSM are normally large in size and immediately deprive indigenes who are previously farming on the lands (in addition to occasional mining activities). Many of these farmers turn to undertake mining activities (usually on concessions belonging to LSM) for livelihood. Promises to recruit these farmers by LSM operators are usually not honoured, especially beyond the mine construction phase. Finally, there have been instances where concessions licensed and being mined by ASM operators have been technically handed to LSM operators.[27] In the case of other authorities such as traditional rulers, politicians and public servants (especially key personnel in the Police Service), they have been reported in the media to be providing cover and various support to illegal ASM operators.[28]

The effects of these have been major expansion in the largely unregulated ASM sector. With their activities largely unregulated, many of the environmental impacts are not mitigated. This has led to the proliferation of abandoned pits causing havoc in mining communities. There has been minimal care and maintenance conducted on the pits amidst security officials occasionally "chasing" the operators. Related to this is frequent collapse of the mines/pits. Also the number of foreigners directly involved in mining activities and the conduct of activities on river bodies (and related pollution of such resources) has negatively affected the reputation of the sector and overshadowed the potential socio-economic benefits, especially the increase in the use of arms by operators and rising levels of conflicts between operators and communities, and LSM operators.

There has been minimal care and maintenance conducted on the pits amidst security officials occasionally "chasing" the operators.

24 *Aryee, BNA, Ntibery, BK, and Atorkui, E., 2003 "Trends in the small-scale mining of precious minerals in Ghana: a perspective on its environmental impact", Journal of Cleaner Production, vol. 11, no. 2, pp., 131-40*

25 *Ntibery, B. K., 2001 "Small-scale mining of Precious Minerals in Ghana: A Strategy to Improve Environmental Performance" thesis submitted in partial fulfilment of the requirement for the Masters of Science in Mining Engineering, Kwame Nkrumah University of Science and Technology, Kumasi.*

26 *Hilson G. and Potter, C., 2003 "Why is illegal mining activity so ubiquitous in rural Ghana?", African Development Review-Revue Africaine De Developpement, vol. 15, no. 2-3, pp. 237-70*

27 *The case of one Mieza Kyi whose concession (duly registered) was taken from him for the then Ashanti Goldfields (now AngloGold Ashanti) is worth noting. In that case, Mieza Kyi could not renew his license only to realize that the area has been licensed by AngloGold Ashanti.*

28 *According to the Manager at the Minerals Commission in charge of ASM activities, some traditional authorities – knowingly or unknowingly – take the law into their own hands and "authorize" operators to engage in mining activities on their lands, and often make reference to a past licensing regime where the Lands Commission in consultation with traditional authorities granted mineral rights. Mr. Kofi Boateng (a legal ASM Operator in Ashanti Region) corroborates this point and further suggests that such conduct by traditional authorities must be stopped as part of efforts to deal with challenges in the ASM sector. Apart from traditional authorities, some politicians and public servants have been reported to be supportive of some illegal ASM activities in the country, obviously in return for personal gains.*

3. Case Studies: ASM Activities in Dunkwa-on-Offin and the Tributer System at Akwatia

Box 2: Characteristics of ASM Operators

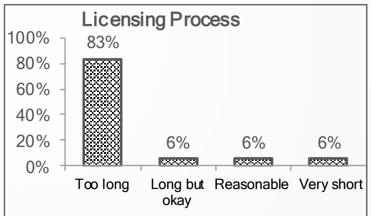
The study consulted ASM in the Dunkwa-on-Offin and Akim Oda Mining Districts. Akwatia is within the jurisdiction of Akim Oda Mining District. Respondents were mainly owners or principal decision makers of Small Scale Mining Enterprises that specialise in gold or diamonds. Out of the 18 mining enterprises that were administered with a questionnaire, 59% were owners, 23% were workers and 18% were co-owners. Seventy-five percent of the co-owners were in a partnership that had no more than 3 partners and 25% were in a partnership with more than 10 people. In terms of education, 35% obtained elementary education whiles 41% had a secondary education and 24% were above the secondary level. The respondents are very experienced in the small scale mining business as 94% had been in small scale mining for over 3 years and 6% has had between one and three years' experience. With respect to the economic activities of the communities visited, 61% of the respondents indicated that the key livelihood activity was small scale mining, whiles 28% ranked farming, and 11% ranked distributive trading as the most pervasive activities in the communities. The survey results about financing, on production, pricing and marketing are provided in the appendix.

The prevalence of illegal small-scale mining in this area of the country has also been attributed to the highly bureaucratic and time consuming processing regime

ASM in Dunkwa-on-Offin- Gold

The Dunkwa District ASM Office is one of the seven districts offices created by the Minerals Commission to manage and promote ASM activities in the country. It is reported that over 300 ASM licenses have been processed through the office and most of them are active. At the same time, between 3000 and 5000 people are believed to be engaging in illegal ASM activities in the jurisdiction.[29] Dunkwa-on-Offin is one of the districts with most extensive alluvial mining since most parts of the jurisdiction is characterized with alluvial gold mineralization. The prevalence of illegal small-scale mining in this area of the country has also been attributed to the highly bureaucratic and time consuming processing regime (See Box 1) that applicants must go through to get a license.

Whilst most of the ASM operators in this area have not bothered to initiate the process towards acquiring a license, others reportedly begin the licensing process but discontinue along the line (especially after publication at the Assembly of the proposed project – with or without objection)



Source: ACET Field survey

Of the pool of owners and principal decision makers pooled in the survey about 83 percent described the process as too long. The Minerals Commission Officer at Dunkwa also cited the low educational level of most ASM operators as another impediment. For example some miners are unwilling to even register a firm for the sole purpose of mining. Rather, they "borrow" business documents of friends and relatives to start but when asked to rectify that, they usually do not return to the office.

Besides licensing, access to land and associated land conflicts remains a major impediment to ASM development in Dunkwa.[30] Increase in reconnaissance and prospecting activities by large-scale mining operators has meant that more and more prospective ASM operators find it difficult to identify good place to apply for and mine. Meanwhile, growing population and high youth unemployment in the area have also meant increasing demand for land for other purposes, especially farming. Although the Minerals Commission has blocked out substantial amount of areas (in the Dunkwa jurisdiction and other parts of the country) solely for ASM activities, inadequate (or lack of) geological information about the viability of those areas make them less attractive to ASM operators.

The Minerals Commission is considering a number of interventions to respond to these challenges. For example, there is a plan to introduce interim permit to allow mining to begin prior to actual license being granted. This interim license is likely to be issued when local level processes (including obtaining a "no objection" after the project is published at the Assembly) are completed and the application process is awaiting

29 The number of illegal small-scale miners must be taken with caution. This is because of the highly mobile nature of these miners (both geographically and occupationally).

30 Elsewhere (especially parts of Eastern Region), another important challenge is growing resistance to ASM activities, largely on account environmental consequences of ASM activities. Asamang Tamfoe and Mmoseaso are two of such places. At Asamang Tamfoe for example, a former chief of defence staff together with other residents of the community and adjoining areas have fiercely resisted ASM activities in their environs final approval from Accra. The commission is also considering collecting geological information about the blocked out areas and establishing plant pool. However, but it is unclear when these initiatives will be implemented.

Finally, Precious Minerals Marketing Company (PMMC) and other entities licensed to purchase gold from ASM operators can work with external entities such as FairTrade to begin adding premium to gold produced in accordance with applicable laws and regulations. The competitive nature of gold purchasing business (in Dunkwa and other parts of the country) coupled with the fact that a large percentage of the gold output from ASM end up with these entities makes the case for their involvement and to use pricing and institutional mechanisms to promote sustainable ASM activities.

ASM and LSM Cohabitation: The Case of Diamonds at Akwatia

When the Ghana Diamond Company was sold to the Great Consolidated Diamond Ghana Limited (GCDGL) (an indigenous company) in 2011 (following a mine closure in 2007), there were high hopes that the once vibrant Akwatia Township will be returned to its past glories. Though that is yet to happen, as the GCDGL is yet to hit the ground running, its decision to revive a cohabitation arrangement (the tributer system) has had some positive effects. Besides the job opportunities, the tributer system has turned a potential conflictual relationship that characterizes ASM and LSM operators in most parts of the country into a mutually beneficial co-existence at Akwatia.

Though the tributer system is not new to the mining sector in Ghana, many LSM operators who are battling ASM operators on their concessions have shied away from considering it, let alone designing one suitable to their circumstances. With increasing promotional activities by the Minerals Commission and the granting of various licenses (reconnaissance, prospecting and mining), along with increasing youth unemployment in mining areas, there is the risk that conflicts between LSM and ASM operators may worsen if there are no innovative interventions.

At Akwatia the tributer system works this way. First, individuals interested in working on a concession must apply to the company which is the license holder. Payment (goodwill) for a tributer concession depends on the size of land (and the perceived or actual richness of the area) that will be transferred to the individual. Mining takes place under the supervision of the licensed company. The contractual arrangement is that all diamonds produced be sold to the company. A portion of the output is then retained by the tributer. This is a relatively simple arrangement, but even the supervision of the license company, success depends on the sincerity of the ASM operator.

Some of the miners surveyed were positive about the arrangement, noting that in its absence, the risks of invasion and encroachment by ASM operators would have been very high. "Now that there is an arrangement that can enable anyone interested to mine, there is no need engaging in illegal mining", one of the workers said.

4. Managing ASM: Continental & Global Responses

The challenges that confront the ASM sector are clearly widely recognized and there are several international conventions and protocols that provide frameworks for addressing them. Many of these conventions address specific aspects of the multifaceted challenges confronting the sector. The recently adopted Africa Mining Vision (AMV) provides a more holistic approach to optimizing the potentials of the sector (while addressing the various challenges it faces). The AMV itself acknowledge other conventions and protocols and urge member countries to implement them. Further to the AMV is the ECOWAS Mining Directive which also acknowledges existing protocols and conventions related to mining (including the ASM sector).

