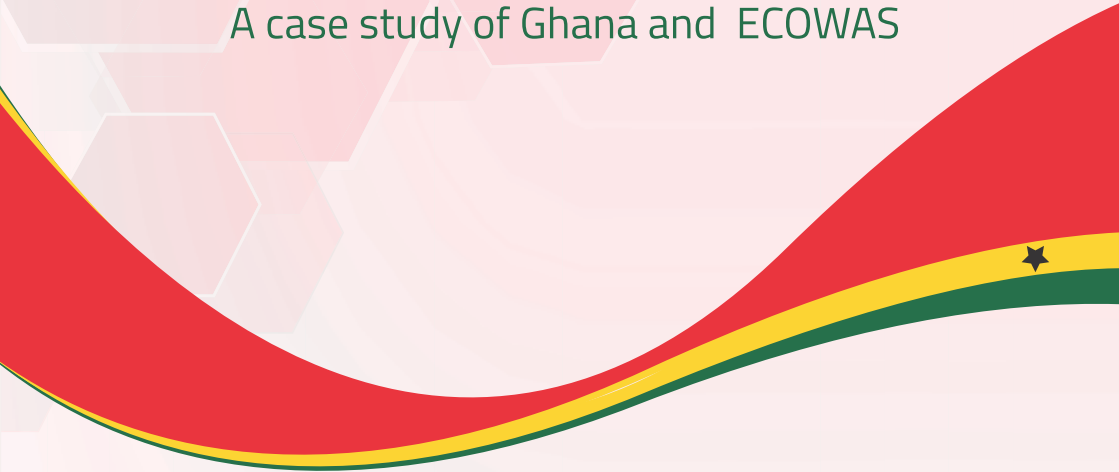




**TAX JUSTICE
NETWORK
AFRICA**

WHERE IS THE MONEY?

Taxation and the state of Africa
Mining Vision implementation:
A case study of Ghana and ECOWAS



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Our vision is ***'A new Africa where tax justice prevails to contribute to an equitable, inclusive and sustainable development.'***

In line with our mandate, TJNA's mission is ***'To spearhead tax justice in Africa's development by enabling citizens and institutions to promote***

equitable tax systems through research, capacity building, and policy influencing.'

TJNA presently has 29 members in 16 countries across Africa. The members act as focal points for tax justice work in their countries and often lead national tax platforms that bring together several organisations interested or active in the tax justice campaign.

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Glossary

AMDC	Africa Minerals Development Centre
AMV	Africa Mining Vision
AU	African Union
BIT	Bilateral Investment Treaty
CEPS	Customs and Excise Preventive Service
CMV	Country Mining Vision
DTA	Double Taxation Agreement
ECOWAS	Economic Community of West African States
EITI	Extractive Industry Transparency Initiative
EMDP	ECOWAS Minerals Development Policy
ERPs	Economic Reform Programmes
FDI	Foreign Direct Investment
GCM	Ghana Chamber of Mines
GDP	Gross Domestic Product
GIPC	Ghana Investment Promotion Centre
GRA	Ghana Revenue Authority
HMRC	Her Majesty Revenue and Customs
ICMM	International Council for Minerals and Metals
IMF	International Monetary Fund
ISG	International Study Group
MoF	Ministry of Finance
NGOs	Non-Governmental Organizations
NRC	Natural Resources Charter
OASL	Office of the Administrator of Stool Lands
PNDC	Provisional National Defence Council
RECs	Regional Economic Communities
SAPs	Structural Adjustment Programmes
TJNA	Tax Justice Network Africa
TWN-A	Third World Network - Africa
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission for Africa

Executive Summary

In February 2009, the Heads of State and Government of the African Union (AU) adopted the Africa Mining Vision (AMV), a policy to guide the development of mineral resources on the continent. The AMV's overarching goal is to create a regional framework that supports a "transparent, equitable and optimal exploitation of (Africa's) mineral resources to underpin broad based sustainable growth and socio-economic development". The adoption of the AMV followed widespread questioning and disquiet among the citizenry throughout the continent over the manner (specifically the mining regime) in which commonly owned mineral resources are developed: how the benefits and burdens associated with the extraction of these resources are shared among key stakeholders. This was borne out of persistent struggles by ordinary people and especially those in mining affected communities against challenges they encounter as a result of widespread mining activities occasioned by liberalized regimes adopted in the late 1980s and early 1990s.

It has been seven years since the AMV was adopted yet the mining regime continues to be characterized by many of the issues and challenges inherent in the liberalized African economic regimes. Over the years, member states, Regional Economic Communities (RECs) and continental bodies (AU and UNECA in particular) have made various efforts towards domesticating the principles and prescriptions of the AMV at the national level, to ensure that national policies and regulatory frameworks are compliant with the vision. These efforts include adoption of the International Study Group (ISG) Report on Minerals and Africa's Development and development of an Action Plan to implement the AMV by the 2nd AU Conference of Ministers Responsible for Mineral Resources Development in 2011. The ISG report presents an analytical framework that contextualizes the AMV and its implementation, and at some points providing prescriptions on how to proceed.

Across the continent, Ghana is one of the countries that have begun earnest preparations to initiate the processes of developing Country Mining Vision (CMV). The need for the conduct of the AMV Gap Analysis for Ghana, therefore, becomes obvious. Besides, the adoption of the Action Plan in 2011 required Member States and RECs to perform some activities towards realization of the AMV and some developments have taken place since then. The Economic Community for West African States (ECOWAS) adopted a directive (C/DIR.3/05/09) on the harmonization of guiding principles and policies in the mining sector shortly after the AMV was adopted. Further, Ghana has undertaken some major reorganization of her fiscal regime applicable to the mining sector over the past few years. From increasing corporate tax rate by 10 per cent (to 35 per cent) to fixing royalty rate at 5 per cent and renegotiation of stability agreements of some mines, the fiscal regime that existed

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on the eve of the AMV has obviously changed since. But to what extent has it changed? Or, put differently, how close has Ghana's fiscal regime gotten to an AMV-compliant fiscal regime? The report provides responses to these key issues by assessing what has been done in Ghana and the ECOWAS following adoption of the AMV and what is yet to be done to enable the realization of the vision. The report also identifies challenges confronting stakeholders as well as opportunities that may be capitalized to improve on underway to implement the AMV.

Key Findings

The fiscal regime and to a lesser extent the revenue management framework in Ghana have changed remarkably following the adoption of the AMV and the ECOWAS Directive on Mining. The fixing of royalty rates at 5 per cent, hiking of corporate profit tax to 35 per cent (up from 25 per cent), adoption of transfer pricing regulations, changing the capital allowance regime as well as the country's decision to renegotiate mining agreements have been important. There is, however, more work to be done in the area of ensuring that tax rules are applied to the letter and revenues generated from the mining sector are efficiently and equitably (inter- and intra-generational) utilised. For example, the transfer pricing regulations adopted in 2012 appear to be too general and in the absence of regional prices for various goods and services, their implementation have not been smooth. Further, Ghana still has to think through the process of re-introducing the additional profit tax to ensure that she can benefit from any unexpected windfall gains from the sector.

Though these reforms have benefited substantially from widespread societal questioning of benefits that Ghana and other West African countries derive from their non-renewable mineral resources, the questioning and associated pressure that have been brought to bear upon the government and the companies appear to be waning, with major implications for the courage on the part of implementing authorities to undertake further reforms that would benefit Ghanaians and West Africans in general. The situation is worsened by the emergence of parallel initiatives that can either dampen or conflict with some tenets of the AMV either in terms of direction or scope. Already, some of the existing initiatives such as the Extractives Industries Transparency Initiative (EITI) and the Natural Resources Charter (NRC) have made significant inroads with a sizeable followership both from state and non-state actors. Though efforts are being made to realign these initiatives with the AMV, it is unclear how helpful such realignment would be to the cause of the AMV.

Finally, the AMV is suffering from poor visibility as many citizens and citizens' groups are not even aware of the efforts being made by the AU and the UNECA to reform mining regimes across the continent. Obviously the support that is envisaged or expected from such stakeholders is lacking. Even key social constituencies such as some labour unions across the continent have not been as supportive of the AMV as expected. The labour unions, in particular, have the clout to bring substantial pressure to bear upon governments but appear to be focused more on their internal demands.

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Despite these challenges there are some opportunities that can be capitalized on by primary stakeholders implementing the AMV. They include general public discontent with the performance of the sector, poor public sector finances and rising public sector debts, and increased pressures being exerted by International Financial Institutions (IFIs) on minerals-dependent countries to obtain greater income from the mining sector. For countries such as Ghana where discoveries of new resources (such as oil) are being made, state officials should have the courage to reform the sector to meet the expectations of the citizenry.

Recommendations

State departments and agencies should be re-oriented to view the state machinery as a developmental vehicle to support the AMV. Further there is need to increase their capacity (expertise, personnel and technological) to enable them implement the AMV as expected. The government must therefore reconsider increasing support to these agencies to ensure the protection of government's (and therefore the people of Ghana's) stakes in the mining sector.

Continental and regional agencies responsible for the coordination of the AMV implementation activities (especially the AMDC and the ECOWAS Commission) should seriously consider supporting public awareness engagements and campaigns to increase pressure on state agencies as well as respond to threats by mining companies. This has to be well planned and executed to ensure that all the key social and economic constituencies in the country and across the continent are

engaged in an on-going process. Further, they must fashion out a collective approach to addressing the problem of transfer pricing abuse that involves the establishment of reference prices of goods and services as well as systems that make comparison of quoted prices to these reference prices easy.

Member states have to prioritize the development of their mineral resources within the context of the AMV and make increased contributions (financially) to the continental reform agenda. This will require a re-assessment of engagements between member states and other parallel mining reform initiatives that can either dampen or conflict with the AMV. Line departments and agencies of member states must be reasonably focused on the AMV and thus should not be unduly distracted by other reform initiatives.

Citizens and citizens' groups should raise their level of awareness of the AMV agenda and increase their collaboration to establish an influential platform to support the implementation of the AMV. Finally, citizens groups and governments must gather the courage to subordinate other parallel initiatives that can either dampen or conflict tenets of the AMV. This, in turn, would require that the AMDC is well supported (financially and otherwise) to undertake its functions with greater level of seriousness that can attract other stakeholders to the AMV table. Currently much of the support to the AMDC is from outside the continent (especially Australia and Canada), a situation that does not augur well for the independence of the AMDC and member states.

1. Introduction and Rationale for the Study

In February 2009, the Heads of State and Government of the African Union (AU) adopted the Africa Mining Vision (AMV), a policy blueprint to guide the development of mineral resources on the continent. The AMV's overarching goal is to create a framework that support a "transparent, equitable and optimal exploitation of (Africa's) mineral resources to underpin broad based sustainable growth and socio-economic development".¹ The adoption of the AMV followed widespread questioning and disquiet among citizens and social groups throughout the continent over the manner (specifically the mining regime) in which mineral resources are developed: how the benefits and burdens associated with the extraction of these resources are shared among key stakeholders. The adoption of the AMV followed persistent struggles by ordinary people and especially those in mining affected communities against challenges they encounter as a result of widespread mining activities occasioned by liberalized economic regimes adopted in the late 1980s and early 1990s.

From loss of livelihoods, abuse of human rights to environmental degradation, reportage on challenges facing mining communities kept increasing². Ordinary people had become apprehensive of the mining sector because multinational companies controlling the mines were reported to be making substantial profits³ from commonly owned mineral resources whilst hardly creating opportunities for locals to benefit. Sooner than later, government officials also bought into the argument and began questioning the fairness of the overall take of the state and the country at large from exploitation of non-renewable national assets in comparison to what the companies obtain. The UNCTAD (2002) went further to assert that dependence on mineral production by 49 Least Developed

Countries (LDCs) it studied was responsible for the large and rising levels of extreme poverty in those countries.

Among the various challenges confronting mining, the nature of the fiscal regime and its contribution to smaller take by host countries is most prominent. First, the nature of the fiscal regimes was found to be either neutral or mildly regressive⁴ resulting in the share of governments falling as profitability of mining operations rose. Secondly, a combination of factors including weak capacity of state agencies responsible for collecting taxes, incentive problems, inadequate transparency and the aggression with which foreign multinationals create loopholes in the system to reduce their tax burdens (for example transfer mispricing,

¹ The African Mining Vision, the African Union, February 2009.

² See for example Akabzaa (2000), Human Rights Watch (2005), Akabzaa et al. (2007).

³ PWC (2007) reports that between 2002 and 2007 prices of minerals and metals rose by 260 per cent and over the same period, the average net profits of biggest mining firms increased by more than 1,400 per cent. Average profits of these firms were up more than 64 per cent between 2005 and 2006.

⁴ Land (2009) and remarks by Yao Graham (2013) at a Seminar in Accra.

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thin capitalization and huge pay-outs for management fees and consultancies) have resulted in government receiving far lower than obtainable with the regressive fiscal regimes. On this issue, also, various reports have been published to raise awareness of the problems among ordinary people and state officials in particular⁵. One of those reports which have been very influential in popularizing the smaller take of African governments from mineral wealth is the report jointly published by TWN-Africa, TJN-Africa and other allied organizations⁶ in 2009.

It has been seven years since the AMV was adopted yet the African mining regime continues to be characterized by many of the issues and challenges raised above. Over the years, Member States, Regional Economic Communities (RECs) and the continental bodies (the AU and UNECA in particular) have made various efforts towards domesticating the principles and prescriptions of the AMV at the national level, to ensure that national policies and regulatory frameworks are compliant with the vision. These efforts include adoption of the International Study Group⁷ (ISG) Report on Minerals and Africa's Development and development of an Action Plan to implement the AMV by the 2nd AU

Conference of Ministers Responsible for Mineral Resources Development in 2011. The ISG report presents an analytical framework that contextualizes the AMV and its implementation, and at some points providing prescriptions on how to proceed. The Action Plan, on the other hand, presents a framework for translating the AMV from policy aspiration to practical actions that ought to be taken at various levels towards the realization of the AMV. It is made up of nine programme clusters⁸ each of which has a goal, expected accomplishment, a list of activities to be implemented. The Action Plan calls for the establishment of a continental clearing house (the Africa Minerals Development Centre – AMDC), which has since been established, to coordinate activities of Member States, RECs and other stakeholders towards the realization of the AMV. In 2014, the AMDC developed a Country Mining Vision (CMV) Guidebook to help Member States migrate the AMV to the national level.

Ghana is one of the African countries that have begun preparations to initiate the processes of developing CMV⁹. The need for the conduct of the AMV Gap Analysis for Ghana, therefore, is obvious. Besides, the adoption of the Action Plan in 2011 required

⁵ See for example Ahmad *et al.* (2003), ICMM (2009), Ayee *et al.* (2011) and TWN-Africa *et al.* (2009)

⁶ The other organizations were Southern Africa Resource Watch, Action Aid and Christian Aid. The report with the title "Breaking the Curse: How Transparent Taxation and Fair Taxes Can Turn Africa's mineral Wealth into Development" reviewed tax regimes in key mineral-dependent countries and their application, revealing that the countries studied failed to optimize mining tax revenue between 2003 and 2008 when there was a boom in the minerals and metals sector.