Apart from the continental and regional regimes and other reforms underway, there are also a number of international conventions and protocols that implicates ASM activities. Four of these that are worthy of considerations include Certification Schemes, conventions and protocols on chemicals (particularly mercury and cyanide), United Nations Convention on the Worst Forms of Child Labour, and relevant ILO conventions and guidelines (on workers' rights, health and safety, and child labour). On certifications schemes, the Kimberly Certification Scheme (which the Government of Ghana has signed onto and applies mainly to diamonds), Fairmined

Though the tributer system is not new to the mining sector in Ghana, many LSM operators who are battling ASM operators on their concessions have shied away from considering it, let alone designing one suitable to their circumstances.

Owners of the land do not have authority and access to the mineral resources. When minerals are found and the right to develop them granted to an entity, that entity's economic interest in developing the resources found supersedes those of the land owner or any other use to which the land is being put to.

Gold, and Fairtrade Gold are worth noting. It may also be useful for Ghana to consider a certification scheme for purchasing gold from ASM operators that can help improve their activities, especially with respect to environmental management and health and safety conditions at various mines.

Fairtrade gold certification scheme, for example, has a framework for certifying miners who adhere to four identified standards, namely strengthened miners' organizations, improved working conditions (broadly defined to include elimination of child labour), freedom of association and collective bargaining, and responsible use of chemicals. Certified miners get a premium from Fairtrade. The premium is even bigger for Ecological Gold (gold that has been extracted without the use of chemicals and with strict ecological restoration requirements). In Ghana, this will involve the PMMC (other companies licensed to purchase gold) collaborating with Fairtrade International which leads to the licensing of artisanal or small-scale miners.

On the production aspect of ASM activities, a number of efforts to minimize or phase out the use of dangerous chemicals (such as cyanide and mercury) have been put in place at the global level, though largely unenforced in Ghana. These include the Minamata Convention on Mercury (which Ghana signed in 2014) and the UNEP's Global Mercury Partnership. Still on production, the ILO has several conventions and guidance that relates mining and ASM activities. The following are relevant considerations going forward:

- Safety and Health in Small-scale Surface Mines Handbook
- Safety and Health in Mines Convention (Convention 176)
- Worst Forms of Child Labour Convention (Convention 182)

5. Questions for Discussion

(a) How can the Ghanaian authorities harmonize land tenure systems with the need to regulate access to minerals in the ASM sector, and translate this into a coherent regulatory framework?

The 1992 Constitution identifies three different entities who own lands, namely the state, stools/skins, and families/individuals. The Constitution further provides that all mineral resources irrespective of where they are found (though most are beneath the soil) are owned by Ghanaians but vested in the President in trust for the people. The President, therefore, has the power to develop (or extract) mineral resources through public institutions, private institutions or both. Stools/Skins and families or individuals ownership are therefore only restricted to surface custodial and user rights. Owners of the land do not have authority and access to the mineral resources. When minerals are found and the right to develop them granted to an entity, that entity's economic interest in developing the resources found supersedes those of the land owner or any other use to which the land is being put to. However, prompt and adequate compensation must be paid in lieu of denying either the land owner or lawful occupant access to the land also during the period of mining.

Prior to the 1986 Minerals and Mining Law and the 4th Republican Constitution that effectively established the framework above, land owners (mainly stools/skins/chiefs and families) authority in the granting of minerals rights. The arrangement had its own challenges in addition to the potential to worsen inequality and cause conflicts. While the current framework has worked quite well in the LSM sector, its application in the ASM sector (where the right to mine must effectively be given by the Minister, representing the President) has been fraught with various challenges. The situation in the ASM appears to be a fusion of the previous and current frameworks, where some land owners (largely chiefs) are reported to have given "authority" to extract minerals found beneath their soil, contrary to legal provisions. This is largely as a result of historical experience, number of people involved in ASM, ignorance of the law, and general challenges in enforcing laws and regulations in the country. Further, there are some land owners who also resist mining activities, especially ASM, contrary to the law. Such resistance obviously challenges the state's ownership of mineral resources beneath the soil.

How can Ghana reconfigure the existing land tenure system and the regulatory regime for the ASM sector to enable effective regulation and management of the sector? There is need for a national debate on the matter with obvious implications for the ownership of the surface rights of lands where mineral resources are discovered. Should they belong to the state? Must the state take steps to compensate and resettle owners or occupants? And therefore what roles must be played by the state, beyond this involvement? Further, the role played by land owners and affected communities in managing activities of ASM operators must be enhanced and made more meaningful than has been the case. The influence that land owners (particularly chiefs) as well as other opinion leaders and Assembly

Members hold and their vast knowledge of what goes on in their communities must be optimized through increased involvement in regulation and management of the sector. [31] Currently, these stakeholders are either involved illegally in activities of ASM or are unconcerned by ASM activities yet faced (helplessly) with the consequences of these activities.[32] These stakeholders must be increasingly involved in the existing regulatory framework through the District Mining Committees (DMC), for example. The DMCs themselves must be more functional (and where non-existent, be established) and their roles in the existing framework together with district offices of MC must be enhanced. The regime must also encourage (or require) land owners and affected communities to have equity stake in ASM operations, to whip up their interest in responsible ASM activities.

(b) How can ASM and Large-Scale Mining (LSM) in Ghana co-exist in a mutually beneficial arrangement?

Much of ASM activities in Ghana and many parts of the world affect LSM activities in different and complex ways. Harmonizing relationship between ASM and LSM is crucial not just for the sustainability of their activities but also to optimize contributions to the economy (both local and national). Though much of the relationship between ASM and LSM has been conflictual, there have been a couple of experiences that show how ASM and LSM can co-exist in a mutually beneficial arrangement. The case of diamond mining in Akwatia is instructive. Further, other studies have shown how ASM and LSM can co-exist in a mutually beneficial arrangement and provide critical requirements necessary for the co-existence.[33] Another case in point is the decision by Goldfields to adopt a "live and let's live" model that ceded portions of its concession (informally) to ASM operators. Even though the company eventually evicted the operators because of challenges encountered, lessons learnt can be used to design mutually beneficial co-existence arrangement. Anglogold Ashanti also supported a group of 10,000 miners who were allowed to work on a section of the Obuasi concession (informally).[34]

There is a widespread understanding that a more sustainable approach to the often conflictual relationship between LSM and ASM is accommodation and LSM, ASM state institutions and traditional actors working together to deepen their understanding of the potential benefits of organized mining activities. In some of the examples cited above, the LSM operators do not formalize the arrangement and this has been part of the problem. In order for a particular arrangement to be sustained over a long period of time, it is worth formalizing as indicated by the former Chairman of the National Development Planning Commission.[35] In such arrangement, LSM may opt to buy the gold produced or allow ASM operators to sell the gold to PMMC through licensed buyers. In the past three decades, arrangement that has been applied in gold mining sector allows ASM operators to directly sell to PMMC. In the diamonds sector, however, the other arrangement where the LSM operator buys minerals (tributer system) has been successfully applied by erstwhile Ghana Consolidated Diamonds and the current firm operating the mines. In order for any of these arrangements to be effective and sustained beyond formalization, relevant state institutions such as the Minerals Commission and Environmental Protection Agency must be involved. Further, efforts by the Minerals Commission to provide viable lands to ASM operators must be enhanced and moved away from rhetoric as has largely been in the past to reduce the pressure on ceded lands.

(c) What is the nature of the current ASM value chain in Ghana and how can it be best regulated to ensure protection of worker's rights and delivery of fair value to citizen traders and to the State?

The ASM value chain in Ghana (similar to mining industry in general) has three main phases. They are exploratory phase, development and mining, and processing and/or marketing. The second and third phases generate significant economic activities that require proper regulation to ensure that rights are not infringed upon and all stakeholders to these activities are adequately compensated. The MC, EPA and PMMC currently play different roles in managing these two phases. There are also rules and regulations that must be enforced to protect

The second and third phases generate significant economic activities that require proper regulation to ensure that rights are not infringed upon and all stakeholders to these activities are adequately compensated.

31 *In Eastern Region, there are a number of communities that have effectively resisted any form illegal small-scale mining on their lands, reflecting the influence held by the leadership and ordinary members of the communities to stop illegal small-scale mining. This sharply contrasts indications by state institutions such as MC, EPA and district assemblies that they do not have resources to stop illegal small-scale mining activities.*

32 *Several reports in the mass media allude to illegal involvement of certain land owners (especially chiefs) in ASM activities. In Dunkwa in the Central Region, a certain chief physically prevented officials of the recently established inter-ministerial taskforce from entering the community and therefore areas where illegal ASM activities were taking place. It is good to note, also, that there are reports of some state officials who illegally engage in ASM activities.*

33 *Aubynn, A., 2009 "Sustainable solution or a marriage of inconvenience? The coexistence of large-scale mining and artisanal and small-scale mining on the Abosso Goldfields concession in Western Region", Resource Policy, vol. 34, no. 1-2, pp 64-70*

34 *Okoh, G A, 2013 "Grievance and Conflict in Ghana's gold mining industry: The case of Obuasi" Futures, no. 0*

35 *During the first National Mining Forum organized by the Minerals Commission in 2012, Mr. P. V. Obeng (then Chairman of the National Development Planning Commission) recommended that LSM operators must consider entering into a formal arrangement with ASM operators in lieu of part of their concession, either being ceded completely or given to ASM operators on a tributer system.*

In Africa only five countries have ratified the more than a decade-old convention. And this excludes Ghana. The case with the ECOWAS Mining Directive is not much different.

and promote rights and fairness. In order for the ASM value chain to be better regulated to ensure that rights are protected and fairness promoted, then the failure of the current framework must be addressed. Widespread ignorance on the part of most participants in the value chain and high rate of unemployment in the country are two of the reasons accounting for the failure of the current framework. Lack of resources for state institutions and compromises made by state officials are also important reasons. In response to these must be increased education on worker's rights and existing rules and regulations. Relevant state institutions must enforce applicable rules and regulations.