⁷ The ISG was established after the Big Roundtable, a conference organized by the UNECA and the AfDB in 2008 that reviewed performance of the mining sector on the continent, following the World Financial Crisis in 2007.

⁸ They are as follows: Mining Revenues and Mineral Rents Management; Geological and Mining Information Systems; Building Human and Institutional Capacities; Artisanal and Small-Scale Mining; Mineral Sector Governance; Research and Development; Environment and Social Issues; Linkages and Diversification; and Mobilizing Mining and Infrastructure Development.

⁹ Mozambique, Tanzania, Lesotho, Guinea Conakry, Angola, Ethiopia, Namibia, Uganda, Zambia, Kenya and Eritrea are among countries that have initiated some processes or made some indications towards developing Country Mining Visions

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Member States and RECs to perform some activities towards realization of the AMV. And some developments have taken place since then. The Economic Community of West African States (ECOWAS) adopted a directive (C/DIR.3/05/09) on the harmonization of guiding principles and policies in the mining sector shortly after the AMV was adopted. Further Ghana has undertaken some major restructuring of her fiscal regime applicable to the mining sector over the past few years. From increasing corporate tax rate by 10 per cent (to 35 per cent) to fixing royalty rate at 5 per cent and renegotiation of stability agreements of some mines, the fiscal regime that existed on the eve of the AMV has obviously changed since. But to what extent has it changed? Or, put differently, how close has Ghana's fiscal regime gotten to an AMV-compliant fiscal regime?

In view of the above and as Ghana prepares to initiate her CMV processes, reviewing what has happened over the period (both in the country and within the sub-region), culminating in a gap analysis of the current situation vis-à-vis requirements of the AMV is urgent. So far, there do not seem to be any major efforts currently, on the part of the key stakeholders (especially Member States such as Ghana), in reviewing these developments and identifying challenges confronting them¹⁰. Similarly, it is unclear how stakeholders are harnessing opportunities that exist for scaling up some of the initiatives that have been undertaken in meeting the aspirations of the AMV and more importantly addressing the concerns that ordinary people have raised about the sector.

¹⁰The CMV process requires of some scan of the policy and regulatory landscape to be undertaken but authorities in Ghana are yet to indicate how far they will go with regards to this scan.

2. Objectives and Outline of the Study

The main purpose of the study is to review developments that have taken place in Ghana and ECOWAS in relation to fiscal regime in the mining sector following the adoption of the AMV. The review is envisaged to lead to a gap analysis and mapping of key issues that bothers on opportunities and challenges in relation to domesticating the AMV at the national and regional levels. The broad objective, therefore, is to measure progress that has been made at the national and regional levels in relation to implementing the AMV, to draw some lessons from what has happened so far (paying attention to how prevailing environment has contributed or hampered progress) and to provide advice and recommendations for Ghana and other countries implementing the AMV. This is within the context of the Country Mining Vision Guidebook produced recently by the AMDC to support Member States in formulating AMV compliant policy and regulatory frameworks. Ghana has begun preparations towards initiating CMV processes highlighting the need for the conduct of an AMV gap analysis.

The terms of reference identify the following two key objectives:

- i. The development of a scorecard to measure regional and national implementation of the AMV with indicators on:
 - a) Fiscal regime and tax compliance;
 - b) Revenue management.
 - ii. Measure progress on the harmonisation of the regional and national domestication of the AMV's Fiscal Regime and Revenue Management initiative using research/case study based evidence at national and regional level.
 - iii. **Objective 3:** Identify and discuss the steps and efforts that have been taken by authorities in Ghana and the ECOWAS Commission to implement activities identified and attributed to them in the Action Plan for Implementing the AMV;
 - iv. **Objective 4:** Assess the outcomes of the steps and efforts taken in relation to AMV implementation;
 - v. **Objective 5:** Assess progress made in the harmonization of guiding principles and policies in the mining sector following the adoption of Directive C/DIR.3/05/09;
 - vi. **Objective 6:** Identify opportunities and challenges exist for the realization of the AMV at the national and regional levels.
- In view of the above, the specific objectives of the country and regional AMV gap analysis and mapping study are highlighted below:
- i. **Objective 1:** Describe the fiscal regime and revenue management framework that existed in Ghana and the ECOWAS on the eve of the AMV;
 - ii. **Objective 2:** Examine the extent to which the above-mentioned fiscal regimes and revenue management frameworks align with or depart from the principles and tenets of the AMV;

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Consequently, the AMV gap analysis and mapping exercise seeks to examine fiscal regimes and revenue management frameworks in Ghana and the ECOWAS prior and post-AMV adoption in order to:

- i. Develop a scorecard to measure progress made in Ghana and the ECOWAS in relation to AMV implementation;
- ii. Measure progress made in the harmonization of national and regional fiscal and revenue management frameworks;
- iii. Draw lessons and provide advice on the bases of i) and ii) to support national processes towards the formulation of CMVs.

3. Methodology for the Study

3.1 Introduction

The methodology for the measurement of performance by Ghana and the ECOWAS region in the implementation of the AMV as well as regional harmonization takes account of requirements set out in the Terms of Reference (TOR), particularly the rigorous nature of such exercise. This section clarifies major questions that set out the context for the study as well as suggests data sources and data collection instruments employed to answer the major questions raised. Further, the section also identifies analytical tools (including mapping and scorecard) used to analyse data in conformity with the ToR.

3.2 Major Questions

The ToR provides a broad context within which the study must be conducted. Specifically two sets of questions (regarding challenges and options for each of the two main focal areas of the exercise - fiscal regime and revenue management), are provided to set out the context for the study. The issues raised by the questions, challenges and options are quite critical and inform how a country may obtain and manage its mineral revenue. With respect to these issues and the main objectives for the study, the following six major questions were identified to guide the conduct of the study:

- i. What fiscal regime and revenue management framework existed in Ghana and the ECOWAS on the eve of the AMV?
- ii. To what extent did the above-mentioned fiscal regimes and revenue management frameworks align with or depart from the principles and tenets of the AMV?
- iii. What steps and efforts have been taken by authorities in Ghana and the

ECOWAS Commission to implement activities identified and attributed to them in the Action Plan for Implementing the AMV?

- iv. What are some of the outcomes of these steps and efforts?
- v. What progress has been made on the harmonization of guiding principles and policies in the mining sector following the adoption of Directive C/DIR.3/05/09?
- vi. What opportunities and challenges exist for the realization of the AMV at the national and regional levels?

3.3 Data Sources and Data Collection Instruments

The two usual sources of data for research (primary and secondary) were utilized in obtaining relevant data to address the major questions identified above. The secondary sources relied on for the exercise included policy documents (including annual budget statements), legal instruments, directives, reports (such as the Ghana Chamber of Mines' annual performance reports and the EITI reports), journals, articles,

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newspaper clippings and other publications related to mineral resources development with particular emphasis on fiscal regimes and revenue management. Information on the nature of fiscal regime and revenue management arrangement that existed at the national (Ghana) and regional (ECOWAS) levels on the eve of the AMV were obtained from this source of data supported with a couple of interviews with key official in Ghana and at the ECOWAS Commission. Further, secondary sources of data were relied on for information on steps and initiatives that have been undertaken by Ghana and the ECOWAS (separately and jointly) towards achieving the objectives of the revenue cluster of the AMV since its adoption.

Fieldwork was undertaken during the third quarter of 2015, which generated primary data from key stakeholders through interviews. The primary data source provided the consultant an opportunity to meet key officials in Ghana and at the ECOWAS Commission on steps and initiatives being taken at the national (Ghana) and regional (ECOWAS) levels in support of the AMV. This was also aimed at getting deeper understanding of what has been done as well as what is being done in addressing the major questions raised above. The field work generated data and information using a number of complementary methods. The approach was a combination of phone calls, email conversation and face-to-face interviews with officials at the Ministry of Lands and Natural Resources, Minerals

Commission, the ECOWAS Commission, Civil Society Organizations and Academia working on or conversant with the AMV agenda and developments at the national and regional levels.

3.4 Data Analysis, Mapping and Scorecard Development

The sources of data for the study produced both quantitative and qualitative data that was used to address the six guiding questions. The quantitative data was analysed through various types of descriptive analysis in addition to content analysis which was employed to review qualitative data generated during the data collection stage. Content analysis helped identify key issues and themes that border on fiscal regime, tax compliance and revenue management that emerge from the data. The issues and themes were analysed in order to respond to the major questions guiding the study. These analyses, in turn, informed a mapping exercise that portrays key issues in fiscal regime and revenue management at the various levels as well as performance or progress made so far as AMV implementation is concerned. It is obvious that some judgements, through pre-established criteria and generally accepted norms, were made in arriving at the levels of progress made at both the national and regional levels in domesticating the AMV. Related to the mapping, is a scorecard that also portrays progress made at the national and regional levels.

4. The Mining Sector in the ECOWAS and Ghana

4.1 The Mining Sector in the ECOWAS

The ECOWAS was established in May 1975 to promote economic integration across the region. It currently has 15 Member Countries¹¹ found in the Western region of Africa. Almost all the countries in the region are endowed with one type of mineral resources or the other. In about half of the countries in the sub-region, mining is an important economic activity (in terms of contributions to foreign exchange earnings, government revenues and gross domestic product). The region is richly endowed with minerals ranging from precious metals such as gold and diamonds to industrial minerals such as copper, iron ore, bauxite, salt and sand. Gold, bauxite, copper and iron ore are the main commercial mining resources in the region. In many of the countries in the region, exploration and production of these minerals represents substantial part of their economies and consequently drive economic growth. The sub-region serves as home to a good number of global mining multinationals, including but not limited to Rio Tinto, Newmont, AngloGold Ashanti, Goldfields and Kinross.

In Burkina Faso and other countries in the region (such as Ghana), mining has overtaken the agricultural sector (mainly cotton for Burkina Faso and cocoa for Ghana) as the most important economic sector in terms of its contribution to foreign exchange earnings and government revenues¹². According to the United Nation's Comtrade Database, Burkina Faso earned almost two-thirds of all its merchandise export revenues from gold alone in 2012 and the commodity has for almost a decade

now been the largest foreign exchange earner for the country. The landlocked West African nation with a population of about 17 million people is the fourth largest gold producer in Africa. Reports indicate that the gold sector in the country continues to grow with new major discoveries every now and then. The situation in Burkina Faso is not significantly different from the other countries in the sub-region and is a fair reflection of the economic significance of the mining sector to the sub-region.

¹¹ The members of the regional bloc are as follows: Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

¹² In Ghana, gold overtook cocoa as the top export commodity in the mid-1990s and has been a leading source of government revenues for almost two decades now. In Burkina Faso, the gold has overtaken rubber as the top export commodity for almost a decade. Given the degree of openness to external economies and the need to import capital equipment to drive economic growth in these countries minerals become particularly important given their export earning potentials.

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The table below provides information on nine out of sixteen countries in the sub-region. In most of these countries, a single mineral commodity is the leading foreign exchange earner, ranking either first or second on the list of top export commodities. In almost

half of these countries (specifically Burkina Faso, Guinea, Mali and Niger), a single mineral resource is responsible for more than half of all its merchandise export revenues, reflecting the economic importance of the mining sector.

Table 1: Minerals Dependent Countries in West Africa Key Minerals Produced/Endowed

Country	Export Rank of Key Mineral**	Percentage of Forex Contributed by Key Mineral** in 2012	Key Minerals and their Production Rank in Africa
Burkina Faso	First	65.6	Gold (4 th) and Zinc
Ghana	First	37.8	Gold (2 nd), Diamond, Manganese, Bauxite, Salt, Lime
Guinea*	First	80	Bauxite/Alumina (1 st), Gold, Diamond, Iron Ore, Manganese, Uranium
Liberia*			Iron Ore, Diamonds, Gold
Mali	First	65.4	Gold , Kaolin, Salt, Phosphate and Limestone
Mauritania	First	38.5	Iron Ore , Gold
Niger	First	50.7	Uranium , Coal, Phosphates, Iron Ore and Limestone
Nigeria			Gold, Coal, Iron Ore, Limestone, Bauxite
Senegal	Second	13.8	Gold , Platinum, Iron Ore, Copper, Chromium, Nickel, Phosphates and Limestone
Sierra Leone*			Diamonds, Gold, Bauxite, Iron Ore
Togo			Lime, Phosphate, Cement, Diamond, Gold, Clinker

Sources: UN Comtrade Database (2015).

* Data for these countries were not obtained from UN Comtrade

** Refer to the first mineral (**in bold**) in the last column

The dominating role played by foreign multinationals in the mining sector across the region is a reflection of how relevant Foreign Direct Investment (FDI) has become to mining

and at the same time offer some insights into challenges facing the mining sector. The challenges reflects conflict that arise from foreign multinationals who are narrowly and

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firmly focused on maximizing profits vis-à-vis governments that hope to transform economies through mining. Substantial amounts of FDIs have found their way into West Africa over the past two decades, thanks to reforms made to the mining sector in late 1980s and early 1990s under the influence of the World Bank and IMF, as part of the Economic Reform Programmes (ERPs) and Structural Adjustment Programmes (SAPs). The policies and regulatory frameworks adopted in the mining sector served to attract and retain significant foreign investments into the mining sector. This is in spite of some unfavourable geographical and climatic conditions that pundits suggested would impede the flow of FDI into Africa¹³. A study by the UNCTAD in 2005 shows that FDI flows into Africa grew by almost three-folds between 1985 and 2003. The study further showed that the uneven spread of FDI flows across the continent is explained largely by the attraction of Africa's natural resources of which minerals are dominant. Between 1999 and 2003, nearly three-quarters of all FDI bound for Africa went into 24 countries classified by the World Bank as oil- and mineral-dependent countries¹⁴. The picture for Africa is not significantly different from the situation in West Africa (see Appendix 7).

With FDI inflows of around US\$ 1 billion in 1980, the figure increased by about three-folds for other African countries and more than five-folds for fuel- and mineral-exporting

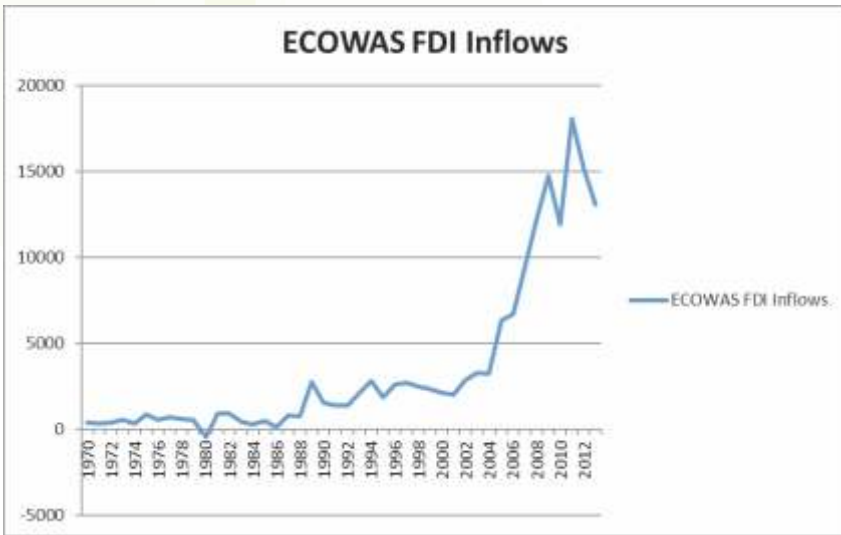
African countries in two decades, emphasizing the significance of the extractive sector to economies in Africa and attraction of FDIs into Africa (UNCTAD, 2005). Thanks to extensive reforms undertaken by most African countries to liberalize the mining sector. The diagram below shows flow of FDI into West African economies. Between 2003 and 2009, FDI inflows increased by more than four-folds, from US\$3.2 billion to US\$ 14.8 billion according to the UNCTAD's FDI Database.

There has, however, been some fluctuations thereafter, following the global economic crisis and the crash in the prices of minerals and metals. Minerals and metals' prices have since picked up and it is important to note that gold prices only eased immediately after the crisis, unlike other prices that experienced huge drops. Given the intensity of gold mining in West Africa, FDI inflows have since witnessed some fluctuations. In a sense, the four-fold increase in FDI flows can be associated with the mining boom experienced over the period when prices of minerals and metals more than doubled, from US\$400 per troy ounce in 2003 to more than US\$1,000 in 2009. Another important factor that explains the significant rise in FDI flows is the operative mining regime that prioritizes foreign investment. Appendix 8 shows quarterly series of gold prices between 2000 and 2013, showing the ease in prices during the crises. The downward turn in FDI inflows post 2012 apparently follows a downward dive in gold prices post 2012.

¹³ Bloom and Sachs (1998) and Freeman and Lindauer (1999) discuss the role of geographical factors in limiting FDI inflows.

¹⁴ UNCTAD (2005).

Figure 1: FDI Flows to the ECOWAS Sub-region between 1970 and 2012



Sources: UNCTAD FDI Database (2015).

The significant economic role played by the mining sector in the region has produced its own challenges. At one level are the issues related to the resource curse hypothesis, which remotely implicates the fiscal regime and revenue management framework applicable to mining activities. Thus, the emergence of the mining sector and the role it plays often results in most government attention being focused on the sector to the detriment of other sectors, especially the agriculture sector. Eventually the mining dependent economies become less diversified and so much dependent (often dangerously) on mining activities. Over the past few years, some African countries, including Ghana, have had their share of the fallout from significant ease in the prices of primary commodities (largely minerals) that they rely heavily on, reflecting the dangers in heavy dependence

on minerals sector. The other set of issues (significantly related to fiscal regime and revenue management frameworks) border on capital flight, corruption and weakening of democratic institutions. In relation to the fiscal regime, mining companies tend to demand significant tax concessions from the government and often end up with negative impacts to the regime. An important case in point is the case of Newmont's stability agreement with the government of Ghana which exempts the company from paying property tax. This tax is virtually paid by all economic agents within a particular local assembly.

4.2 The Mining Sector in Ghana

Ghana, which is the country of focus in this study, has probably had the longest history

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with mining in the sub-region¹⁵. This history is largely dominated by gold. Nonetheless, the country is endowed with other mineral resources – precious and industrial alike, as indicated in Table 1 above. Mention can be made of diamond, manganese, bauxite, salt, limestone, sand and clay. Most of these minerals are produced in the country but in relatively small amounts and therefore of little actual economic significance, though their potentials for more inclusive and robust economic growth are thought to be great. The case of bauxite is worth noting. The country has substantial reserves of bauxite but has no refinery so all the bauxite produced are exported in their raw state to be refined. Ghana then imports refined bauxite (alumina) to feed a smelter which has been largely underutilized over the past decade or two, amidst periodic shut downs. This is partly associated with power availability, a key requirement for a well-integrated bauxite-aluminium industry¹⁶. Output of the smelter feeds reasonably established aluminium industry in the country for the production of aluminium products (such as roofing sheets for a booming construction industry and cooking utensils for domestic and commercial use). The

vast opportunities for value addition and the fact that greater chunk of the value created would stay in the domestic economy, unlike the gold sector, demonstrate the inclusivity and robustness of economic growth related to a well-integrated bauxite-aluminium industry.

The story about bauxite-aluminium can be repeated for Ghana's limestone and clay resources, which can be used for the production of cement and tiles respectively to feed a booming construction industry in the country. The economic significance of the foreign exchange savings that can potentially be made from the reduction in the importation of these products (in particular clinker and tiles) cannot be ignored. Despite the potentials of these industrial minerals to a more transformative economic growth and development of Ghana, the country has for a very long time precariously depended substantially on gold mining, which continues to lead export commodities in foreign exchange earnings as well as serves as a major source of government revenues. The country can therefore boast of a number of first tier global mining multinationals on its backyard, and mention can be made of Newmont,

¹⁵ The TWN-Africa (undated), Akabzaa (2000) Akabzaa and Darimani (2001) and Aryee (2001) provides extensive background to the mining sector in Ghana, touching on its evolution pre- and post-reforms in the 1980s. Further, performance and drivers for the reforms have been adequately covered in these publications.

¹⁶ The bauxite-aluminium industry requires substantial amount of power, and at a cheaper price, to be efficient and profitable. So despite Ghana's open desires to have a well-integrated bauxite-aluminium industry along with all the economic benefits (from job creation to revenue generation for the government and foreign exchange earnings), its weak power generation infrastructure and what appears to be ever increasing prices of power (amidst accelerated withdrawal of subsidies by the government) poses a major challenge to the attainment of the country's desires. Further, there are suggestions that the efficiency of existing smelter is in question as operational size is sub-optimal and relies on dated technology. There are some lessons to be learnt from South Africa, which used to be a major hub for refining bauxite on the continent, even though the country does not produce bauxite on her own. The country is no longer attractive for refining of bauxite and major refiners are disinvesting which is becoming expensive and unavailable (in desired quantities).

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AngloGold Ashanti¹⁷, Goldfields, Kinross and Golden Star Resources. And along with these global miners are global providers of mining services such as AEL Mining Services, Atlas Copco, Cummins, Liebherr Mining, and Mantrac. Nonetheless, the country's dependence on gold mining continues to be of great concern. In 2011, a report by the Oxford Policy Management¹⁸ classified Ghana as one of 12 non-fuels, mineral-dependent countries most at risk from resource curse on grounds of its "critical" reliance on minerals exports (mainly gold) for foreign exchange earnings.

It has been suggested (especially by mining firms and associates) that if the country can obtain optimum benefits from its natural resources (minerals in particular), there is a need for significant investments in infrastructure (especially power generation and transportation)¹⁹. At the same time the citizenry (who own the mineral resources) of benefits that must accrue to them from the exploitation of the mineral resources which could put pressure on the same revenue stream that could go into infrastructure. However, mining firms are also demanding sweeping incentives in order to take that decision to invest in Ghana. In these circumstances, the need for the country

to have a very efficient and effective fiscal regime that obtains adequate share of mineral revenue and utilizes it in an equitable manner is crucial²⁰. The evidence suggests that though the country depends substantially on the mining sector (particularly gold), the proportion of revenue that accrue to the state (out of the total take in the sector) in terms of tax revenues and foreign exchange revenues appear to be inadequate. Take for example foreign exchange earnings attributable to mineral exports. Though substantial amounts are generated every year by the mining sector, the law permits mining companies to negotiate and keep in off-shore accounts 25 per cent to 80 per cent of the earnings. However, in these agreements mining companies obtained between 60 per cent and 80 per cent of retention quotas (TWN-Africa, undated). In the year 2000, for example, although gold exports accounted for 36.6 per cent of total merchandise exports, only 9.5 per cent was available to the country from the sector with the rest retained by the companies in off-shore accounts²¹. Mining companies, however, explain that some of the foreign exchange earnings reported to have been kept off-shore are actually returned to the country through commercial banks²².

¹⁷ AngloGold Ashanti is currently almost out of production, following a shutdown of its underground mine infrastructure to engage in what it terms as "care and maintenance". It is supposed to return to full production in 18 to 24 months' time, as per its own plans and schedules announced to the public. It is expected that the mining giant will continue with some surface mining activities during this period. See for example <http://citifmonline.com/2014/10/07/anglogold-to-seal-obuasi-mine-from-illegal-miners/>.

¹⁸ Dan Haglund (2011) "Blessing or Curse? The rise of mineral dependence among low- and middle-income countries, Oxford Policy Management.

¹⁹ An interview with the Chief Executive Office of the Ghana Chamber of Mines, emphasized this point and revealed that there are some manufacturers who want establish plants in the country to produce consumable for the sector but are concerned of infrastructural challenges, especially energy.

²⁰ UNECA (2011) International Study Group Report on Africa's Mineral Regimes.

²¹ TWN-Africa (undated).

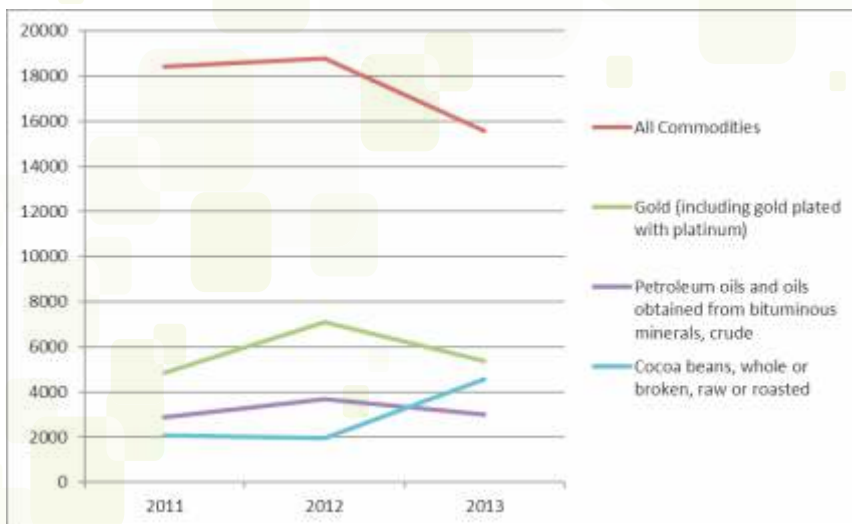
²² Interview with the CEO of Chamber of Mines.

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The figure below shows Ghana's top 3 export commodities (by revenue) between 2011 and 2013, demonstrating the dependence of total export revenues on export revenues from gold. It is worth noting that the trend in All Commodities export revenues follows that

in the gold export revenues or vice versa. This suggests some level of association in the two series. Over the same period, manganese was part of the top ten export commodities, by revenue.

Figure 2: Export Revenues from Top 3 Export Commodities

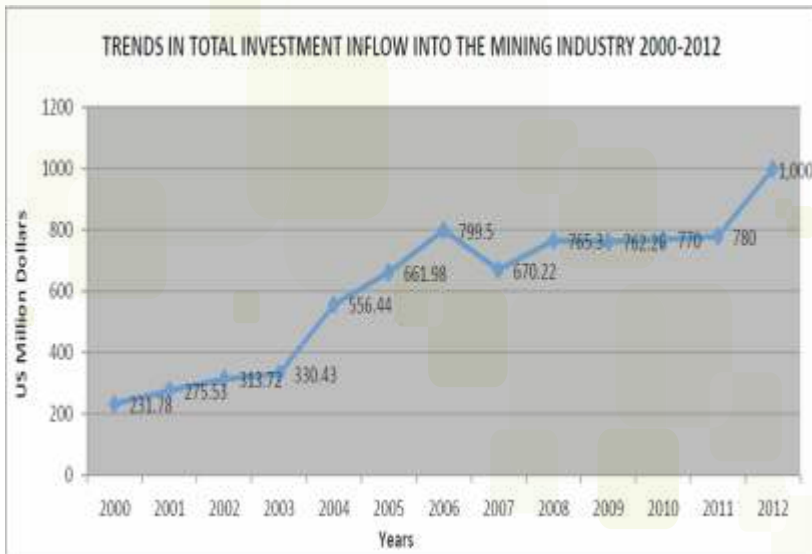


Sources: UN Comtrade (2015).

The economic relevance of mining to Ghana, when it comes to attracting FDI, is not much different from the other countries in ECOWAS. The figure below shows the hundreds of millions of dollars that have been poured into the country's mining sector annually between

2000 and 2012. In 2007, however, the country made discoveries of oil and gas resources in commercial quantities and has since 2011 joined the oil club on the continent, exporting crude petroleum and natural gas in large quantities.

Figure 3: Trends in Total Investment (FDI) Inflows into the Mining Sector, 2000 to 2012



Sources: Minerals Commission (as appears in Ghana Chamber of Mines, 2012).

Besides foreign exchange earnings from the mining sector, substantial amounts of government revenues derive from the sector, another feature of dependency. The sector has for a long time now been the significant contributor to domestic revenue mobilization in Ghana²³. According to the Chamber of Mines²⁴, the mining industry paid GHC1 billion to the Ghana Revenue Authority (GRA) in 2011, representing 27.6 per cent of total domestic revenues collected by GRA. The amount increased to GHC1.5 billion in 2012 but reduced to GHC1.1 billion in 2013, representing 27 per cent and 14.3 per cent of

total domestic collections by GRA, respectively. In terms of employment, the sector does not absorb much given the intensity of capital utilization. By the end of year 2014, the mining sector (largely the large-scale mines or members of GCM) employed a little over 12,300 people, down from over 21,300 workers the previous year. In the decade preceding 2014, total work-force in the sector hovered around 20,000²⁵. The small-scale sector (which is outside the focus of this study) is believed to employ over one million people directly.

²³ The sector can contribute more in revenues if the state change its orientation in the sector which prioritizes foreign investors. There is significant revenue potential in the informal sector (both gold and salt production) but the state must first recognize the indigenous operators in these sectors as investors, offer them similar opportunities as they do to foreign investors and strategize to widen the tax net/base in the sector to include them.

²⁴ See various annual mining sector performance reports published by the Chamber of Mines.

²⁵ These figures (government revenues and employment) were obtained from various performance reports published by the Ghana Chamber of Mines applied to large-scale mines that are members of the Chamber. See www.ghanachamberofmines.org.

5. Fiscal Regime and Revenue Management in the ECOWAS and Ghana on the Eve of AMV

Akabzaa and Ayamdoo (2009) define fiscal regime as “the quantum of taxes and taxes incentives for a particular sector”. Specific to the mining sector, the TWN-Africa (undated) also defines fiscal regime as “an array of taxes, rents, fees and tax incentives to foreign investors in the mining sector”. More broadly, however, fiscal regime can be defined as the set of treaties, laws, regulation, agreements, policies, guidelines and institutions that broadly govern economic benefits (mainly financial) that derive from economic activities and more specifically the distribution thereof among participating stakeholders in a particular economic sector or the country at large.