But one of the challenges facing ASM operators is their lack of marketing skills and the absence of organized markets for their products. Most operators end up being cheated by middle men who buy their output at unrealistic prices and in turn around and sell at high mark-ups. The PMMC must also play increased role in the marketing of ASM outputs. In the absence of organized markets, government will have difficulty enforcing regulations and certification schemes.

(d) What are the current impediments to enforcing globally accepted environmental (social and physical) management practices on Ghana's ASM

Signatory to and ratification of relevant conventions is the first major impediment to enforcing relevant environmental management practices in Ghana's ASM industry. And this is the case even in the larger mining industry. A case in point is the ILO Convention 176 (Safety and Health in Mines Convention). This applies to not only large-scale mines but also small-scale mines. In Africa only five countries[36] have ratified the more than a decade-old convention. And this excludes Ghana. The case with the ECOWAS Mining Directive is not much different. Even though the government has gazetted the directive, no visible steps have been taken to ratify the directive or make relevant provisions such as Free and Prior Informed Consent applicable in the mining sector. Beyond signatory and ratification of relevant conventions are the general challenges to law enforcement in the country attributed earlier to factors such as ignorance, high rate of unemployment and compromises on the part of state institutions with the mandate to enforce laws.

36 *Botswana, Morocco, South Africa, Zambia and Zimbabwe*

6. Conclusion

Ghana's ASM sector continues to remain very important to the developmental process in a number of ways: job and income creation, as well as sustainable extraction of mineral resources. Yet from looking for areas to work through to acquiring requisite documentation for mining, to sustainable mining, challenges and bottlenecks remain. The process of acquiring a license which ought to take three months take a year or more and is an issue frequently cited by ASM operators in explaining why so many people refuse to obtain a license before starting mining activities. And once ASM operator does not have a license state agencies responsible for ensuring sustainable ASM activities do not supervise them. The consequence has been there for everyone to see. Though several initiatives have been identified in response to the various challenges (including the introduction of interim license or permit, geological data collection to support site selection by ASM, and establishment of plant pool), the state of implementation has been very poor. The government is therefore being called upon as a matter of urgency to put in place a mechanism that involves all major stakeholders in the sector to fine-tune existing initiatives as part of reviewing the entire regime.

Most of the miners personally finance their operations (53%) whiles some solicit for funds from friends (41%) and only 5% relied on local banks for their operations.

Box 3: Can Ghana adopt some aspects of the Mining Governance Frameworks in Liberia, Sierra Leone and Ethiopia?

Ghana's governance framework for the ASM sector treats every ASM operator equally, irrespective of scale, technology being utilized and levels of output. This has been cited as partly responsible for the challenges facing the country's ASM sector. Liberia's 2000 Minerals and Mining Law distinguish between three classes of mining license (Class A, Class B and Class C). The Class C mining license is given to holders who shall conduct mining predominantly as small-scale operation for a period of one year, renewable for further terms and cover area not more than 25acres. Class B license is issued for a period of five years and mining may be conducted as industrial operation with additional obligations such as submission of production plan for approval. Class A license is issued for a period not exceeding 25 years and mining operations conducted under terms agreed in a Mineral Development Agreement (between the operator and the government). In Sierra Leone the 2009 Mines and Minerals Act separates artisanal miners from small-scale miners, with the size of an artisanal mining license area limited to half of a hectare whilst that of small-scale mining license ranges between one hectare and one hundred hectares. In terms of license duration, artisanal license is issued for a period of one year and renewable for up to three further periods not exceeding one year at a time. Small-scale license is issued for a period not exceeding three years and may be renewed for a further period not exceeding three years at a time. In Ethiopia, the 2010 Mining Proclamation defines ASM operations on the basis of levels of output and mechanization adopted. Artisanal license is issued for a period of three years and renewable for further three years whilst small-scale license is issued for a period of 10 years and renewable for five years.

Appendix:

Survey Report

1. Production and Pricing

Most of the miners personally finance their operations (53%) whiles some solicit for funds from friends (41%) and only 5% relied on local banks for their operations. The responses revealed that it is not possible to operate as a small scale miner for twelve months within a year. About 53% of the respondents indicated that they operate between 8-12 months, 41% operated between 5-8 months and 6% operate less than a month within a year. This is mostly individuals with very limited financial resources. The relatively high price of gold suggests that, most of the respondents were mainly into gold production (89%) with some limited small scale miners (11%) in diamond production.

does not give them problems in their operation. They accordingly revealed the process as easy (28%) and very easy (6%).

The study also observed that most of the miners (77%) had between 11 and 25 acres of mining concession[37] for their operations. Twelve percent of the respondents had concessions below 5 acres. These were peimarily diamond miners in Akwatia that were given permit by a larger concession holder on a piecemeal basis through their

37 *The maximum allowable concession size for one small scale mining permit is 25 acres.*

The activities of women are mostly limited to cooking although there are some women who own small scale mining enterprises. 50% of the respondents indicated they employ between 1 and 5 women, 28% employ between 5 and 10, 11% of the respondents employ over 10 females and 11% also don't employ any female on their concessions.

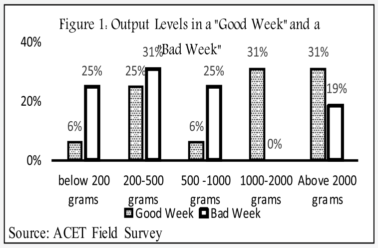


Figure 1: Output Levels in a "Good Week" and a "Bad Week"

Source: ACET Field Survey

The Miners indicated various output levels based on average estimated output in "a good week" and "a bad week" as indicated in figure 1. The diamond producers revealed that, in a good week they produce about 20-50 carats of diamond and in a bad week they get about 3-10 carats of diamond. In terms of pricing, the majority 59% use the prices given by their local associations. Some are also able to bargain (18%) with the buyers using the world market price of precious metals as the benchmark price. Local Ghanaian buyers and the Precious Mineral Marketing have been the main buyers (41% and 59%).

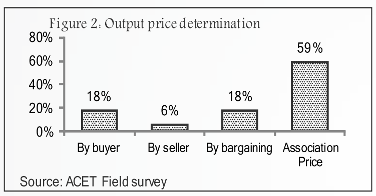


Figure 2: Output price determination

Source: ACET Field survey

With regards to further processing of the mineral output, 59% of the respondent were aware of some level of local processing and 41% were of the view that none of their output is processed locally. About 60% of the respondents were not aware of the entity that further processes their output but 30% indicated that they are aware of local goldsmiths that processes their output and 10% also indicated that local jewellers processes their output.

2. Employment

The miners employ a considerable number of workers for their operations on both permanent and temporal basis. Majority of the respondents indicated that, they employ over 10 permanent workers on a full time basis; 39% of the respondents had no temporary workers whiles 28% and 33% employed 5-10 and above 10 temporary workers respectively.

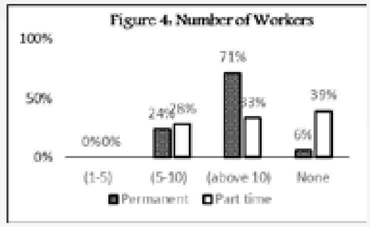


Figure 4: Number of Workers

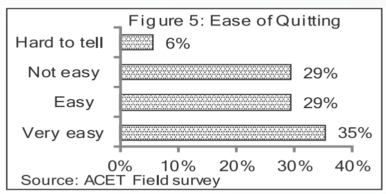


Figure 5: Ease of Quitting

Source: ACET Field survey

The survey revealed limited women participation in small scale mining. The activities of women are mostly limited to cooking although there are some women who own small scale mining enterprises. 50% of the respondents indicated they employ between 1 and 5 women, 28% employ between 5 and 10, 11% of the respondents employ over 10 females and 11% also don't employ any female on their concessions. The respondents expressed mixed reaction when they were queried on the ease with which the workers could leave their enterprises. Accordingly, 35% of the respondents revealed it is very easy for the workers to quit, 29% indicated that it was easy, 6% were of the view that it's hard to tell and 29% revealed it is not easy for workers to leave because of the lack of alternative livelihoods in the communities.

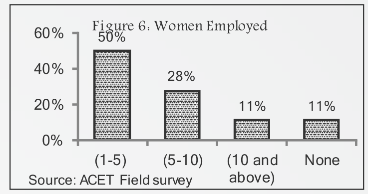


Figure 6: Women Employed

Source: ACET Field survey

3. Registration and Licensing

The study captured 94% of the respondents as registered and 6% were not registered. All the gold producers indicated that they obtained their license from the Minerals Commission and the diamond producers obtained their permit from the land owners where they operate.

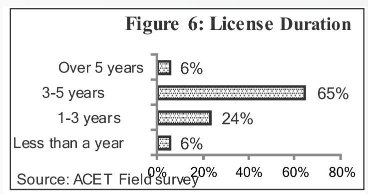


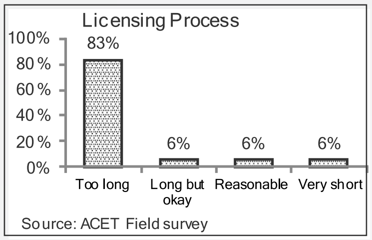
Figure 6: License Duration

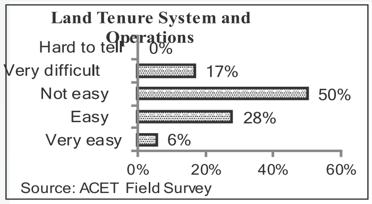
Source: ACET Field survey

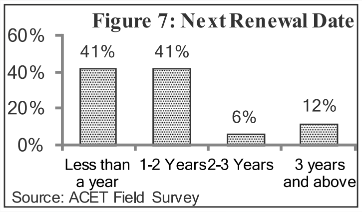
Few of the miners that have multiple small scale enterprises had licenses that spans over 5 years. The licensing process was a source of worry to the miners. They unanimously (83%) described the process as too long though a minority described the process as reasonable and very short.