A fiscal regime can be defined for a particular economic entity if it is large enough and has substantial economic impact on the economy. Usually, the focus is on laws and regulations that determine the proportions (rates) or levels of financial benefits arising out of economic activities that are attributable to the state (both national and sub-national state agencies). In this sense, the provision of incentives or concessions (irrespective of where they are derived from, such as agreements, treaties or laws) that prevents an otherwise eligible economic entity from making certain payments or economic contribution to state agencies on the basis of former’s engagement in an economic activity are viewed as a part of the fiscal regime.

In the mining sector, therefore, fiscal regime comprises taxes, fees, duties and rents (to be referred to as fiscal imposts) that mining entities are required by legal instruments (both soft and hard law, including laws, regulations, treaties, policies and agreements) to either pay or not to pay

to relevant state agencies. The fiscal regime that is applicable to the mining sector is influenced by a range of economic, social and political factors. Ordinarily, and at the political level, the establishment of a state and responsibilities assigned to it require of the state to raise revenues through taxation for the purposes of discharging its responsibilities. Another consideration that influence design of mining fiscal regime is the ownership of the mineral resources, usually owned by the people (though held in trust for them by the President or Government). This makes citizens important stakeholders (at least in theory) in the mining sector and therefore to be considered in the design of fiscal regime. Further, mineral resources and mining have potentials to transform economies with respect to growth and development, and the design of fiscal regime usually takes this into account. Finally, the nature of mining and impacts produced thereof²⁶ puts the sector in a unique position and require that design of fiscal regime duly takes account of.

²⁶ These impacts include voluntary and involuntary resettlement, destruction of livelihoods and other environmental and health consequences.

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The implementation of mining fiscal regime is as important as its design. Over the past decade or so, compliance with a fiscal regime (which concerns implementation) has become a key issue not just in Africa, but throughout the world. Developed and developing countries alike are battling with poorly performing tax systems that do not seem to be growing tax revenues in tandem with increases in GDP. This follows increased revelations of the aggressive posture of mining companies to avoid tax payments (through base erosions) and in some cases evade taxes. This is in addition to influence that mining companies and other related entities exert in the design of the fiscal regime itself which inures more to their benefit. In Ghana and across the continent, thin capitalization remains a major challenge. On this, mining companies report most of the investments as debt (rather than equity) and makes substantial provision (out of mining revenues) to service the debts which eventually results in base erosion. Other challenges that affect robustness of fiscal regime includes transfer pricing abuse and various levels of fees paid to affiliated institutions for various reasons including consultancy and management.

In general, the case of evasion is quite controversial because in many cases, it is only when a case is brought against accused firm at the court that a particular act or scheme (be it avoidance or otherwise) can be proven as constituting evasion and therefore illegal. This obviously depends on the understanding and opinion of the

judge. In a report published by the United Kingdom House of Commons in 2013²⁷, it was revealed that tax rules throughout the world (both national and international) are not only out-dated but also complex enough to enable large accountancy firms to devise aggressive tax avoidance schemes and sold to their clients. Back in Africa, initiatives such as the African Union's High-Level Panel on Illicit Financial Flows and Africa's Progress Panel have been instrumental in bringing to the fore the staggering amounts of tax revenues that are not collected because of tax avoidance and evasion schemes across the continent. Avoidance and evasion are often thought of as separate issues with tax avoidance being legal and tax evasion being illegal. However, only a thin line separate these seemingly different concepts and the separating thin line is often determined by ones opinion. This is in view of the fact that some of the avoidance schemes developed by large accountancy firms have actually been found to constitute tax evasion rather than tax avoidance.

Revenue management (or revenue utilization frameworks), on the other hand, regards institutions and arrangements made towards the use of revenues obtained from a particular industry or sector, in this case the mining sector or mining industry. These frameworks are more popular in the extractive sectors than non-extractive sectors given the preponderance of national or common ownership of natural resources in many countries. Further, given the proximity to the resources by certain communities or provinces,

²⁷ United Kingdom House of Commons (2013) Tax Avoidance: the role of large accountancy firms. The Report, which was published by the Committee of Public Accounts, was based on interactions with representatives of four large accountancy firms, namely Deloitte, Ernst and Young, KPMG, and PwC.

some demands are made by residents in those communities or provinces for certain share of the revenues that derive from the production of these resources. Reasons that are often cited for such demands include environmental impacts they suffer and demographical changes occasioned by extractive sectors with profound impacts on the socio-economic conditions in these areas. Also important is the need for future generation to get a share of wealth created from these national resources.

5.1 Mining Fiscal Regime and Revenue Management Framework in the ECOWAS²⁸

In the ECOWAS, there is no such thing as common fiscal regime neither is there a common revenue management framework. This is no surprising given that even in some countries specific fiscal regimes and revenue management frameworks apply to different resources and sometimes different entities. That is, two different companies involved in extracting the same natural resource (say mineral) and same type (say gold) can have significantly different fiscal regimes²⁹. A common fiscal regime and revenue management framework for an entire Regional Economic Community such as the ECOWAS cannot be easily negotiated

and applied, though possible and can prove helpful. The implementation of Common External Tariff in the sub-region in 2015, for example, has followed a decade of negotiations. Nonetheless, the ECOWAS envisages and seeks to achieve a harmonized policy and regulatory frameworks in the mining sector. Article 31 of the Revised ECOWAS Treaty prescribes that “Member States shall harmonize and coordinate their policies and programmes in the field of natural resources” and also “coordinate their programmes for the development and utilization of mineral and water resources”. The approach of the ECOWAS Commission on this is to rely on Member state mechanisms to achieve the object of Article 31 of its revised treaty. The treaty is also silent on the utilization and management of mineral revenue. The region, however, supports intra- and inter-generational equity in the utilization of mining revenues.

5.2 Mining Fiscal Regime in Ghana

In Ghana, a good number of studies³⁰ that have been conducted provide a detailed description of the fiscal regime that applied to the mining sector on the eve of the AMV, in addition to stipulations in applicable laws, regulations and agreements. At the outset, it is worth noting

²⁸ It will be ideal to split the section into two: one for fiscal regime in ECOWAS and the other for revenue management/utilization framework. This has been difficult because until recently there was virtually nothing of that sort. What were actually adopted recently are a couple of principles, duly presented and discussed in Section 7 below.

²⁹ The cases of AngloGold Ashanti (AGA) and Newmont Ghana Gold Limited (NGGL) are instructive. Even though both companies are engaged in the gold sector, they managed to obtain a specific fiscal regime different from what applies to other mining companies in the gold sector. And between the two companies there are important differences in their fiscal regimes. Whiles NGGL was exempted from paying property rate to the local government, AGA was not. But both had their royalty rate fixed at 3 per cent and were not affected when the royalty rate was fixed at 5 per cent in 2011. NGGL's fiscal regime has been renegotiated pending parliamentary approval and AGA has closed down temporarily for care and maintenance.

³⁰ Akabzaa and Ayamdo (2009) and TWN-Africa (undated) are some of these studies. Also Awudi (2002) provides information on fiscal instruments and their rates that applied in the mining sector before and after the reforms in 1980s. Another useful reference in Ayee et al. (2011)

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that the fiscal regime in Ghana generally applies to all the minerals (particularly the traditional mineral resources, namely gold, manganese, bauxite and diamonds). Further, the mining law permits the government to enter into a stability agreement with individual mining companies that can freeze fiscal imposts for up to 15 years and at the same time vary downwards some of the rates or altogether deny otherwise eligible mining firm from honouring certain tax obligations. In view of this, a description of the fiscal regime that applies to the mining sector in Ghana shall focus mainly on the general features that apply to all miners, and occasionally make mention of some of the provisions that apply solely to firms with stability agreements or derive from other legal instruments such as Bilateral Investment Treaties (BITs) and Double Taxation Agreements (DTAs). Though stability agreements are ratified by the Parliament, they are usually difficult to access. Nonetheless, knowledge of some provisions becomes public through the implementation of the agreements. For example, in Newmont Ghana Gold's stability agreement with the Government of Ghana, the firm is exempted from paying property rate to the local assembly, though all mining companies in the sector do pay.

Before presenting the fiscal regime that applied to the mining sector in Ghana on the eve of the adoption of AMV, it is imperative to provide some background to the country's first independent mining code following the Structural Adjustment Programme and

Economic Recovery Programme initiated in the mid-1980s. The mining code, the Minerals and Mining Law (PNDC Law 153 of 1986), is seen as the root of the current mining regime and the associated fiscal regime³¹. In late 1970s and early 1980s, Ghana experienced systemic economic difficulties, characterized by highly unstable macroeconomic conditions. Virtually all economic sectors were affected as reflected in downward trend in output levels for several economic activities. The mining sector was not spared of the general economic difficulties. In 1983, output of the traditional minerals had fallen significantly, in some cases the falls were several folds from their peak levels. Gold production had dwindled to less than 300,000 ounces in 1983 compared to over 900,000 two decades earlier. Diamond production of about 350,000 carats in 1983 was a minute portion of the over 2.4million carats produced in 1974, just a decade earlier. Bauxite production of over 70,000 metric tonnes in 1983 was also a small fraction of the 1975 production level of over 380,000 metric tonnes. At that moment, worries over a collapsing mining sector and the consequences of that to the larger economy which depended substantially on the mining sector were obvious.

The fiscal regime is presented in two parts: those that derive from legislation (both primary and secondary) and those that derive from other agreements. As earlier indicated, even though the law may prescribe a rate for a particular tax, an agreement (such as stability or DTA) or a treaty could deny an

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eligible mining company from honouring that obligation or vary it downwards. Ghana's DTA with South Africa which has significant mining investments in the country is worth noting as citizens of South Africa in on South African mines can end up not paying taxes domestically (even though incomes are earned in the country) as provided for in the agreement. Further, there are some tax

obligations that have been excluded because they affect all economic agents and activities in the country. This does not suggest that those captured in the presentation below are specific to the mining sector. Consequently, taxes such as value added tax, pay as you earn, national reconstruction levy and national stabilization levy have been excluded. The following table presents the first part of the fiscal regime.

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Table 2: Ghana's fiscal regime that existed before and after the adoption of the AMV in 2009

Fiscal Element or Impost	Description	SMCD 5	PNDCL 153, 1986	Amendments to PNDCL 153*	ACT 703, 2006 (prior to AMV in 2009)	Current Rates, Post 2009 till date
TAXES						
Royalty	Production base tax by mining lease holders. The rate applies to value of mineral won.	6 %	3% - 12%	3% to 12%	3% to 6%	5%
Corporate Income Tax	Tax on Net Profit of Company.	50% - 55%	45%	35%	25%	35%
Withholding Tax	Tax on dividends to shareholders, management fees, consultant's fees paid to contractors and loan interest.		10%	10%	10%	10%
Capital Gain Tax	Tax on profits on sale of mine assets or mine.		10%	10%	10%	10%
Additional Profit Tax	This is a levy on windfall profits or extra rents generated by mining firms, often arising from price hikes or discovery of unexpected high quality or grade mineral deposits.	NA	25%	25%	0%	0% ³²
Import License tax or import levy	Levies on imports or regular payments made to obtain a license to import.	10%	Exempt	Exempt	Exempt	Exempt
Mineral Duty		5% - 10%	Exempt	Exempt	Exempt	Exempt

³² There is a new bill in parliament to re-introduce the additional profit tax but a reduced rate of 10 per cent. It has been fiercely resisted by the mining companies as they complain it will overburden them. But the government is hoping to rely on this to ensure that wealth created on the country's irreplaceable mineral resources is shared fairly among stakeholders.

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Import Duty	Additional duties on imports.	5% - 35%	Exempt	Exempt	Exempt	Exempt
Foreign Exchange Tax	A tax charged for the utilization of foreign exchange earnings.	33% - 75%	Exempt	Exempt	Exempt	Exempt
Gold Export Levy	A charge imposed on export of gold (usually in raw state).		Exempt	Exempt	Exempt	Exempt
Property Rate	Rates levied on immovable properties of mining firms by local assembly including machineries. The rates are set by the local assemblies through bye-laws and vary from one jurisdiction to the other.					
Ground Rent	Annual payment by mineral right holders to land owners or Office of the Administrator of Stool Lands.		GHC1 per hectare for prospecting license holders and GHC3 per hectare for mining lease holders.	GHC1 per hectare for prospecting license holders and GHC3 per hectare for mining lease holders.	GHC1 per hectare for prospecting license holders and GHC3 per hectare for mining lease holders.	Increased from GHC0.5 per acre to GHC36.6 per acre. ³³
Stamp Duties	These duties are basically various monies collected usually at the early stages of mining activities, such as: 1. Granting of Prospecting License; 2. Granting of Mining Lease;		The amounts charged are as follows: 1. 0.5pesewas 2. GHC5	The amounts charged are as follows: 1. 0.5pesewas 2. GHC5	The amounts charged are as follows: 1. 0.5pesewas 2. GHC5	

³³ Mining companies were reported to have kicked against the upward revision despite the fact that some of them were found not to be paying the previous rate. See Ghreiti website

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Stamp Duties	3. Transfer of license or lease 4. Principal Security; 5. Collateral Security; 6. Transfer of Security.	3. 1% of value of consideration 4. 0.5% if amount is secured 5. 0.25% of amount secured 6. 0.25% of amount secured.	3. 1% of value of consideration 4. 0.5% if amount is secured 5. 0.25% of amount secured 6. 0.25% of amount secured.	3. 1% of value of consideration 4. 0.5% if amount is secured 5. 0.25% of amount secured 6. 0.25% of amount secured.
FEES				
Exemption Fees	Paid to MC to receive exemption for duty free imports. It is subject to periodic review and parliamentary approval.			
Licensing Fees: 1. Reconnaissance License 2. Prospecting License 3. Mining Lease	Fees paid to MC obtain mineral rights. It is subject to periodic review and parliamentary approval.			
	For reconnaissance exploration rights.			
	For prospecting/detail exploration rights.			

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	For mining rights								
All other Fees	Various fees are charged by the Minerals Commission to offer certain services (such as acquisition of forms, cadastral search, document processing etc.) to the mining companies. Like other fees, they are subject to periodic review and parliamentary approval.								
OTHERS									
Dividends	Government share of dividends.	10% of declared dividends							
Free Carried Interest	An entitlement to the government that has been described as equity participation.	55%	10% with option to buy additional 20% at market price	10% with option to buy additional 20% at market price	10% with option to buy additional 20% at market price	10% with no option to participate further in equity			
INCENTIVES AND ALLOWANCES									
Initial Capital Allowance	An allowance against taxable income when a mining firm start production for the first time.	20%	75%	75%	75%	75% (80%)			
Subsequent Capital Allowance	An allowance against taxable income when a mining beginning from year two of production.	15%	50%	50%	50%	50%			

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Carried Forward Capital Allowance	An allowance in lieu of expenditures incurred during the reconnaissance and prospecting phases of mining that are capitalized.		Indefinitely	Indefinitely	Indefinitely
Investment Allowance	This is an allowance given in addition to capital allowance	5%	5%	5%	5%
Carried Forward Losses for Purposes of Taxation	Losses made in previous years can be brought against profits in subsequent years		Up to five years	Up to five years	Up to five years
Off-shore Retention of Sales	Mining firms are allowed to retain a proportion of their sales off-share to finance certain expenditures	N A	25% - 80%	25% - 80%	25% - 80%
Exemptions from Expatriate Income Taxes	Mining companies, through deed of warranty and specific development agreements, obtain exemptions or reduced taxation on income of expatriate employees.				