4. Land tenure and Concession Issues

Access to land continues to be a source of worry to small scale mining activities. Seventeen percent and 50% of the respondents expressed dissatisfaction (as very difficult and not easy) on the high compensation demanded by land owners for lands for which they have licenses to mine on. Other respondents particularly the diamond miners at Akwatia and Gold Miners that had their own lands or operated on a family land revealed the land tenure system







tributary sutem. Lastly 6% also had concessions between 26-50 acres. This is made up of miners that have different Small Scale Mining Enterprises. It must be noted that because all small scale mining enterprises are assigned 25 acres as the maximum allowable concession size, the miners have developed a strategy to register a new company once they exhaust the minerals in their original concessions. Further conversation about the size of the concessions revealed that, 47% were just content with the size of their concessions. But 24% and 29% indicated that it was small and too small respectively.

References

Akabzaa, T and Darimani, A., 2001 "Impact of Mining Sector Investment in Ghana: A Study of the Tarkwa Mining Region

Aryee, BNA, Ntibery, BK, and Atorkui, E., 2003 "Trends in the small-scale mining of precious minerals in Ghana: a perspective on its environmental impact", Journal of Cleaner Production,vol. 11, no. 2, pp., 131-40

Ayee, J., Soreide T, Shukla G. P., and Le T. M., 2011 "Political Economy of Mining Sector in Ghana" World Bank's Policy Research Working Paper 5730

Aubynn, A., 2009 "Sustainable solution or a marriage of inconvenience? The coexistence of large-scale mining and artisanal and small-scale mining on the Abosso Goldfields concession in Western Region", Resource Policy, vol. 34, no. 1-2, pp64-70

African Union Commission, 2009 "Africa Mining Vision", African Union Commission, Addis Ababa, Ethiopia

Hilson, G., 2004 "Structural Adjustment in Ghana: Assessing the Impacts of Mining Sector Reform. In Africa Today, vol. 51, No. 2, pp. 53-77

Hilson G. M., and Garforth, C. J., 2013 "Everyone Else is talking about Mining': Drivers and Implications of Rural Economic Transformation in the Eastern Region of

Hilson G. and Potter, C., 2003 "Why is illegal mining activity so ubiquitous in rural Ghana?", African Development Review-Revue Africaine De Developpement, vol. 15, no. 2-3, pp. 237-70

Daily Graphic, 2014

United Nations Economic Commission for Africa, 2002 "Compendium on Best Practices in Small-scale Mining in Africa", United Nations Economic Commission for Africa, Addis Ababa, Ethiopia

National Coalition on Mining, 2013 "Statement by the National Coalition on Mining (NCOM) on the "Galamsey" Problem"

Ntibery, B. K., 2001 "Small-scale mining of Precious Minerals in Ghana: A Strategy to Improve Environmental Performance" thesis submitted in partial fulfilment of the requirement for the Masters of Science in Mining Engineering, Kwame Nkrumah University of Science and Technology, Kumasi

Ofosu-Mensah, E. A., 2011 "Gold mining and the socio-economic development of Obuasi in Adanse" African Journal of History and Culture, vol. 3-4, pp. 54-64

Okoh, G A, 2013 "Grievance and Conflict in Ghana's gold mining industry: The case of Obuasi" Futures, no. 0

United Nations Economic Commission for Africa, 2011 "Minerals and Africa's Development: The International Study Group Report on Africa's Minerals Regimes", United Nations Commission for Africa, Addis Ababa, Ethiopia

World Bank et al., 2006

Yakubu, B. R., 2002 "Towards Sustainable Small Scale Mining in Ghana", paper presented at Mining, the Nevironment and Sustainable Development, 21-22 February, Tarwka, Ghana

Position Paper on:

"Governance as it Relates to Local Content in the Mining Sector in Ghana[38]"

38 Tony Aubynn (Minerals Commission), Joe Amoako-Tuffuor and Ouborr Kutando (African Center for Economic Transformation)

1. Introduction

Many resource-rich African countries have raised questions about the extent to which mining activities have been beneficial to their economic development. Until the recent headwinds of commodity price slump, the commodity boom of the past 10 to 15 years, along with reports of soaring corporate profitability, only fuelled public debate specifically about revenue sharing and broadly about the mining sector's contribution to inclusive growth beyond its contribution to government revenue. Expectations of governments and especially of those who live around mining operations have never been higher.

Besides seeking to improve on its share of revenues, Ghana, in the past three decades has sought to increase local involvement in the mining industry value-chain. The broad efforts have evolved slowly and inconsistently since 1986 when the Minerals and Mining Law (MML) was first enacted, to 2006 when the MML was amended, and into 2012 when finally the operational regulations spelled out clearly how Ghana expects to promote localization of the mining industry.

The strategy of prioritising local content is hardly a new trend – it has been in place in several oil and mineral producing countries.[39] Yet, as a concept, local content has a host of definitions often, with country-specific considerations and types of interventions. From the spending point of view, local content is the value contributed by multinational companies to the national economy through expenditure on goods and services.[40] The World Trade Organization (WTO) defines it weakly as a "requirement that the investor purchase a certain amount of local materials for incorporation in the investor's product".[41] The World Bank emphasizes ownership. It defines local content on the basis of the domestic ownership of the firm, namely, "domestic preference qualification." The African Development Bank (AfDB) emphasizes geography and nationality. It defines local content as "local firms" based on place of registration, a majority of board members being nationals, and level of shares held by nationals.

Despite differences in emphasis, there are common objectives in the varying approaches to local content strategy: to deepen backward linkages with other sectors of the economy (increasing the amount of local goods and services that mining companies purchase and though transfer of technology); to see benefits in the form of job opportunities and greater citizen participation in the sector (through local ownership and control); and possibly expand forward links through processing of industry output before exporting. The means of pursuing these goals can be expected to vary from country to country, often depending on country's initial conditions, especially in their human, financial, technological and administrative capacity.

The broad objective of this paper is to assess Ghana's local content in mining to date. The paper identifies The country's aspirations with respect to local content and the steps to translate these into practice, , the efforts of companies towards enhancing local content, and what all this means in terms of enhancing mining companies' contributions to Ghana's economic and social development, especially for citizens who live around and are affected by mining operations. Specifically, the content of the paper is organized around the following questions:

1. What are the opportunities that local content strategy in mining provide to industry, government and communities in Ghana?
2. What is the nature and scope of local content policy in Ghana's mining sector: is it adequate?
3. What are the key challenges with the current local content measures to promote domestic linkages?
4. What policies would best encourage domestic backward linkages?
5. What should Ghana do to reconcile its local content policy with enhancing regional cooperation and in relation to trade agreements?
6. What is being done to address current challenges relating to local content in Ghana today?

The paper is structured as follows: Section 2 presents a brief overview of Ghana's mining industry, and introduces the local content policy and legislative framework in Ghana. Section 3 presents three case studies and draw lessons from them. We then turn to the questions above in Section 4 to provide some answers. Section 5 draws some conclusions.

The strategy of prioritising local content is hardly a new trend – it has been in place in several oil and mineral producing countries.

39 Gbegi, D., J Adebisi, (2013) "Managing Local Content in the Extractive Industries" Research Journal of Finance and Accounting, ISSN 2222-1697, Vol. 4, No 7.

40 Warner, Micheal (2010). "Are Local Content Regulations a Pathway to Competitiveness or a Road to Protectionism" Local Content Solution 2010

41 WTO, 2011. www.wto.org/english/thewto_e/...e/local_content_measure_e.htm - Downloaded October, 7th 2011

2. Ghana's Mining Industry

2.1 Background

Ghana is richly endowed with mineral resources. Ferrous and other precious minerals include gold, diamonds, bauxite, and manganese and, to a lesser extent, iron ore. A recent geophysical survey indicated the "occurrences"' of more than 28 minerals, including, platinum, uranium, tantalite and rare earth in the country.[42] Table 1 categorizes the various minerals in the country.

"the rate at which mining is catalyzing long term, broad-based development on the continent through the actualization of the linkage opportunities – backward, forward and lateral – has been, and continues to be rather slow."

Table 1: Mineral Resources in Ghana

Commercially Exploited	Partially Exploited		
Gold	Kaolin	Zinc	Lead
Diamonds	Salt	Andalusite & Kyanite	Copper
Manganese	Clay	Barite	Iron Ore
Bauxite	Marble	Beryl	Limestone
	Mica	Chromites and Asbestos	Columbite

Source: Ghana Minerals Commission 2012

2.2 The Contribution

The contribution of mining to the macro-economy of Ghana is not negligible. Mineral export has remained the country's number one foreign exchange earner since 2000. The share of minerals to total Ghana's foreign exchange earning has increased from 14 percent in 1990 to an average of 41 percent since 1993, outpacing cocoa as the country's most important foreign exchange earner.[43] Between 1995 and 2002, for instance, the annual average export earning of Ghana was approximately $1.7 billion of which mining contributed about $690 million. In 2012, mining earned over $4.0 billion or 42 percent of gross merchandise exports value for Ghana. Gold has always led the other minerals by all indicators in the mining industry and has contributed between 86 percent and 95 percent of the earnings from the country's total mineral exports since 1986.[44]

Since before the advent of oil, mining has been the leading contributor to domestic revenue through personal and corporate taxes and royalties. Government receipts from the mining sector have generally reflected the general production levels, price, and the tax rate at any particular period and have been increasing over the years. Between 1995 and 2003, for example, the total annual average contribution by the sector to Ghana's domestic revenue was approximately $40 million, representing about 10 percent of total government domestic receipts. This notable contribution occurred during a period of a dramatic fall in gold price, reaching a 20-year low of $255 per ounce and low gold production levels. Ghana has since witnessed significant growth in receipts from the mining sector to peak in 2011, at 27 percent ($708million), of the country's domestic receipts.