Sources: Akabzaa and Ayamdoo (2009), TWN-Africa (undated) and Awudi (2002), PNDC. 153, 1986; Minerals and Mining ACT 703, 2006; IRS ACT 592, 2000.

* The amendments referred to were made in 1994.

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The second part of Ghana's fiscal regime regards other key features that are either derived from the law or other related instruments. These features are often not fixed either as a ratio or as a quantum. Akabzaa and Ayamdoo (2009) discuss the following as key elements of Ghana's fiscal regime:

I. Double Taxation Agreements and Reliefs

Ghana has entered into double taxation agreements with a number of countries throughout the world. Given that all the large-scale mining companies operating in Ghana are foreign owned, the government loses tax income from firms and expatriates who are citizens of a country with whom Ghana has one of these agreements. This is because these agreements exempt such entities from paying certain taxes in Ghana.

II. Transferability of Capital or Foreign Exchange Retention in Off-shore Account

The mining law permits mineral right holders to negotiate a percentage of foreign exchange earnings from the sale of mineral won by them that can be kept in an off-shore account. This is to enable miners pay off loans acquired for investment, procure equipment for their operations and other related expenditures. Though miners are allowed not more than 25 per cent, Akaabza and Ayamdoo (2009) report that they end up obtaining permits to retain between 60 per cent and 100 per cent of sales.

III. Stability Agreements

The law permits the Minister (acting on behalf of the President and the Government of Ghana) to enter into a stability agreement with mineral rights holder as part of a mining lease with the aim of protecting the mineral holder from adverse effects of new enactments that border on virtually all fiscal imposts – from taxes to exchange controls and fees. What this means is that when taxes are increased, companies with this kind of agreement will not be affected, however if the taxes are reduced such companies stand to enjoy the benefits of the reduction. Stability agreements are subject to parliamentary ratification. Though this part of the fiscal regime enjoys some support in the mining industry, it is also a source of inequality and anxiety among operators since it is not available to all operators. While these agreements are beneficial to mining companies as they effectively freeze tax imposts and rates, they turn up to be costly to mining countries as they prevent them from enjoying from windfalls associated with unexpected price hikes.

IV. Development Agreements

This agreement is similar to stability agreement but entered between the Minister (acting on behalf of the President and the Government of Ghana) and an individual under a mining lease when the person's proposed investment exceed US\$500 million. This agreement is broader in scope

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than the stability agreement. It covers environmental issues as well as the manner in which the Minister exercises his/her discretionary powers under the law. Like the stability agreement, the development agreement is subject to parliamentary ratification. It often has stability clauses and has the same policy and fiscal implications like the stability agreement.

V. Agreement with GIPC

The Ghana Investment Promotion Centre (GIPC) is also mandated to offer incentives to foreign companies with the view of attracting them to establish in Ghana. The incentives offered range from fixed management and consultancy fees to some types of tax holidays. Though these provisions may not directly apply to mining firms, principles in these provisions are fast finding their ways in the mining sector and becoming part of the fiscal regime. A typical example is Newmont Ghana Gold's stability agreement that provide that the firm can remit about three per cent of revenues to its mother company in lieu of management fees.

VI. National Reconstruction and Fiscal Stabilization Funds

From time to time, the government imposes a tax on selected companies for a fixed period of time and for identified purpose. Mining companies have usually been part of the selected entities that are affected by these taxes.

The first part of Ghana's fiscal regime (presented in the table above) clearly shows the vast difference between the current fiscal regime, right from its inception in 1986 (PNDCL 153) and the fiscal regime that existed prior to the mining sector reforms in mid-1980s. Despite the sweeping incentives offered in PNDCL 153, the 1994 amendment and the new law passed in 2006 (ACT 703) provided substantial reductions in key tax rates. Profit tax was reduced from 45 per cent in 1986 to 35 per cent in 1994 and further down to 25 per cent in 2006. In two decades, the corporate income tax rate had fallen by almost half! What a race! That was not all, the additional profit tax (or windfall tax) was abolished altogether whilst the upper limit of the royalty rate range (never used before) was slashed by half, from 12 per cent to 6 per cent.

Before 1986 and 2009 when the AMV was adopted, the effective royalty rate applicable to the mining sector was three per cent. This is in spite of legal provision that the royalty rate ranges between three and 12 per cent until 2006 and between three and six per cent up to 2009. This is because the royalty rate applicable was determined by a miner's rate of return which takes account of all the allowances provided in the fiscal regime (presented above). Given the approach which allows for almost indefinite carried forward of losses, mining companies were always unable to go beyond the rate of return that will make them eligible to pay royalty rate above three per cent. For similar reasons, many mining companies are unable to pay corporate income tax as deduction of all the allowances provided usually return an otherwise profitable venture into a perpetual loss-making entity. Further details of the various defects or loopholes

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in Ghana's fiscal regime that denied her of collecting adequate revenues from the mining sector are discussed in Akabzaa and Ayamdoo (2009) and the TWN-Africa (undated).

When the new law was passed in 2006 there were expectations that the formula for calculating a mine's rate of return which triggers increases in actual royalty rate payable within the range will be reviewed to remove some of the generous allowances that guaranteed depressed rate of return and prevented mining companies from paying more than three per cent. Unfortunately, that review never took place, thanks to a long running discussion between experts at the Minerals Commission and their counterparts at the Ministry of Finance (MoF) to come to an agreement on how to revise the regulation that provides the formula for calculating the rate of return and subsequently royalty rate payable. The experts at the MoF wanted a wholly new approach to the basis for an upward move along the royalty rate range that depends largely (if not solely) on international prices of metals and minerals. Given the insensitivity of such approach to cost profiles of miners and changes in them overtime, experts at the Minerals Commission feared that such approach will be fiercely fought by the miners. They, therefore, proposed that the current approach be maintained and some allowances that disallow the rate of return from approaching and exceeding the mark that triggers increment in royalty rate be removed. Between 2006 and 2009, the discussion on how to review the regulation continued without end (amidst significant increases

in prices of metal, especially gold), allowing mining companies to continue paying three per cent royalty rate³⁴.

Further, new policies and laws as well as BITs and DTAs that came on stream boosted the fiscal regime in favour of mining firms. Take for example the Ghana Investment Promotion Centre law passed in 1994 and subsequent amendments, which allows foreign investors (including mining firms and their affiliates) to enter into an agreement with the GIPC that enables such investors to remit a fixed proportion of revenues to mother companies as management fees or some other fees. This remittance is usually set against profit before tax, effectively shrinking the tax base. While it can neither be confirmed nor denied that mining companies have obtained these agreements, the fiscal implications of the GIPC law on the mining sector cannot be ignored and a typical example is the provision in Newmont Ghana Gold's stability agreement that permits the company to remit about three per cent of its revenues to its mother company in the United States of America in management fees.

Finally, the issue of compliance which cannot be separated from the fiscal regime deserves a comment. There is no doubt that compliance is a significant challenge confronting tax administration throughout the world. This is in view of the considerable resources being expended in devising schemes (or products) that effectively erode tax bases. In this, both legal (involving the so-called avoidance or base erosion schemes) and illegal

³⁴ Ayee *et al.* (2011), corroborated by Mr. Ben Aryee, former CEO of Minerals Commission and Mining Adviser to the Minister of Lands and Natural Resources.

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(involving compromising officials, evasion and embezzlement) ways and means have been adopted. Whether legal or illegal, the amount expended and the benefits from these expenditures are great. According to report published by the World Bank in 2011³⁵, “the risk of embezzlement in the collection and estimation of royalties in the mining industry is real”. This followed a revelation from the report that personnel of the Customs, Excise and Preventive Service (CEPS) who are responsible for verifying production figures of gold (the basis for paying royalties and other taxes) are usually not present in the bullion rooms where they are supposed to be to authenticate the documents, but are rather called in to validate the records when the boxes are being sealed. The report further found that personnel of CEPS posted to the mines who are supposed to be changed on regularly basis have been at same mines for nearly a decade, an obvious misnomer and a reflection of the broader tax compliance challenges in Ghana’s mining sector (Ayee *et al.*, 2011).

Worse of it all, tax compliance challenges are not limited to developing countries (and for that matter Ghana). Even developed countries are up in their arms struggling to deal with these problems. In the United Kingdom, a report published by the House of Commons³⁶ remarks that the “HM Revenue & Customs (HMRC) appears to be fighting a battle it cannot win in tackling tax avoidance”. This is conclusion was arrived at on the basis of the fact that the resources being expended by large accountancy firms and their clients

(most of them multinationals) on avoidance scheme were several folds what the HMRC devoted to fighting those schemes. Four large firms interacted with by the Public Accounts Committee employ nearly 9,000 and earn £2 billion from their tax work in the UK, and earn around \$25 billion globally from their advice on taxation. This is how big the market is and in the UK these firms together have a staff strength that is four times greater than the HRMC has in the area of transfer pricing alone. In Ghana and other mineral-dependant developing countries, the situation is direr.

On a good note, the government signed onto the Extractive Industry Transparency Initiative in 2003, which commits the government to publishing revenues received from the mining sector and how they have been utilized. The country’s first audited the EITI report which cover the period January to June 2004 was published in 2007 and thereafter, the Ghana EITI has been publishing reports on revenues received by government agencies as against those that companies claim to have paid. In these reports, fiscal challenges confronting the sector have been highlighted and the government has shown interest in taking some steps to address them. The country was declared EITI-compliant in 2010 reflecting some level of seriousness with implementation of the EITI as well as good level transparency in the mining sector with respect to revenues collected by governments and those companies claim to have paid to the government. There have, however, been complaints by citizens’ groups and

³⁵ Ayee *et al.* (2011).

³⁶ The United Kingdom House of Commons (2013 Tax Avoidance: the role of large accountancy firms).

other organizations that the EITI mandate is too limited to deal with the challenges that confront the fiscal regime and revenue utilization in the mining sector. For example, the Third World Network – Africa³⁷ argues that with all the incentives and allowances that effectively erode the tax base and therefore tax revenues, increased transparency in what is received or paid is useful but not improving the benefits of mining that accrue to host countries and communities as expected, especially when compared with the profitability of mining companies.

In essence, Ghana's fiscal regime prior to the adoption of the AMV had been lax (despite joining the EITI which improved transparency in the mining modestly) and thus did not allow for the collection of "adequate" revenue from the sector. The regime can be described as sub-optimal and less robust considering the fact that major rates were slashed amidst steadily increasing prices (especially gold) and accompanying jumps in profits made by mining firms. Juxtapose this to the policy position of the World Bank in 1992 that emphasizes "a primary objective of maximizing tax revenues from mining over the long term, rather than pursuing other economic or political objectives such as control of resources or enhancement of employment."³⁸ The manner in which Ghana's fiscal regime evolved (which suggests revenue minimization rather than maximization) betrays the Bank. Graphs of the performance of the fiscal regime in terms of actual collections of various taxes (and various percentages) are presented in the Appendices.

5.3 Mineral Revenue Management and Utilization Framework in Ghana

From the foregoing discussion of the regime, it can be observed that mineral revenues are collected at three different levels in Ghana. A fourth stream is the ground rents paid directly to land owners (usually stools). Most of the revenues are collected by the Ghana Revenue Authority, an agency of the Ministry of Finance and Economic Planning. The Minerals Commission is also authorized to charge fees for rendering certain services. At the local level, Municipal and District Assemblies also collect certain types of revenues from the mining sector, mainly property rates. Among the revenue streams, it is the royalties that return the largest chunk of mining revenues to the country. Mining fees collected by the Minerals Commission are utilized by the Commission, largely on recurrent expenditures. The property rates received by the Municipal and District Assemblies form part of their internally generated funds and are used to finance both capital and recurrent expenditures. All other revenues from the mining sector end up in the Consolidated Fund of the Government of Ghana and are used for both capital and recurrent expenditures.

The only exception is the royalties, which has a special mechanism for distributing it among key stakeholders. The figure below shows how royalties are distributed. The portion of royalties that is returned to Municipal and District Assemblies is supposed to be used for developmental projects following a guideline

³⁷ This was noted in an interview with the Coordinator of TWN-Africa, Dr. Yao Graham.

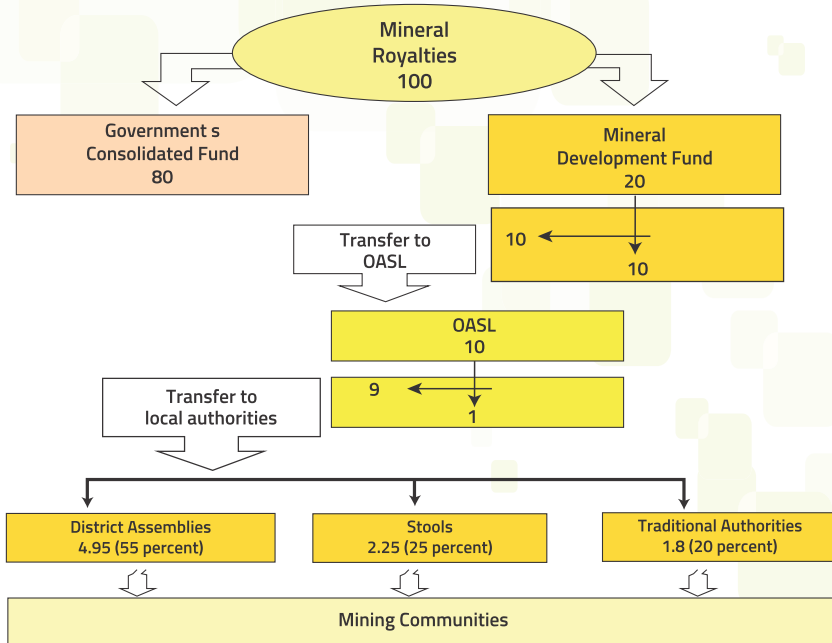
³⁸ The World Bank (1992) Strategy for African Mining.

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produced by the Minerals Commission. However, there are reports³⁹ that much of the revenues are spent on recurrent expenditures (including meeting allowances). This,

notwithstanding, some assemblies have spent royalties revenues on capital projects, mainly in the educational and health sectors.

Figure 1: Framework for Distributing Mineral Royalty



Sources: The World Bank *et al.* (2006).

*OASL is the Office of the Administrator of Stool Lands.

**The 10 that remains in the Mineral Development Fund is supposed to finance mining departments and agencies. The 1 that remain in the OASL is for administration.

³⁹ See for example the EITI Annual Reports.

6. AMV-Compliant Fiscal Regime and Revenue Management Framework

Fiscal regime and revenue management frameworks are AMV-compliant if they meet the aspirations of the AMV in general but more specifically take into account all the activities that were identified to be undertaken in the Action Plan. The aspirations of the AMV, in relation to the fiscal regime, are to collect “adequate share of mineral revenue and utilizing it in an equitable manner”. The vision therefore envisages “an efficient and transparent fiscal regime [that] catalyses social, physical and knowledge infrastructure development”. From these AMV principles, the following key features of AMV-compliant fiscal regime and revenue management framework can be identified as below:

- i. Obtain or collect “adequate” share of mineral revenues;
- ii. “Improved” management and use of mineral revenue.
- iii. Utilize revenues in an “equitable” manner;
- iv. The fiscal regime revenue management framework must be ‘efficient and transparent’;
- v. The fiscal regime and revenue management framework must “catalyses social, physical and knowledge infrastructure development”.

In addition to these four key features derived from the AMV, the action plan also has one of its nine programme clusters devoted to mining revenue and mineral rents management. The programme goal is to “create a sustainable and well-governed mining sector that effectively garners and deploys resource rent”. And along this goal are two main accomplishments (presented below) and list of activities (presented in the Appendices) that must be undertaken at the national, sub-regional and regional levels within certain timeframes by certain stakeholders.

- i. “Enhanced” share of mineral revenue accruing to African countries; and

Consequently a fiscal regime and revenue management framework can be said to be AMV-compliant if it meets the four features or principles presented above and do not fall short of the two main expected accomplishments identified by the Action Plan. In fact a fiscal regime and revenue management framework that meets the four principles or features above are almost certain to guarantee the attainment of the expected accomplishments in the Action Plan. This is because the four principles can, without much difficulty, be mapped into the expected accomplishments.

The above notwithstanding, there are important definitional issues to be resolved as far as the principles or features and related expected accomplishments are concerned. For example what proportion of mineral revenues is deemed “adequate”? What is the operational definition for “equitable” utilization of mineral revenues? How much transparency and efficiency must be built into a system to be AMV-compliant? And to what “extent” must the fiscal regime and revenue management framework

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“catalyse” social, physical and knowledge infrastructure development? Similar questions can be raised about some of the activities as well as monitoring indicators in the Action Plan. All the same, the value of the AMV and its Action Plan remains significant. This is in view of the various problems and challenges confronting the mining sector across the continent.

In some sense, the need to provide concrete or operational definitions for these key words in the continental reform agenda can be seen as an opportunity to deepen democratic institutions across the continent and more importantly allow the CMVs to respond to country specific circumstances. Allowing Member States to define what in their view is “adequate” of the created from their irreplaceable mineral resources also help in deepening ownership of the vision. The striking difference between the current continental mining reform agenda and the one orchestrated by the World Bank and the IMF is that this time around, the prescriptions are not only home-grown but also focuses overwhelmingly on transformative and inclusive socio-economic development. Further, these prescriptions have the overwhelming support of citizens and citizens groups, following the widespread expression of a sense of disquiet and displeasure at the

current mining regimes. This support, however, exist more at the general level than the specifics of the new framework. Consequently the AMDC must invest resources in ensuring deepening of this support, especially with respect to the specific prescriptions.

The challenges that would have been confronted if the AMV had fixed the meaning of “adequate” share of mineral revenue at say a quarter of mineral revenue are likely to have been more than allowing these to be determined at the country level⁴⁰. Apart from the difficulties that would have been entailed in implementing such regime, which partly derives from the fact that such determination would be deemed more appropriate to certain circumstances than others (even in the same country), it could have been self-defeating. The stakeholder engagement that characterizes the analytical component of the CMV process becomes handy in resolving the definitional issues raised above. Yet care must be taken in order to prevent unnecessary dampening of the principles by certain interested parties. For example one of the stakeholders interviewed revealed that when the idea of windfall profit tax was first made mention of by the government, the Ghana Mineworkers’ Union expressed concerns over the consequences (particularly job losses) that its members could suffer as a result.

⁴⁰ Care must however be taken to prevent undue delay in the process as a result of consultation and differences in opinions of key stakeholders. Two key developments on the continent in the mining sector offer useful lessons. One is the long-running discussions between representatives of Minerals Commission and MoF in relation to changing the approach to varying royalty rate within the range. For five years, this discussion continued without resolution. The other example is in Zambia where stakeholder debated the definition of “Local Content” as part of a process initiated by the World Bank to formulate local content policy and regulatory frameworks in that country.

6.1 How do the Fiscal Regimes and Revenue Management Frameworks in Ghana and the ECOWAS on the Eve of the AMV Comply with the Principles and Tenets of the AMV?

As earlier indicated in Section 5.1, the ECOWAS, strictly speaking, did not have a common fiscal regime and revenue management framework beyond its vision for a “harmonized” fiscal regime in the mining sector, when the AMV was adopted. Yet when the AMV is fully implemented across the ECOWAS sub-region, there will obviously be harmony in the fiscal regime and revenue management framework, which ties in with the vision of the ECOWAS. Nonetheless, the sub-region has been supportive of some of the aspirations contained in the AMV, for example transparency in the regime, its efficiency and equity with which mining revenues are distributed among stakeholders. Since the AMV itself is largely aspirational (backed by key principles and specified activities to be implemented), it is more or less at the same level with the aspirations of the ECOWAS with respect to mining and its revenues. However, with the adoption of the action plan and publication of the ISG report, the AMV agenda parts ways with that of the ECOWAS. Even though the aspirations of the ECOWAS and their possible expressions do not stand in the way of AMV’s fiscal regime and revenue management framework, there is a low level of compliance or amenability between the two. Still, the ECOWAS has also increased its efforts towards a common mining regime and taken

some steps following the adoption of the AMV (just as the action plan and ISG report were produced following the adoption of the AMV). These and related issues are discussed in the following section.

In the case of Ghana, there seems to be some level of compliance and amenability, though low, between the country’s draft policy that existed on the eve of the AMV and the principles and prescriptions contained in the AMV. The current 50-page national mining policy of Ghana (approved by the Cabinet) had been in the offing since 2000 or thereabout. Though the fiscal regime contained in that policy supports the collection of “adequate” and “fair” share of mining revenue⁴¹ just as the AMV does, it appears (at the same time) to be too preoccupied with the need to develop “favourable fiscal provisions” in order “to attract investment into the sector”. The rendition in the policy document appears too wary of the “particular risks and economic characteristics of mineral operations” as well as the “long gestation period associated with mineral exploration and development operations”. It is therefore supportive of much of the existing regime including a promise to “offer an accelerated rate of depreciation for mine-related capital expenditures”, which existed at the time but has since 2012 been changed.

These notwithstanding, there is ample evidence that the actual fiscal regime did not (for a number of reasons) comply with most principles and tenets of the AMV, some of which appeared in the country draft mining

⁴¹ See pages 21 and 22 of the draft mining policy (dated October 2010)

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policy⁴². On grounds of generous incentives, often resulting “perpetual tax holidays” (Akabzaa and Ayamdoo, 2009), and challenges with enforcing the tax regime, Ghana’s fiscal regime on the eve of the AMV can be described as not complying with the tenets of AMV. Further, since most of the revenue generated ended up in the Consolidated Fund and utilized on current expenditures (both capital and recurrent), the revenue utilization framework also did not comply with some of the tenets or principles of AMV. At the very least an arrangement is supposed to be made

for future generation but this did not and continues not to exist in the manner in which mining revenues are utilized⁴³. Transparency had begun to improve in the fiscal regime following the signing and implementation of the EITI in Ghana. However, this transparency was limited to receipts and payments of mining revenues, leaving important aspects of the mining sector still shrouded in darkness or secrecy. For example, stability agreements that contain fiscal imposts applicable or inapplicable to certain mining firms remain confidential and therefore secret.

⁴² See TWN-Africa (undated), Akabzaa and Ayamdoo (2009), Awudi (2002) and The World Bank et al. (2006)

⁴³ The oil and gas sector has a revenue management framework that complies fairly well with the tenets of AMV worth considering for the mining sector.

7. Developments in the ECOWAS and Ghana following AMV Adoption

Barely three months after the AMV was adopted, the 62nd Ordinary Session of the Council of Ministers of ECOWAS, also adopted a Directive⁴⁴ which seeks to effect the harmonization of guiding principles and policies in the mining sector. Three years later, in 2012, the ECOWAS Minerals Development Policy (along with its implementation plan, similar to the AMV's action plan in many respects) developed on the back of the Directive was also adopted by the 40th Ordinary Session of the Authority of Heads of State and Government through a Supplementary Act⁴⁵. Clearly, the initiative to adopt a directive by the ECOWAS in April 2009 coincided with (rather than being influenced by) the adoption of the AMV (and related initiative). Nonetheless, an interaction between these two initiatives and adoptions cannot be ruled out. In actual fact the sector Ministers and line officials behind these initiatives are often the same and ideas that drove the initiatives would obviously overlap. Further, the drivers of change and societal pressures that drove the two initiatives are not different and should come as no surprise that the two adoptions, in relation to fiscal regimes, carry similar aspirations and expectations.

Following these two major developments at the regional level, the ECOWAS Commission has been engaging relevant departments and agencies of Member States on the best approaches for the implementation of the EMDP⁴⁶. Further, the ECOWAS Commission is undertaking a number of institutional restructuring to enhance its capacity to engage Member States on the implementation of the EMDP. For example the Energy and Mines Department has been beefed up and additional personnel are being hired to support the activities of the department. In a related development, a new Directorate on Mining and Geo-Extractive Development has been created out of the previous Industry and Mines Directorate. In other words, the Mines Division of the

previous Industry and Mines Directorate has been upgraded into a Directorate (for Mining and Geo-Extractive Development).

The EMDP which envisions harnessing the enormous resource endowments of the Community to facilitate sustainable economic growth and integrated socio-economic development in the region, appears to comply with the AMV broadly but in some specific areas, the AMV appears to be more progressive than the EMDP. On page 9 of the AMV policy document, there is a call for the "need to expedite intra-regional harmonization of laws, regulations and fiscal regimes, among other critical factors". This call strongly reflects motivations and the substance of the ECOWAS Directives and

⁴⁴ With reference number C/DIR.3/05/09

⁴⁵ With reference number A/SP.16/02/12

⁴⁶ This was revealed by the Principal Officer in charge of Mines at the ECOWAS Commission. He also indicated that when goals or objectives have been identified by the principal authorities of ECOWAS, mechanisms for their pursuance are left to Member States to develop within the context of national context of existing national institutions and mechanisms.

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the EMDP. However, when it comes to the fiscal regime (and other specific areas), the AMV is more progressive than the ECOWAS Directive and the EMDP. Whereas the AMV envisions a “mining sector that effectively garners and deploys resource rents”, explained by subsequent AMV documentation (including the action plan) to imply the need to collect “adequate” share of mineral revenue and suggesting how to do so, the ECOWAS mining reform agenda appears to be marginally weaker on the need to collect adequate share of mining revenues. This is in view of a comparison (see relevant table in the Appendices) between activities called for by the continental mining reform agenda on the one hand and the regional mining reform agenda on the other hand.

In Ghana, a number of major developments have taken place following the adoption of the AMV which suggests that the country is making some progress towards implementing the AMV, though there is still more work to be done. A couple of these activities or initiatives, however, were being contemplated prior to AMV adoption. Changing the approach for determining the royalty rate payable as well as improving transparency in the mining sector are two of such activities or initiatives. The following are the key initiatives or activities related to the fiscal regime implemented by Ghana post AMV adoption in 2009.

i. **Fixing of royalty rates at 5 per cent across the board**

In 2010, the government amended the Mining and Minerals Act, and fixed the royalty rate at 5 per cent, instead of a sliding regime that ranged from 3 per cent to 6 per cent. The effective royalty

rate for all the mining companies had been 3 per cent prior to the amendment in 2010. This is in spite of the fact that the country practiced a sliding royalty regime by law. The upper limit of 12 per cent which had rarely been used was slashed by half in 2006.

ii. **Increasing of corporate income tax rate by 10 percentage points to 35 per cent, back to pre-2006 level**

When the mining reforms were initiated (in mid 1980s), corporate income tax was reduced to 45 per cent. In 1994 an amendment to the mining law reduced this further to 35 per cent and in 2006 when prices were steadily rising, the government mysteriously reduced the corporate income tax further down to 25 per cent. The 2006 reduction came as a big surprise to many Ghanaians given that prices were going up at the time.

iii. **Accelerated rate of depreciation altered to fixed 20 per cent for five years**

Previously, mining firms were allowed to write off up to 80 per cent as initial capital allowance against taxable income when the company starts production for the first time. Subsequently, the company was allowed to write off up to 50 per cent in subsequent years. This can obviously improve government revenues since in times of boom the maximum allowable capital allowance deduction is capped at 20 per cent, effectively preventing mining companies from eroding the tax base.

iv. **Proposals to introduce additional profit tax of 10 per cent**

During the reforms in mid 1980s, the country maintained a windfall profit tax (of 25 per cent). However, that was abrogated when new mining and taxation laws were passed in mid 2000s. It is therefore refreshing that the government has mooted the idea of re-introducing additional profit tax rate (though at a reduced rate of 10 per cent). This proposal has benefited significantly from popular societal dissatisfaction about what Ghana obtains from the irreplaceable national assets. Notwithstanding, the mining firms seem to be succeeding from resisting the adoption of the additional profit tax.

v. **Establishment of a National Renegotiation Team to renegotiate stability agreements, mining agreements and the entire mining regime**

In 2012, the government inaugurated a National Renegotiation Team to review the entire mining regime, including a renegotiation of stability agreements and mining leases/agreements in the sector. The team focused mainly on the renegotiation and completed renegotiation of Newmont's stability agreement. That of AngloGold dragged and was put on hold following the company's decision to put the mine under care and maintenance. This step has brought some meaning to other initiatives taken by the government, since companies with stability agreements were exempt from

those initiatives in lieu of the stability agreements.

vi. **Signing of EITI and Consequent Attainment of EITI Compliance Status**

Though Ghana joined the EITI prior to the adoption of the AMV, her efforts in the area of transparency deserve mention since more work has been done in this area following the adoption of the AMV. An EITI bill has been introduced on the floor of parliament post AMV adoption. The EITI itself has been undergoing some important changes that generally improve transparency in the sector, an important element of the AMV.

vii. **Development of a fiscal model that have been applied to some mines to enhance compliance to fiscal regime**

Following recommendations arising out of various EITI reports, the key mining sector agencies collaborated and developed a fiscal model to improve collection of taxes in the sector. The model is now widely applied to mining companies operating in the country, improving revenue collections.

viii. **Adoption of transfer pricing regulations**

A couple of years ago, the parliament adopted a transfer pricing regulations to fight the canker. This followed a presentation by the Finance Minister in Parliament confirming huge sums of money that the government loses in the sector in lieu of abuse of transfer pricing. Though helpful some tax officials have complained that the

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regulations are too generic and in order use it effectively, a customized version for the mining sector would be of great benefit.

ix. **Implementation of local content procurement in a manner that revokes the tax free status of some mining inputs**

In 2012 (six years after the mining law was passed), parliament adopted six regulations to give effect to some aspects of the law as well as provide a framework for implementing certain clauses in the law. One of those regulations provided a framework that compelled mining companies to procure some mining inputs locally. It was envisaged that in order for those laws to be effective, those items will lose their import duty free status.

x. **Installation of modern assaying equipment at the airport and Takoradi laboratory**

The government has confirmed the installation of modern assaying equipment at the Kotoka International Airport in Accra as well as the Takoradi laboratory in order to double check the production of minerals prior to export. There have been complaints in the past that the government is unable to independently assess claims of mining companies regarding production levels and quality of the various ore.