The relative contribution to exports and revenue notwithstanding, there is a general perception that mining's overall contribution in Ghana has been miniscule. Reasons for these perceptions may have as much to do with the history of weak social responsibility of mining companies in many areas as with the failure of overall public policy to improve the economic and social well-being of affected communities who live in and around communities hosting mining operations. These views and the growing pressure on mining companies to create benefits for citizens are often influenced by the government's own assessment that the benefits from the mining industry have been minimal. A former sector minister once remarked that "the rate at which mining is catalyzing long term, broad-based development on the continent through the actualization of the linkage opportunities – backward, forward and lateral – has been, and continues to be rather slow."[45] The Minister of Finance observed that renegotiating Ghana's mining fiscal regime has become necessary in order "to maximize the flow of the economic and social value from our natural resources to the country on a sustainable basis".[46] Typically, mining provides modest direct contribution to a country's GDP.[47] Available data, however, suggests steady improvements since the 1980s. For example, in the 1990s the industry contributed between one and five percent to Ghana's GDP. This has steadily improved since the 2000s, reaching a high of 14 percent in 2012. The questions are whether these contributions are is sustainable, how they translate into other sectors of the economy, and what actions are needed to deepen the impact of mining on broad based growth. In other words, does this statistic translate into a greater number of Ghanaians or other sectors of the economy, being involved in the mining value chain to a greater extent than before? A simple comparative analysis of the data on export and contribution to GDP may give a sense of the extent of integration of mining into the economy.

42 Ghana Geological Survey, 2011
43 ISSER 1996-2010; Bank of Ghana 2010, Minerals Commission 2012, Ghana Chamber of Mines 2012).
44 Ghana Chamber of Mines (2012) "Factoids" The Mining Sector 2011Ghana Chamber of Mines, Annual Report 2012;
45 Mr Hammer, Minister of Lands and Natural Resources, 2012 presentation on mining policy, Accra.
46 Source: Dr. Kwabena Duffuor, "Government Re-Negotiates Mining Agreements," Ghanaweb.com Accessed April 30, 2012.
47 ICMM, The Role of Mining in National Economies. ICMM October 2012

Table2: Average per unit contribution of GDP relative to export by key sectors of the economy, 2000 – 2012

Sector	Contribution to GDP (%)	Contribution to Exports (%)	Contribution to GDP relative to contribution to Exports
Agriculture	38	34	0.8
Mining	6	41	6.8
Services	29	5	0.2
Others	27	20	0.7

Source: Based on ISSER, 2000-2012, GSS 2001-2012

The basic assumption in the illustration in Table 2 is that the higher the per unit contribution of GDP relative to exports, the lower the integration with the national economy and vice versa. Table 2 indicates the per unit contribution of the sectors by GDP to export. As can be seen, Services, with the lowest per unit contribution to export by GDP (0.2), is the sector with the highest linkage to the economy after Agriculture. On the contrary, mining, which contributes only 6 percent (the lowest) to GDP, contributes over 6 percent (the highest) to exports. This is indicative of a weak link of the sector to the rest of Ghana's economy.

2.3 Ghana's Local Content Policy and Legislative Framework

Ghana's desire to ensure that mining contributes to its economic and social development has evolved rather slowly and without explicit policy in place. The broader legislative framework for mining in Ghana in the post-1980s began with the Minerals and Mining Law (MML), 1986, (PNDCL Law 153). This law was amended by the Minerals and Mining Amendment Act (MMA) 1993, (Act 475); modified by the provisions of the 1992 Constitution of Ghana; and amended and replaced by Minerals and Mining Law 2006, (Act 703).

Box 1: Key Localization Measures in the Minerals and Mining Law 2006 (Act 703).

- A 10 percent government stake in all large scale gold mining companies without any financial contribution.
- The reservation of small-scale mining for Ghanaian citizens
- Gold mining companies are to give preference to 'made in Ghana products for service companies located in Ghana and to employment of Ghanaians.
- Mining companies are to submit detailed programmes for the recruitment and training of Ghanaians.
- Section 50(3) of Act 703 specifically calls for the eventual localization of mining staff.

Although the MML (PNDC Law 153) in 1986 and the MMA 2006 (Act 703) contained key provisions of local content requirements, the legal framework provided limited guidance on implementation.
The passage of the Minerals and Mining (General) Regulations, 2012 (Legislative Instrument (LI) 2173), would become the 'game changer'. The LI 2173 provides clear interpretation of the MMA 703, focusing on three key areas: (i) the employment and promotion of local workforce, (ii) the procurement of locally produced goods and services; and (iii) additional licensing and reporting requirements. These key areas are discussed in detail below.

(i) Employment and promotion of local workforce

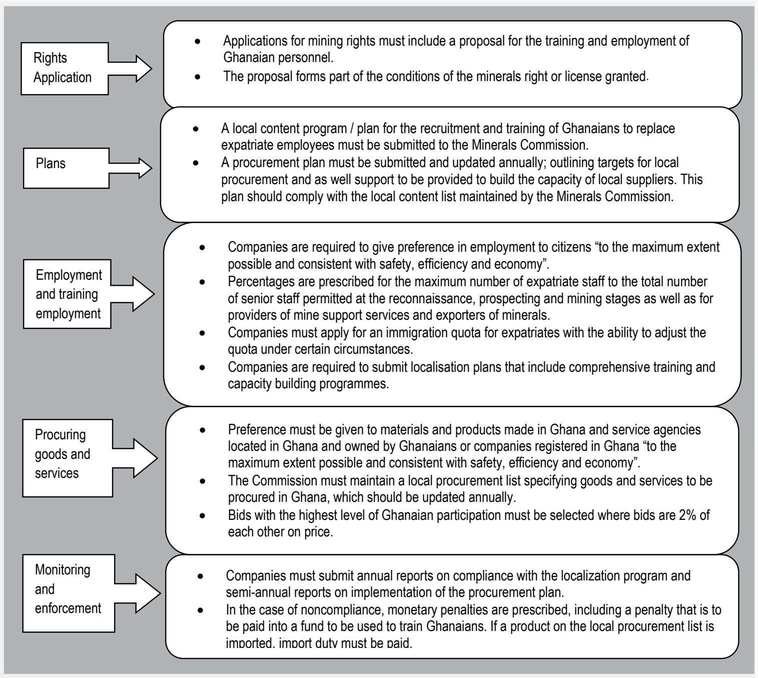
First, the regulation requires holders of mineral rights to hire a minimum proportion of national staff in various employment categories (subject to some exemptions, e.g., small companies, regional offices, etc.). The Minerals Commission (MC) works with mining companies to identify staff positions that can be filled by Ghanaians, local candidates who can be trained to replace foreign staff, and training programs and timings for local staff to replace foreign staff. This provision requires existing license holders to present for approval a programme for the recruitment and training of Ghanaians, including plans for the replacement of expatriates with Ghanaians.

On the contrary, mining, which contributes only 6 percent (the lowest) to GDP, contributes over 6 percent (the highest) to exports.

Applicants for new licenses or mineral rights are similarly required to present a proposal in respect of the employment and training of Ghanaians.

Second, the regulation aims to promote local knowledge and to minimize the number of expatriates assigned to jobs that are not extremely complex and for which local capacity exists. The regulation specifically imposes a ceiling on the number of expatriate staff a mining lease holder can have: it requires that the percentage of expatriate staff should not exceed 10 percent of the total senior staff within the first three years and 6 percent after three years of coming into force of the LI In other words, within six years of the passage of the L.I, mining lease holders can have a maximum of expatriate staff numbers not exceeding 6 percent of the total senior and management staff of the holder. Unskilled labour and clerical positions are generally to be reserved for Ghanaians.

Figure 1: Outline of Ghana's Local Content Framework in Mining



Third, to ensure effective implementation of the regulations, LI 2173 requires all mining lease holders to provide a list of senior staff including expatriate employees, their positions and job descriptions. In addition, a comprehensive 5-year plan of replacement of expatriates by Ghanaians, including training programmes, are to be submitted to the Ghana MC for review and approval. Applicants for new licenses or mineral rights are similarly required to present a proposal in respect of the employment and training of Ghanaians.

(ii) Procurement of Locally Produced Goods and Services

On the purchase of local goods and services (excluding labour), LI 2173 clearly states its preference for local products to the maximum extent possible that are consistent with safety, efficiency, and economy. It enjoins holders of mineral rights to give preference to materials and products made in Ghana; service agencies located in the country and owned by citizens; and companies or partnerships registered under Ghanaian Company Code or Partnership Act. To achieve the regulation's aim to promote the procurement of local products and services both mineral title holders and mining support providers are required to:

- Submit a procurement plan, covering five years, to be submitted within a year of commencement of the regulation;
- Specify means of procurement and use of local products to the maximum extent possible;
- Align the procurement plan with a guiding Procurement List to be developed by the MC and revised annually;
- Submit an annual report by January 31st of each year which demonstrates the level of compliance to the MC (for mining businesses with approved procurement and localization plans)

(iii) Additional licensing and reporting requirements:

This provision of local content requirements by the MMA 2006 (Act 703) and MML 1986 (PNDC Law 153) expands the licensing requirement of applicants for a mining lease to include licence to purchase, export, sell, or dispose of minerals and other mining related licence holders.

So by 2012, we see that what Ghana lacked in a publicly debated policy on mining, it accounted for in the legislation in 2006 and in the regulations that followed, namely LI 2173. The localization measures in Act 703 and LI 2173 are simple and laudable. The challenges are in the adequacy of the measures and in how to go about implementation, monitoring, and measuring achievements. On one hand, success depends on the procurement decisions of the large mining firms which dominate the Ghanaian industry, on how much local procurement decisions are at the discretion of individual firms, and on the capacity of local supply firms. On the other hand, success depends on the clarity and deliberate directions of government policies as well as on complementary government-industry relationships. Successful local content strategy must create a framework for learning and adaptation and should involve both government and industry.

While less extensive than Nigeria's local content strategy in the oil and gas sector, Ghana's local content strategy as spelled out in the provisions of LI 2173 is also a prescriptive approach backed by the MC's oversight. In relation to skills development, even before LI 2173, skills development in mining had advanced to the polytechnic and university levels, culminating in the opening of the University of Mines and Technology – indicative of the value that both the government and mining companies place on skills development and research. Unlike Trinidad and Tobago, what Ghana had not pursued was a strategy to diversify its economy to leverage its manufacturing in the basic tools and equipment used by the mining industry and other sectors of the economy.

3. Case Studies

Unlike the oil and gas sector, there are surprisingly fewer exemplary cases of local content policies in the mining industry globally. In Africa most mineral-rich countries are in the process of developing explicit local content policies. A recent study by the World Bank outlined the way some resource-endowed countries have approached local content policies.[48] Nigeria has christened the concept, Nigerian Content, and Angola, *Angolanisation*. This section briefly examines two countries, Trinidad and Tobago and Nigeria, to underscore the differences in approach and yet similarity in focus. It then outlines and discusses a company case study from Newmont Gold in Ghana.

Unlike the oil and gas sector, there are surprisingly fewer exemplary cases of local content policies in the mining industry globally.

Trinidad and Tobago developed its petroleum sector through the careful design and application of local content policies. The Local Content and Local Participation Policy aims to maximize the level of participation of its people, enterprises, technology, and capital through the development and Further, new skills development and training programs have been introduced in Nigerian universities as a result of the local content policy.

Case study: Ahafo Linkages Program

The opening of the Ahafo mine created a local business opportunity for Saveok Company Limited, a supplier of anti-erosion jute mats to the Newmont mine.

Newmont assisted Saveok to raise its standards and technical expertise to be supply Newmont in a mutually beneficial manner. The company directly benefits local producers of jute mats by purchasing from local producers and on-selling to Newmont. Saveok, in a span of one year, increased from a one-man business to 12 employees.

Newmont Ghana's approach provides valuable lessons about how to deepen the localization benefits at the community level. As one of the world's leading gold producers, Newmont has two operations in Ghana, the Akyem and Ahafo operations in the Eastern and Brong-Ahafo regions respectively.

Voluntarily, Newmont in their investment agreement made a local content commitment that it "shall, to the maximum extent possible and consistent with safety, efficiency and economy... ..give preference to materials and goods made in Ghana, and services provided by Ghanaians or entities incorporated or formed in Ghana and owned and controlled by Ghanaians, provided that such goods and services are equal in quality, terms, delivery, service, quantity and price to, or better than, goods and services obtainable outside Ghana."

In line with the above commitment, Newmont prioritized a contractor bidder selection with a ranking that gave priority first to a local-local

48 World Bank 2012

If managed and implemented properly, local content policies can present a 'win-win' situation for companies and communities alike.

company (company based in the mining locality), then to a Ghanaian owned company (100% Ghanaian ownership), then a Ghanaian participation company (50% Ghanaian ownership) followed by a Ghanaian registered company, and lastly to an international company. The company also reserved key sectors and services for local businesses as outlined in Figure 3 below.

Figure 3: Sectors reserved for local businesses by Newmont Ghana

Trade	Tools, paints, soap and detergent, condoms, tarpulin, waste bins, wall clocks, building material. quarry dust. stone & sand. farm inputs. items for Christmas hampers, PPE, stationery and office materials, cotton rags, MTN cards.
Maintenance Services	Sewage waste collection, potable water, light vehicle maintenance, tree felling. weeding & bush clearing. car wash. cleaning of gutters.
Rental services	Light vehicle rental, heavy vehicle rental, sound services (microphone & speakers)
Construction services	Bore holes, landscaping, stone pitching, building renovations, reshaping of roads, construction of community buildings, concrete slabs and cinder blocks.
Small industry	Jute mats, bamboo sticks, sign writing services, carpentry works, curtains& maintenance of curtains, plastic sample bags, uniforms, metal fabrication, calico bags, wooden chocks.
Educational/training services	Driving lessons
Hospitality services	Accommodation, catering services, coffee breaks & snacks, event organization.
Advertising services	Video coverage services, community announcements (blasted related), printing services and photography.

Source: Newmont Ghana Limited

To further execute and support their local content policy, the Ahafo Linkages Program (ALP) was implemented from October 2007 to May 2010. The objectives of the program were to improve the economic situation of local communities affected by the mine operations by increasing income and employment opportunities. The program focused on three key areas: local supplier development, local economic development, and institutional capacity building.

As a result of the ALP, local procurement values increased from US$1.7m (2006) to US$14m (2010) with over 373 local businesses receiving contracts within that period. By 2011, 96% of Newmont's 4,706 employees were Ghanaians. There were 57.25% 'non-local' employees, that is Ghanaian citizens who did not come from the 10 communities within and around its concession, 38.01% of the group which the company calls 'local-local', "these are citizens from the 10 communities we are operating in," with only 4.74% expatriates.

4. Key Questions and Answers

We turn now to the key questions on Ghana's local content in the mining industry that have framed the writing of this paper.

4.1 What are the opportunities that local content measures in mining provides to industry, government and communities in Ghana?

Local content strategy offers a number of advantages and opportunities for Ghana, mining companies, and the local communities where mining operations take place. The winning formula for all stakeholders is to develop a concerted, collaborative local content strategy. This means developing efficient and competitive local supplier networks for the goods and services that industry needs the most and that can realistically be sourced locally. Developing these networks expands the depth of local outsourcing, opens up opportunities for more local suppliers, creates jobs, promotes technology transfer through learning by doing and offers opportunities for local management.

For international mining companies, a strong business case for local content development exists if the company is in turn able to source goods and services locally, at a lower cost, and in a more timely manner than having to import these goods and services abroad. A community, region, or country is more attractive to foreign investors if there is strong capacity within the country to provide these goods and services. If managed and implemented properly, local content policies can present a 'win-win' situation for companies and communities alike.

For Ghana, opportunities exist in the areas of food supply (including supplies to cater to mine site staff), banking and insurance services, business services, lime, cyanide, chemicals, safety equipment, metal working, and machinery and parts (grinding media, crusher, pump and motor spares). Currently, local firms such as Tema Steel, Interplasts, Engineers and Planners and Insurance Companies are all involved in varying degrees in the supply chain in Ghana. As noted above, increasing local purchase of these items is good for mining companies because in the long run it may reduce supply chain costs and shorten delivery times. For government, deeper local content also means additional sources of tax revenues, directly through purchases of mining companies from suppliers and indirectly through subsequent rounds of spending through income and consumption taxes. A strong local industry, with technically skilled local potential employees is also considerably more attractive to investors. The adoption of local content policies indicates recognition that mining operations will not contribute to meaningful economic development if they exist as enclaves.

4.2 What is the nature and scope of local content requirements in Ghana's mining industry: are they adequate?

As noted earlier, the current legislative framework for mining is contained in the MMA 2006 (Act 703). In accordance with section 110 of the Act, the Minerals and Mining (General) Regulations LI 2173 enacted in March 2012 provided more specifics, even if prescriptive in principle. The LI provides clearer interpretation of the Act for which the two key areas for local content provisions are: (i) the employment and promotion of local workforce, and (ii) the procurement of locally produced goods and services. The challenge is in the practice of the regulation.

The State of Implementation

The regulation only came into force in 2013 and available information from the MC and the Ghana Chamber of Mines suggest modest progress in implementation. Most of the major mining companies submitted both their localization and procurement plans to the MC for approval by the end of 2014. A committee within the MC reviews the plans and discusses comments with the companies. Based on their consultation, an initial list of 18 items earmarked for local procurement was pruned down to eight. While this may seem a significant reduction, in reality, the eight items constitute over 60% of the value of the total local procurement budget of the companies. The final approval is based on the recommendation by the committee.

The review committee includes representation from the Immigration Services, meaning that approval for residence and work permits for expatriate staff of holders of mineral rights will depend on the satisfactory compliance of the localization regulation. It is doubtful though how much latitude the MC or the Immigration Services has to determine the jobs that require more than "modest qualification". Much depends on the prerogative of the mining companies who have an eye on quality and cost minimization. The reality is that even prior to 2012, companies typically outsourced much of their early exploration surveying, sampling and exploration evaluation, haulage and transport to local firms and individuals. It is in the supply of non-labour inputs where domestic linkages remain weak.

4.3 What are the key challenges with the current policy in relation to fostering domestic linkages?

In principle, the local content measures as laid out in the regulations have a number of strengths and clearly signal Ghana's intent and priorities. The measures restrict the number of expatriates, promote a Ghanaian workforce and the procurement of local goods, and spell out the requirements to acheive that end. But applying these measures has its challenges. Some may argue that it too late for a century-old industry that has already built and established its network of international supplies. In addition, challenged by local content legislation in the oil and gas sector, there is the question of whether the mining local content measures are ambitious in a bid to make up for past failures. Further specific challenges are as follows:

Unclear Definition: Even though the policy defines local content as preference for: materials and products made in Ghana; service agencies located in the country and owned by citizens; and companies or partnerships registered under Ghanaian Company Code or Partnership Act, it fails to make the "local" or "in-country" geographical distinctions. For example, should a local company be defined by where it is registered its ownership structure, its management and staff complement, or a combination of these? How should a 'local' company be geographically defined? Should preference be given to companies in the immediate vicinity of a mine (local local) over national or regional companies? These questions have also been posed by the World Bank, and are applicable to a number of country contexts.