Implementation of these activities has put Ghana among few countries making progress

with the implementation of the AMV in relation to the fiscal regimes. Even though these activities have benefited from (or have been influenced by) the AMV reform agenda, they appear to have been influenced more by the very drivers that shaped the AMV agenda than adoption of the AMV itself. As noted earlier, widespread public discontent with benefits derived by the country from her irreplaceable mineral resources as against rising profitability of mining companies on the back of high prices. Further, there is growing awareness of mining costs (in various forms including environmental, economic and social) borne by the country and mining affected communities as a result of mining activities. It is therefore not surprising that in 2011 when a good number of these initiatives were announced (and prior to the adoption of the AMV's action plan), there was no mention of AMV in the policy document that contained these announcements⁴⁷.

The revenue cluster of the AMV action plan has two main expected accomplishments. The first seeks enhanced share of mineral revenue accruing to African countries whilst the second regards improved management and use of mineral revenue. Between these two expected accomplishments are other important tenets or principles such as transparency and equitable (inter- and intra-generational) utilization of mining revenues. The above activities and initiatives suggest that Ghana is on course to implement the AMV, though processes leading to the formulation of a CMV are in the early stages. In particular, there is a sense among policy officials and

⁴⁷ Associated to this is the challenge of relatively little awareness of the continental mining reform agenda as well as the regional initiatives to harmonize mining regimes.

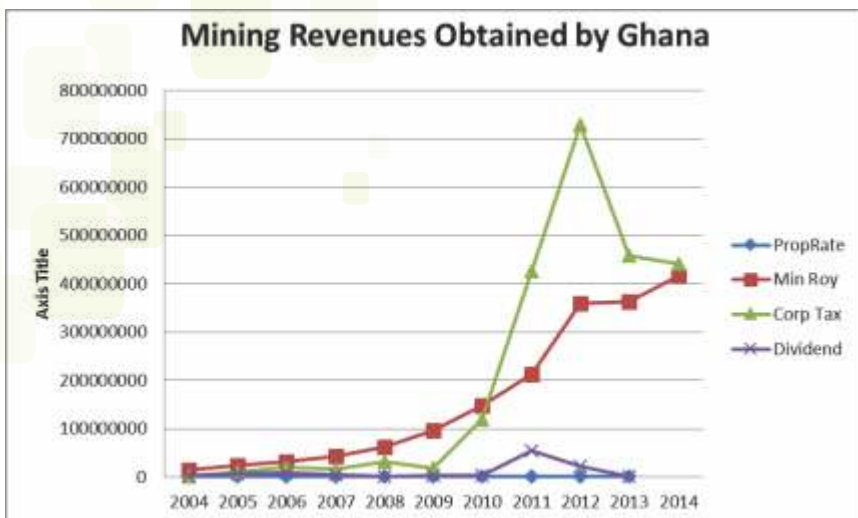
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stakeholders interviewed that the current levels and rates of taxes are among the highest on the continent⁴⁸. Therefore, Ghana must turn her attention to compliance where significant mineral revenues are lost. More so, there is still more work to be done to reform the country fiscal regime in order to bring it into compliance with tenets and principles of AMV. In the area of revenue utilization, for example, the old rules still apply. Most of the revenue streams end up in the Consolidated Fund and therefore used to finance recurrent and capital expenditures. But with Ghana's wage bill and debt servicing expenditures fast

rising (relative to capital expenditures), there is little doubt that significant portion of mining revenues go into recurrent expenditures⁴⁹. Consequently, not only is the country failing to put aside some of the mineral wealth for future generation and stabilization purposes, it is effectively unable to finance infrastructural projects with mining wealth as required under the AMV.

Figure 6 shows amounts of mining revenues obtained by the government before and after AMV adoption.

Figure 5: Mining Revenues Obtained by Ghana

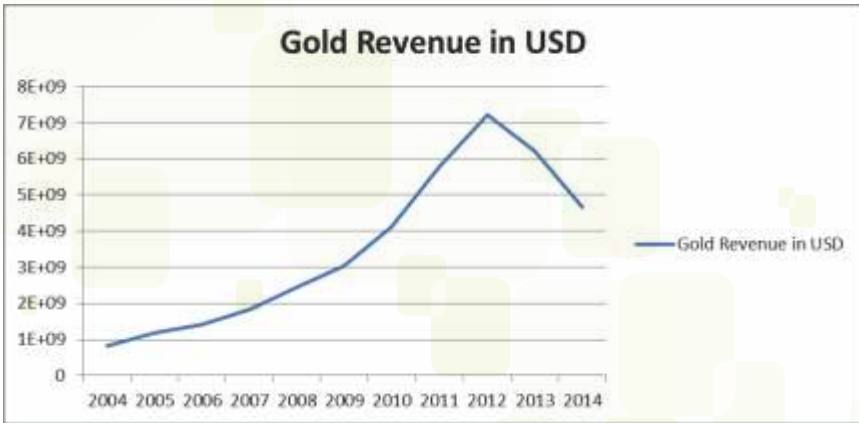


Sources: Minerals Commission, 2015.

⁴⁸ There is, therefore, some level of concern that the country may be losing its investor friendly status, which seems to have been damaged already to some extent.

⁴⁹ According to the 2014 Budget Statement, the country spent more than GHC5.9 billion representing 62.3 per cent of tax revenues (excluding exemptions) was spent on wages and salaries between January and September 2013. An additional GHC846.3 million was spent on wage arrears (now a feature of public accounts delays in processing employments of new hires that run into several months, often beyond a year) bringing the total amount spent on wages and salaries to 71.3 per cent of tax revenues (excluding exemptions). On interest payment (or debt servicing), the country spent about GHC3.3 billion – about half of total expenditures on wages and salaries – over the same period (Jan – Sep 2013). A bad norm emerging in Ghana's public finance is the procurement of loans to repay debts and a portion of financial resources from the Consolidated Fund used to service the debt.

Figure 6: Gold Revenues in USD



Sources: Minerals Commission (2015).

It is clear from above graph that there has been an improvement in absolute revenues collected by the government from the mining sector. A close look at the data also suggests that there has been marginal improvement in the share of mining revenues that accrue to the government from around 5 per cent at the beginning of the millennium to about ten per cent over the past couple of years. Even though both series increased and reduced,

largely following trends in gold prices, the rise in mining revenues (especially corporate income taxes and royalties, elements that have been hiked in Ghana following the adoption of AMV), were steeper. The rise in corporate income taxes between 2010 and 2012 is particularly spectacular and conspicuous. This follows the exhaustion of capital allowances by some companies leading to their migration to corporate tax paying category⁵⁰

⁵⁰ One of such companies is Newmont Ghana Gold. Goldfields also contributed to the hike.

Following the adoption of the AMV and the ECOWAS Directive on Mining, a number of developments have taken place in the ECOWAS sub-region with implications for the mining fiscal regime. Most of the key mining countries in the region, including Ghana, have already ratified the ECOWAS Mining Directive, according to the Principal Mines Officer at the ECOWAS Commission. The following are some of those developments:

- i. In 2011, the Government of the Republic of Guinea passed a new mining code which raised the custom duty on exports of mineral from 5.6% to 8%. Further, the Minister for Mines indicated that the government intend to follow up with a comprehensive review of existing contracts to root out “unconscionable provisions” granted by previous administrations as well as tighten regulation of the industry. Following this the country has renegotiated mining agreements and undertaken other changes to its mining regime with implications for the fiscal regime, including giving the state the right to 15 per cent free equity participation in mining companies with the option to acquire addition 20 per cent equity participation.
- ii. In Burkina Faso, a new mining code adopted in 2015⁵¹ has abolished a previous 10 per cent tax break on profits made by mining companies, allowing tax collection agencies to take the full amount of 27.5 per cent. Further, firms with industrial mining license will pay 1 per cent of monthly turnover excluding taxes or 1 per cent of the value of extracted minerals into a local development fund. And the government will add 20 per cent of its mining revenue collections into the fund. This puts Burkina Faso ahead of other countries in the region with regards to the development of a rent distribution system that allocates substantial part of mineral revenue to communities near mining areas and local authorities, as demanded by the AMV⁵². The new law has also introduced a 20% capital gains tax on the transfer of mining titles. However, transfers of licenses to local companies are exempt from the capital gains tax.
- iii. In Liberia and Sierra Leone, new mining policies and sets of legal instruments have been developed,

⁵¹ See a news article published by Reuters <http://www.reuters.com/article/2015/06/26/burkina-mining-regulations-idUSL8N0ZC48G20150626>

⁵² Though this is welcoming, there are some organizations, including TWN-Africa, that have concerns on such frameworks. They call for a framework that directly responds to the particular economic, social and environmental challenges that mining affected communities face (and the basis for allocating such financial resources to them) rather than a framework which makes mining revenue allocations irrespective of the nature and magnitude of the challenges mining affected communities face. It must be noted that in virtually all African countries, mineral resources have been nationalized and belong to all the people. There is, therefore, some level of concern that such arrangements may create islands of wealth in an ocean of poverty with its obvious attendant challenges.

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with implications for the countries' fiscal regimes. In Sierra Leone, a new semi-autonomous government agency (National Minerals Agency) to administer and enforce the 2009 mining law. In 2013 two regulations, Mines and Minerals Operational Regulations and Environment Protection (Mines and Minerals) Regulations, were passed in Sierra Leone to improve governance of the sector.

These reforms, notwithstanding, Ghana and Guinea appear to be the countries making the most changes or leading in the mining reform agenda and extracting significant revenue from their mining sector after making important changes to their fiscal regime. Consequently, there is still a long way to go to harmonize fiscal related aspects of mining across the sub-region. The table below shows the royalty rates, for example, of key mining countries across the region.

Table 1: Current Royalty and Corporate Income Tax Rates in Selected the ECOWAS Countries

Country	Royalty Rate for Precious Metals	Royalty Rate for Base Metals	Corporate Income Tax Rate
Burkina Faso	3 – 7*	3	27.5
Ghana	5	5	35
Guinea	5	3.5	
Ivory Coast**	3		30
Liberia	3 – 10	3 – 10	
Mali	3	3	25
Niger	5.5		
Nigeria	3 – 5	3 – 5	30
Senegal	3		30
Sierra Leone	5	3	30
Togo			

Sources: Compiled by authors from various sources, including mining codes and other legal instruments.

*The minimum rate is 3% and applies to gold. It increases to 4% for prices between USD 1,000 and USD 1,300 per ounce, and to 5% for prices above USD 1,300 per ounce. It appears that the 2015 law has fixed gold royalty rate at 3%. The maximum rate of 7% applies to diamonds and gemstones. The royalty rate is 8% for uranium.

**The royalty rate is not specified in the new law and expected to be provided for in a regulation or application decrees.

9. Challenges and Opportunities for the Realization of AMV

9.1 Key Challenges for Realizing the AMV

i. **Significant Ease in the Prices of Minerals and Metals (Especially Gold)**

The reduction in prices of minerals and metals experienced over the past few years is having major implications for the mining sector on the whole, resulting in some falls in output. There have been reports of falls in exploratory spending by mining companies such as Goldfields whiles AngloGold Ashanti has put its mine under care and maintenance following reports of loss making at the mine (attributed largely to price falls). All these developments do not provide state officials a free hand to reform the mining regime (in particular the fiscal regime) to respond to widespread societal questioning of the benefits that accrue to countries endowed with these resources.

ii. **Inadequate Capacity on the part of State Department and Agencies**

Various EITI reports have pointed out that the capacity of various state officials who are responsible for administering or enforcing the fiscal regime is on the low side. A typical example is the case with transfer pricing regulations where the law obliges multinational companies (including mining firms) to provide details of each and every transaction that implicates a transfer price. However, it is unclear the extent to which these details are being

pursued by responsible state officials, given the volumes of data involved. Conversations with officials of the GRA also reveal that the transfer pricing regulations passed in 2012 are too general and would require a customized regulations for the mining sector giving its uniqueness.

iii. **Unavailability of Reference Prices of Goods and Services at the Regional Level**

The difficulty in dealing with transfer pricing abuse in the country and across the continent can also be attributed to reference prices of various goods and services used by the mining industry. Consequently, even if state officials are doubtful of prices being quoted by mining companies or their affiliates, the basis on which to challenge such prices become difficult to produce.

iv. **Orientation of State Departments and Agencies**

The orientation of state departments and agencies has been identified as another important challenge that has to be addressed effectively in order to realize the aspirations of the AMV. Having operated a regime that pays little attention to utilizing mineral resources to catalyse inclusive socio-economic growth and development for a couple of decades, a change in orientation needed to transform the regime is often difficult to make. For example, the age old strong relationship between the Minerals Commission and the

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Ghana Chamber of Mines, has produced an orientation of the officials involved towards prioritizing their concerns (as can be inferred from the current mining policy). The new fiscal regime being called by the AMV requires a change in orientation that is uneasy to come by.

v. **Inadequate Support from Key Constituencies such as Labour Unions**

Over the past few years, there seem to have been some ease in the pressure brought to bear by citizens and citizens groups in calling for a new mining regime that optimizes benefits associated with mining activities. It is therefore expected that key constituencies such as labour unions as well NGOs operating in the mining sector will increase their support for the realization of the AMV bringing meaningful pressure to bear on implementing authorities as well as proving them with key information and offering them with constructive criticism. Yet that is not exactly what is happened. Some labour unions, for example, continue to be more focused on issues internal to the mining industry (such as remuneration and conditions of service) than on other related issues such as the environmental impact of mining activities or what the state and communities obtain from the mines. In a similar fashion, NGOs working on transparency issues do not seem to be making much efforts in connecting their issues of focus to other related issues in the mining sector for optimum impact.

vi. **Poor Visibility of the AMV**

The visibility of the AMV among the public and key constituents remains a big challenge. It has been six years since its adoption yet many citizens of African countries are unaware of its existence. Even people and organizations that operate in the mining sector do not seem to be aware of the Vision and in instances where they do, their appreciation of the vision is very narrow and shallow. This obviously affects their engagements with and support for the AMV which is very important in the realization of the AMV.

vii. **Emergence of other Initiatives that can Dampen or Conflict with the Tenets of AMV**

Prior to the adoption of the AMV and immediately afterwards, a couple of couple of mining governance initiatives have been proposed. These initiatives (such as the Natural Resources Charter, the EU's Raw Materials Initiative, and the EITI) require the energies and support of the same (more or less) stakeholders being relied upon to implement the AMV. Whiles these parallel initiatives can bring some complementarities and support the AMV, they can also challenge, conflict or dampen some tenets of the AMV. For example the prioritization of transparency issues (which is very important) to the neglect of other key issues such as development of linkages by EITI can dampen the support that development of linkages section of the AMV enjoys.