Newmont Ghana attempts to address this definitional challenge in its local procurement policy by providing clarity on how "local" procurement should be assessed and prioritized. To them the highest priority is allocated to "local-local" companies, which are defined as suppliers that are situated within the geographical area affected by mine operations and which are more than 50% Ghanaian-owned. Following "local local" companies, preference is given to other local companies, in the following order: Ghanaian-Owned Company - one that is majority (> 50%) Ghanaian owned either via a listing on

The measures restrict the number of expatriates, promote a Ghanaian workforce and the procurement of local goods, and spell out the requirements to acheive that end.

53 Morris M., Raphael Kaplinsky and David Kaplan, One Thing Leads to Another, Promoting Industrialization by Making the Most of the Commodity Boom in Sub-Saharan Africa (2012)

There is no doubt that the mining companies and the Chamber of Mines have shown active interest in this human development, although there remains a lot of work to be done.

the Ghana Stock Exchange or equity placed with Ghana-based institutions and/or private investors; Ghanaian Participation Company-a supplier that has an element of Ghanaian ownership; Ghanaian Registered Company -a vendor who is an international or multinational company, registered in Ghana for the purposes of carrying out business in the country; and lastly, international companies—registered outside Ghana, with no known Ghanaian ownership. Such a concentric approach to local procurement is to ensure that enterprises within the catchment communities of the mines are not left behind in favour of their more cosmopolitan counterparts. Clearly, there is much benefit to using the Newmont Ghana model. It clearly defines the concept of "local" and thereby removes or at least reduces the element of discretion companies have in the choice and prioritisation of local suppliers.

Insufficient Capacity: In spite of the excitement at the prospect of Ghanaians and Ghana-based companies buying into the mining industry supply chain, there was no clear indication or direction as to the available capacity of the suppliers. Indeed, among the conclusions of the Local Supplier Development Needs Assessment for the mining industry undertaken for the International Finance Company (IFC) was that the existing suppliers in forging and fabrication as well as the chemical productions sectors have significant capacity gaps ranging between 33% and 57% when compared to international best practice. It is not clear whether government is willing to make the necessary investments in the capacity development of local entrepreneurs and a trained workforce to ensure competitiveness, efficiency, and quality.

From the perspective of the business community, the industry is increasingly technology and capital intensive and to take advantage of outsourcing in the supply chain requires extensive capital, long-term planning and collaboration between government, industry majors and the non-mining private sector; a collaboration that is currently perceived as weak in Ghana. With few exceptions, the immediate obstacles include the lack of domestic manufacturing, fabrication and service capabilities to support the mining industry and the lack of infrastructure to support the growth of the supplier industry. The concerns whether LI 2173 can alter the enclave nature of the industry and build the platform to enhance the contribution of mining to Ghana's economic and social development may not be far-fetched.

Absence of dedicated institution(s): Local content in its current form is relatively novel in Ghana and most resource-rich developing countries. An institution fully dedicated to providing guidance and support to participants and mining companies would ensure rapid and effective responses and solutions to the teething problems that are likely to arise out of the implementation of the policy. Such dedicated institution would not necessarily be a training institution. Rather, it would provide a one-stop-shop information and advisory services to prospective and current local suppliers and mining companies. It would host information on available opportunities and how to access them; SME funding sources; relevant documentations, etc. Currently, local suppliers whose services cut across to the mining and oil and gas areas have to register separately with the Minerals and Petroleum Commissions and pay separate fees to these institutions. In a way, the institution envisaged, would serve as a 'clearing house' for local content matters and perform additional function of monitoring and evaluation for the implementation of the local content policies.

Some argue that also lacking are the ***explicit provisions of skills and technology transfer*** as well as private equity holding. But, on balance skills and technology transfer may not be a significant omission if we consider that skills development in mining, such as mining engineering and metallurgy, has long been a major part of Ghana's higher education (from polytechnics to university) culminating in the establishment of the University of Mines and Technology. There is no doubt that the mining companies and the Chamber of Mines have shown active interest in this human development, although there remains a lot of work to be done. At the policy level, there needs to be a focus on policy level support–a focus on the development of training packages and competency frameworks and workforce planning and development–as well as capacity building support for training institutions within Ghana. All these are to ensure that these institutions are producing skilled and work-ready graduates that meet the demands and standards of industry. Collaboration in the area of skills development should involve all key stakeholders: government, skills and training authorities, training centres, and industry.

When it comes to ***equity participation,*** the reality is that there is limited local capacity other than the state's carried equity participation, largely because of limited financing capabilities. Act 703 clearly recognizes this limitation by reserving small-scale mining to Ghanaians. As the experience of Trinidad and Tobago demonstrates, a focus on ownership rather than state equity participation may discourage foreign investments into exploration and lose sight of the potentially bigger local content benefits that could accrue from the two pillars of employment and procurement.

The ***absence of a strategic approach is*** perhaps a more substantive challenge to developing a local manufacturing base on which to build a local supply chain to meet some of the low to medium technology needs of the industry. It is here that technology transfer begins in the development of linkages; yet, it is here that public policy direction remains weak. An indicative industrial policy on how Ghana plans to leverage its mining activities, as a step to building significant spinoffs, is non-existent. In fact, "local content in the mining industry" as a means to increase the contribution of mining to sustainable development is mentioned only once in 2013 in the Ghana Government Budget Statements and Economic Policy between 2003 and 2014.

On the two priority areas of local content identified in section 4.1, the promotion of employment is perhaps less a challenge than the procurement of goods and services. Human resource development has moved much further forward and some complaints by industry is the increasing migration of Ghanaians who by their development and experience have become attractive to mines within and outside West Africa.

Conversations with local businesses and other stakeholders revealed that the range of tax exemptions on the import of inputs provides very little incentives for mining companies to nurture local supplies industry. With subsidiaries of multinational plant and equipment suppliers (Atlas Coco, Caterpillar, Komatsu etc.) on the market, it is easy for mining companies to report high local procurement when in fact these purchases are often through local dealership of foreign firms.

4.4 What policies best encourage domestic economic linkages?

A good local content framework that encourages strong domestic linkages should have the following features:

- **Clear Definition:** The definition of "local" company in the current policy places much emphasis on ownership (share) structure of the local company and also leaves the interpretation 'local company' at the discretion of the mining companies. This does not only expose itself to 'fronting' but also puts companies domicile in the mine catchment communities at a disadvantage. It should be clear what a "local" company means and therefore what constitutes "local procurement". Ideally a combination of where it is registered, its ownership structure, management, and staff complement should define a local company. The policy should recognise and define local in a concentric geographical location as exemplified by Newmont's model.
- **Clear Objectives:** The objectives and rationale behind the local procurement policy should be clear. The current policy is not explicit on what it seeks to attain beyond providing opportunities for Ghanaians. The following are some common considerations for implementing local content requirements applicable to the Ghanaian context:
    - o Create value in-country and community, by maximizing the level of local material and human resources participation in the mining food chain.
    - o Create employment opportunities that are accessible at the local and national levels.
    - o Determine what range of goods and services are feasible to offer and within the productive capabilities of local SMEs.
    - o Enhance and deepen technology transfer and capacity building as well as local industrialization.
    - o Reduce the import burden of the country and improve on the balance of payments situation. This is particularly relevant in view of the increasing depreciation, in recent times, of the country's currency, the Cedi, due largely to excessive imports.
- **Priority focus:** The initial eight items selected for local procurement was based largely on the current capacity to deliver. These would progressively be scaled up on the basis of similar consideration. Thus, a successful local procurement policy, rather than being general and open-ended, should identify priority areas of focus.
- **Capacity development and financing:** Identify both existing and potential local capacity through a supply and demand analysis to achieve results and provide opportunity for capacity development. The policy should identify potential funding mechanism for entrepreneurs in the programme.
- **Metrics:** Provide mechanism for performance measurement, assurance and process reporting.
- **Oversight**: Set up a central body with oversight responsibility for the implementation of the local content policy. The central body

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must be inter-ministerial and multidisciplinary in its content. In the case of Ghana, the Ministry of Trade and Industry and Ministry of Lands and Natural Resources should be the 'champion' institutions.

- **Reviews:** The Framework must be subject to regular review, preferably, every five years to ascertain progress, impact, challenges and prospects.

What lessons can we learn from Ghana's mining sector? Ironically, it is too early to fairly assess the impact of the recently introduced local content policies for Ghana's century old mining industry. The seemingly smooth implementation of the policy, according to the MC may be attributable to three key factors: (a) the desire to correct the mistakes of the past and secure the social license to operate, (b) the simplicity of the local content guidelines, and (c) the collaboration between industry and government.

The general perception that Ghanaians have not benefited from the extraction of their gold meant that it was in the best interest of mining companies to embrace the local content strategy if only to alter this perception and to earn the social license to operate, even without a policy in place. As far back as 2000, major mining companies such as Gold Fields Ghana, Newmont, and Golden Star Resources began to outsource some of their activities and to increase the values of their procurement from local sources. By 2007 Gold Fields Ghana, for example, began to source a significant amount of its grinding media requirements from Ghanaian sources. Similarly, Newmont Gold rolled out its own local procurement strategy at its Ahafo operations two years prior to LI 2173.

The simplicity of the LI 2173 and collaborative relationship between the relevant stakeholders has also attributed to its relatively successful implementation. According to the MC the requirements of the regulations, were a product of a dialogue between the industry players, through the Ghana Chamber of Mines and the MC and does not impose unrealistic, hard to monitor and hard to achieve requirements.

Unlike the proposed local content regulations for the oil and gas sector which set a 90% "full local participation" quota within a decade, the local content provisions for mininig make room for a determination of what is achievable within five years with accompanying local supply chain development plans. In anticipation of the growing importance of local content as government policy in the extractives, the Commission and the Chamber, in September 2011, collaborated with the International Finance Corporation (IFC), to undertake a validation and gap analysis of opportunities for increasing local procurement with existing suppliers. A list of 28 products from current local goods and service suppliers and demand forecast served as the basis for the analysis. The result was the development of the Ghana National Supplier Development Programme (NSDP) for the mining sector with the aim to build the capacity and productivity of suppliers and increase the share of product lines produced in Ghana. The initiative however suffered a setback due to lack of funds to support the capacity building of the local enterprises, a situation made worse by the bearish world gold market, which caused the main sponsors, the mining companies, to cut back on spending and contributions.

4.5 How can the Government of Ghana reconcile local content policies in mining with regional cooperation and trade agreements?

The drive towards local content requirements by developing countries, such as Ghana, may run counter to some of the provisions of the World Trade Organisations rules. The absence of any open criticisms against the drive for local content policies perhaps reflects the practical consideration that there are significant development benefits from their implementation. For that reason, one of the pathways to the transformation of these economies by deepening the domestic resource sector linkages should not be unduly constrained by WTO rules, which arguably ignore the realities of countries' development circumstances.

Another notable concern is whether Ghana, a leading member the Economic Community of West African States (ECOWAS) and signatory to essentially all its treaties, is not tacitly in breach of ECOWAS treaties. The regional treatise seek to encourage free movement of goods and services within the region and abhors preferences for local goods. Can Ghana reconcile its local content policies in mining and at the same time pursue meaningful regional cooperation? Here are two considerations:

- **Collective selective ignorance:** Most West African states produce one mineral or the other at varying levels. It appears though, that all the member-countries are keen to achieve

55 *Ghana Chamber of Mines (2012) "Factoids" The Mining Sector 2011Ghana Chamber of Mines, Annual Report 2012*

their own form of local content and therefore turn a blind eye to one another's activities with respect to this area. It may be in the interest of Ghana to continue with this collective selective silence, keeping in mind though that in the long run this may not be an optimal path because of the smallness of each country's market for the kinds of inputs required by the industry.

- **ECOWAS-wide local content**: A second and perhaps more pragmatic approach, is for the ECOWAS region to be treated as one country and then identify and support the comparative advantage of each member country in the production and supply of some inputs. Although this idea needs to be carefully researched, the clear advantage is the vast market that opens up to businesses and supports the growth of the regional extractive sector. Ghana can lead such an initiative and take advantage of its long experience in skills and capacity development in gold mining in particular, to capture that market segment.

4.6 What is being done to address the challenges relating to local content in Ghana today?

The following key steps are being undertaken to address the key challenges outlined in this paper:

- The MC is continuing to review localization plans by the mining companies in line with Section 50 and 05 of Act 703 and LI 2173 respectively. These reviews require clear capacity-building plans for Ghanaian suppliers.
- The Mining List which essentially determines the items for import duty exemption is currently due for review. The goal is to complete the review by December 2015 and to identify additional mining inputs that should be excluded from exemptions. The idea is to increase the set of items for local procurement from the current level of 8 to 18 and as such, increase the opportunities for local suppliers to become involved in the mining supply chain. The review will be undertaken jointly with the MC , Custom Division of the Ghana Revenue Authority and the Chamber of Mines.
- The tripartite signatories to the Ghana National Supplier Development Programme (NSDP) are seeking to revive the capacity-building initiative. Efforts in this direction began in February 2015. The MC which had hitherto taken a largely passive position with respect to funding for capacity development has accepted to make financial contribution through the Minerals Development Fund (MDF).
- At a recent forum held in Accra (16-17 June 2015) by the tripartite and also attended by the Petroleum Commission and other local companies, the parties committed themselves to addressing the challenge of 'information asymmetry' through the use of ICT systems including social media.
- There is renewed interest in the donor communities to support capacity-building of local enterprises in the oil and gas area. For example the Australian Government has sponsored capacity development programme on Health and Safety for SMEs in the Western Region of Ghana in collaboration with the Western Region Chamber of Commerce. An initial two-week training programme was delivered in June 2015.

Conclusion

This paper has examined how Ghana's local content policies in the mining sector have been framed and operationalised. It has identified some key challenges of implementation and the lessons to be learned. What is certain is that local content framework is increasingly gaining a central place in policy development in Ghana's extractives industries.

The winning formula for all stakeholders is to develop a concerted, collaborative strategy. This means developing efficient and competitive local supplier networks for the goods and services that industry needs the most. This requires time, consistent efforts and learning. It also requires three levels of collaboration between industry and government -is an essential first step for a successful design and effective implementation of local content measures; Second, is the collaboration between the industry and local suppliers. Here too government has a role to play through its industrial policy to signal directions, outline incentives and support to build capacity and productivity. Third, the Newmont Ahafo Linkages Program highlights the importance of grassroots collaboration between mining companies and citizens in communities where mining operations occur.

A successful strategy expands the depth of local outsourcing, opens up opportunities for more local suppliers, creates jobs, promotes technology transfer through learning by doing and offers opportunities for local management. For industry, it means reduced supply chain costs, shortened delivery times and ongoing contributions to inclusive growth. For government, it means a broader tax and a diversified growth base.

Ghana can lead such an initiative and take advantage of its long experience in skills and capacity development in gold mining in particular, to capture that market segment.

References

Auty, R. M. Sustaining Development in Mineral Economies: The Resource Curse Thesis. Routledge, New York 1993.

Auty R. M. How Natural resources affect Economic Development. Development Policy Review, Vol. 18, 2000.

Auty R. M. 'Resource Abundance and Economic Development.' WIDER, Helsinki 1998.

Auty R. M and R.F Mikessel. Sustainable Development in Mineral Economies. Clarendon Press. Oxford 1998.

Brunschweiler C and E. Bulte 'Linking Natural Resourse to Slow Growth and More Conflict' Policy Forum Science (www.sciencemag.org) Vol. 320 2 May 2008.

Davis G.A "The Mineral Sector, Sectoral Analysis, and Economic Development." Resources Policy Vol. 24, No. 4 217-228 1998.

Frynas, J.G., Paulo, M., 2007. A new scramble for African oil? Historical, political, and Business perspectives" African Affairs. 106/423, 229-251.

Gbegi, D., J Adebisi, "Managing Local Content in the Extractive Industries" Research Journal of Finance and Accounting, ISSN 2222-1697, Vol. 4, No 7, 2013

Ghana Chamber of Mines "Factoids" The Mining Sector 2011Ghana Chamber of Mines, Annual Report 2012

GLSS. Ghana Living Standard Survey, Statistical Service, Accra 1989

Hackenbruch, M and J. Pluess "Commercial Value from Sustainable Local Benefits in the Extractive Industries: Local Content. BSR March 2011

Heum,P, C. Quale., J.E.Karlsen,M. Kragha and G.Osahon. "Enhancement of local content in the upstream oil and gas industry in Nigeria. A comprehensive and viable policy approach." SNF report 25/0, project no.4245, 2003

Institute of Statistical and Social Research (ISSER) The State of Ghana's Economy (various) 1996-2010. University of Ghana 1996-2010.

International Council on Minerals and Metals (ICMM) "Ghana Country Case Study: The Challenge of Mineral Wealth: Using Resource Endowments to Foster Sustainable Development March 2007.

ICMM, The Role of Mining in National Economies. ICMM October 2012.

Klueh, U., G. Pastor, A. Segura, and W. Zarate "Inter-sectoral Linkage and Local Content in Extractive Industries and Beyond: The Case of Sao Tome and Principe" IMF Working Paper, WP/07/213, 2007

Kolstad,I.; A.Wiig and A.Williams. "Mission improbable: Does petroleum-related aid address the resource curse?"Energy Policy, 37 (2009), pp.954-965.

O'Keefe Ed. "African Mining Changes the Tune, but Will Actions Follow?" beyondbrics (blog), Financial Times, February 12. http://blogs.ft.com/beyondbrics/2013/02/12.

Pedro, A. M. "Mainstreaming Mineral Wealth in Growth and Poverty Reduction Strategies" Economic Commission for Africa, ECA, Addis Ababa 2004.

PwC "Local Content Requirements for the Mining Sector- Introduction of L.I 2173," On Point series, www.pwc.com/gh.

Reed, D. "Resource extraction industries in developing countries," Journal of Business Ethics, 39, 199-226 2002.

Roberts, C. "Governing Natural Resources for Africa's Development. Extractive Sector Regulations and Policy in Africa: Old Practices and New Models for Change" Africa Access Consulting North-South-Institute 2014

Sachs, J. and A. M. Warner 'Natural Resource Abundance and Economic Growth' Centre for International Development and Harvard Institute for International Development, Harvard University Cambridge MA November 1997.

Sachs, J. and A. M. Warner 'The Curse of Natural Resource' European Economic Review Vol. 45, pp827-38 2001.Warner, M "Are Local Content Regulations a Pathway to Competitiveness or a Road to Protection" Local Content Solutions (2010).

Warner, M. "Are Local Content Regulations a Pathway to Competitiveness or a Road to Protectionism" Local Content Solution 2010

WTO, 2011. www.wto.org/english/thewto_e/...e/local_content_measure_e.htm - Downloaded October, 7th 2011.

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