9.2 Key Opportunities for Realising the AMV

i. **Widespread Public Discontent with Benefits from the Mining Sector**

There is still appreciable level of discontent among the citizenry with respect to benefits that accrue to communities and countries from the extraction of nationally owned mineral resources. This offers opportunities for continuing on the path of implementing the AMV but will require that the discontent continue to be transformed into engagement and constructive criticism of authorities implementing the AMV to ensure that ongoing reforms meet expectations.

ii. **Poor Public Finances and Rising Debt Levels**

The ease in mineral prices over the past few years has had some appreciable impacts on public finances across the continent. In Ghana for example tax revenues from the mining sector have reduced⁵³ while country level total tax collections have not been able to match rising expenditure levels. The effect is that pressure is being brought to bear on authorities to look carefully at the mining sector to ensure that every collectible tax revenue is being collected. This is also giving the reform agenda some impetus with popular sentiment that "we are not getting enough from mining". However the mining companies are resisting as

usual. Making headway therefore requires some level of courage on the part of implementing authorities and support from the citizenry and citizens groups (especially key constituencies such as labour unions).

iii. **Reduced Dependency Level on the Mining Sector**

With the discovery of oil, Ghana's dependency on the mining sector has reduced relatively. This has provided the government with some clout to make demands, with relatively little fears or concerns over mining companies shutting down. More importantly high public expectations that characterized oil discovery meant that the country got better package from the oil companies and this is being used as a basis to demand more from the mining companies without much fear.


iv. **Increased Pressure from IFIs such as the World Bank and IMF**

The fallout on public finances has necessitated the involvement of IFIs in many countries including Ghana, which has programme with the IMF. The position of the World Bank and IMF has been that governments collect more in taxes from the minerals sector than what they currently obtain. Such position ties in very well with the AMV and its Action Plan which calls on governments to obtain "adequate" revenues from the sector.

⁵³ The total revenue from the sector has reduced by almost a third between 2012 and 2014, following reduction in gold prices. See Appendix 9

10. Conclusions

- i. The fiscal regime, and to a lesser extent the revenue management framework, in Ghana have changed remarkably following the adoption of the AMV and the ECOWAS Directive on Mining. The fixing of royalty rate at 5 per cent, hiking of corporate profit tax to 35 per cent, changing the capital allowance regime and the country's decision to renegotiate mining agreements have been important.
- ii. There is however more work to be done in the area of tax rules to ensure they are applied to the letter and revenues generated from the mining sector are efficiently used and equitably (inter- and intra-generational) distributed. Further, the country must still think through to re-introduce the additional profit tax to ensure that she can benefit from any unexpected windfall gains from the sector.
- iii. Though these reforms have benefited substantially from widespread societal questioning of benefits that Ghana and other West African countries derive from their non-renewable mineral resources, the questioning and associated pressures that have been brought to bear appear to be waning, with major implications for the courage on the part of the implementing authorities to undertake further reforms, for the benefit of Ghanaians and West Africans.
- iv. The situation is worsened by the emergence of parallel initiatives that can either dampen or conflicts with some tenets of the AMV either in terms of direction or scope. Already, some of the existing initiatives such as the Extractives Industries Transparency Initiative (EITI) and the Natural Resources Charter (NRC) have made significant inroads with a sizeable followership both from state and non-state actors. Though efforts are being made to realign these initiatives with the AMV, it is unclear how helpful such realignment would be to the cause of the AMV.
- v. Finally, the AMV is suffering from poor visibility as many citizens and citizens groups are not even aware of those efforts being made by the AU and UNECA to reform mining regimes across the continent. Obviously the support that is envisaged or expected from such stakeholders are lacking. Even key social constituencies such as labour unions across the continent have not been as supportive of AMV as expected. The labour unions, in particular, have the clout to bring substantial pressure to bear on governments but appear to be overwhelmingly focused on their narrow demands related to remuneration.
- vi. Despite these challenges there are some opportunities that can be capitalized on by primary stakeholders implementing the AMV. They include general public discontent with performance of the sector, poor public



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sector finances and rising public sector debts, and increased pressures being exerted by IFIs on minerals-dependent countries to obtain greater income from the mining sector. For countries such as

Ghana where discoveries of new resources (such as oil) are being made state officials would have some courage to reform the sector to meet the expectations of the citizenry.

11. Recommendations

- i. State departments and agencies should be re-oriented (by regional and continental bodies) to view the state machinery as a developmental vehicle to support the AMV. Further there is need to increase their capacity (expertise, personnel and technological) to enable them implement the AMV as expected. The government must therefore reconsider increasing support to these agencies to ensure the protection of government's (and therefore the people of Ghana's) stakes in the mining sector.
- ii. Continental agencies responsible for the coordination of the AMV implementation activities (especially the ECOWAS Commission and the AMDC) have to seriously consider supporting public awareness engagements and campaigns to increase the pressure on state agencies as well as respond to threats by mining companies. This must be well planned and executed to ensure that all the key social and economic constituencies in the country and across the continent are engaged in an on-going process.
- iii. Member states need to prioritize development of their mineral resources within the context of AMV, and make increased financial contributions to the continental reform agenda. This will require re-assessment of engagements between member states and other parallel mining reform initiatives that can either dampen or conflict the AMV.
- iv. Line departments and agencies of member states should be reasonably focused on the AMV and thus should not be unduly distracted by other reform initiatives.
- iv. Citizens and citizens groups need to increase their level of awareness of the AMV agenda and increase their collaboration to establish an influential platform to support the implementation of the AMV.
- v. Continental and regional bodies (particularly the ECOWAS Commission and the AMDC) have to fashion a collective approach to addressing the problem of abuse of transfer pricing that involves the establishment of reference prices of goods and services as well as systems that make comparison of quoted prices to these reference prices easy.
- vi. Citizens groups and governments have gather the courage to subordinate other parallel initiatives that can either dampen or conflict tenets of the AMV. This, in turn, would require that the AMDC is well supported (financially and otherwise) to undertake its functions with greater level of seriousness that can attract other stakeholders to the AMV table. Currently a significant part of the (financial) support for the AMDC comes from outside the continent (especially Australia and Canada), which does not augur well for their independence.

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Appendices

Appendix 1: Comparison of the AMV Activities to those Undertaken in Ghana (Mapping of Key Developments)

Expected Accomplishment 1: Enhanced share of mineral revenue accruing to African mining countries	Relevant themes/issues in Ghana and Activities Implemented
1. Improve national capacity to physically audit mineral production and exports.	Installation of Assaying equipment at Takoradi laboratory and the Kotoka International Airport.
2. Review mineral regimes in terms of optimizing revenues.	Review of key fiscal imposts (such as royalty fixed at 5% and corporate income tax raised to 35%).
3. Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws.	Some policy officials have undergone various fiscal related capacity building and skills enhancing workshops in the country and outside of the country.
4. Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls.	Stability agreements and other agreements in the mining are under review. Negotiations with Newmont have concluded awaiting parliamentary approval.
5. Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion (e.g. transfer pricing).	Transfer pricing regulations have been passed.
6. Review terms of double taxation agreements and BITs with host countries of mining companies including the principle that minerals should be taxed at the point of extraction.	There do not seem to be any efforts on this issue. There are however reports that the parliament is considering ratifying a double taxation agreement between Ghana and Denmark.
7. Build capacity and systems to auction mineral rights where applicable.	Workshops have been organized for relevant state officials.
8. Review the current fiscal environment in African mining countries to develop guidelines & standards for optimizing revenue (e.g. tax & dividends) packages in a manner that does not discourage mining investment.	The AfDB has undertaken some reviews and published findings (particularly its 2012 report on fiscal regime – in particular royalties – in the gold sector which is available online).
9. Develop mineral taxation guidelines for implementation at the REC & national levels.	Some efforts have been undertaken by the AMDC and other continental bodies in this direction.

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10. Develop typical financial models for mineral projects for member states and run training workshops at REC level.	Some efforts have been undertaken by the AMDC and other continental bodies in this direction.
Expected Accomplishment 2: Improved management and use of mineral revenue.	
1. Explore strategies for investing windfall earning and mineral rent into sovereign wealth funds including stabilization funds and infrastructure funds.	There are no visible efforts on this issue.
2. Develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities.	The old rules still apply.
3. Develop mechanisms to facilitate local communities' access to jobs, education, transport infrastructure, health services, water and sanitation.	Some voluntary mechanisms (notably CSR initiatives) are being implemented. The government has also supported some initiatives, especially plantations in the Western Region.
4. Develop the capacity of local communities to negotiate partnership agreements.	Minerals Commission has organized some workshops for some communities. It is, however, unclear if capacities have been sufficiently built.
5. Develop systems for strengthening capacities for national and sub-national bodies for revenue management.	Some efforts have been undertaken by the AMDC and other continental bodies in this direction.
6. Compile best practice guidelines on mineral revenue management and deployment for implementation at the REC and national level.	Some efforts have been undertaken by the AMDC and other continental bodies in this direction.

Appendix 2: Scorecard

Expected Accomplishment 1: Enhanced share of mineral revenue accruing to African mining countries	Performance
1. Improve national capacity to physically audit mineral production and exports.	√√
2. Review mineral regimes in terms of optimizing revenues.	√√√
3. Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws.	√√√
4. Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls.	√√√
5. Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion (e.g. transfer pricing).	√√
6. Review terms of double taxation agreements and BITs with host ² countries of mining companies including the principle that minerals should be taxed at the point of extraction.	√
7. Build capacity and systems to auction mineral rights where applicable.	√√
8. Review the current fiscal environment in African mining countries to develop guidelines & standards for optimizing revenue (e.g. tax & dividends) packages in a manner that does not discourage mining investment.	√√√
9. Develop mineral taxation guidelines for implementation at the REC & national levels.	√√
10. Develop typical financial models for mineral projects for member states and run training workshops at REC level.	√√
Expected Accomplishment 2: Improved management and use of mineral revenue.	Performance
1. Explore strategies for investing windfall earning and mineral rent into sovereign wealth funds including stabilization funds and infrastructure funds.	√
2. Develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities.	√√
3. Develop mechanisms to facilitate local communities' access to jobs, education, transport infrastructure, health services, water and sanitation.	√
4. Develop the capacity of local communities to negotiate partnership agreements.	√
5. Develop systems for strengthening capacities for national and sub-national bodies for revenue management.	√√
6. Compile best practice guidelines on mineral revenue management and deployment for implementation at the REC and national level.	√√

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Note to Scorecard: One tick implies weakest level of compliance and five ticks implies strongest level of compliance. They ticks may be interpreted as follows:

Ticks	Interpretation
√	Very weak compliance with AMV prescriptions
√√	Weak compliance with AMV compliance
√√√	Good or average compliance with AMV
√√√√	Strong compliance with AMV
√√√√√	Very strong compliance with AMV

Appendix 3: AMV Action Plan Programme Cluster 1: Mining Revenues and Mineral Rents Management
Programme Cluster Goal: To create a sustainable and well-governed mining sector that effectively garners and deploys resource rents

Expected Accomplishment	Activities	Timeframe	Monitoring Indicators	Responsible Bodies and Main Actors
Enhanced share of mineral revenue accruing to African mining countries 1991	Improve national capacity to physically audit mineral production and exports. Review mineral regimes in terms of optimising revenues.	ST	Physical audit systems in place and implemented with trained inspectors. Reviews of mineral regimes undertaken.	MS
		ST		WB NGOs CSOs
	Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws. Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls. Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion (e.g. transfer pricing).	ST-MT-LT	Level of improvement in fiscal revenues collected by African mining countries. Increase in number of policy makers and other stakeholders participating in capacity building initiatives. Degree of improvement in the design of fiscal terms.	Bilateral AfDB ECA
		ST-MT		
		ST-MT		

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<p>Enhanced share of mineral revenue accruing to African mining countries 1991</p>	<p>At national level Review terms of double taxation agreements and BITs with host countries of mining companies including the principle that minerals should be taxed at the point of extraction. Build capacity & systems to auction mineral rights, where applicable.</p>	<p>ST-MT</p>	<p>Extent to which tax leakages are reduced by evaluation systems as determined by independent audits of tax compliance.</p>	<p>MS WB NGOs CSOs Bilateral AfDB ECA</p>
<p>At sub-regional and regional levels Review the current fiscal environment in African mining countries to develop guidelines & standards for optimizing revenue (e.g. tax & dividends) packages in a manner that does not discourage mining investment. Develop mineral taxation guidelines for implementation at the REC & national levels. Develop typical financial models for mineral projects for member states and run training workshops at REC level.</p>	<p>ST</p>	<p>ST</p>	<p>Number of double taxation agreements signed and implemented by member States. Extent to which competitive and transparent mineral concession systems are implemented.</p>	

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<p>Improved management and use of mineral revenue</p>	<p>At national level Explore strategies for investing windfall earnings and mineral rent into sovereign wealth funds including stabilization funds and infrastructure funds. Develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities. Develop mechanisms to facilitate local communities' access to jobs, education, transport infrastructure, health services, water and sanitation. Develop the capacity of local communities to negotiate partnership agreements. Develop systems for strengthening capacities for national and sub-national bodies for revenue management.</p>	<p>ST ST ST-MT MT MT</p>	
<p>At sub-regional and regional levels Compile best practise guidelines on mineral revenue management and deployment for implementation at the REC & national levels.</p>			

Source: Action Plan for Implementing the AMV (2011).

Appendix 4: Comparison between Fiscal Regime Related Activities Called for by the ECOWAS Mineral Development Policy and the Africa Mining Vision

ECOWAS Mineral Development Policy	Africa Mining Vision
<p>Article 2.2 of EMDP: Improvement and Management of Mineral Revenues</p> <p>Objective 2 of EMDP Implementation Matrix: Maximize the Benefits of Mineral Exploitation (Mineral Revenues Management Programme)</p>	<p>Programme Cluster 1 (of the Action Plan): Mining Revenues and Mineral Rents Management</p> <p>Programme Cluster Goal: To create a sustainable and well-governed mining sector that effectively garners and deploys resource rents</p>
<p>Members State's Undertaking in the EMDP</p> <p>a. Promote and develop value addition for all mineral products.</p> <p>b. Promote the diversification of the mineral exploitation and the structures necessary for value addition.</p>	<p>Expected Accomplishment 1: Enhanced share of mineral revenue accruing to African mining countries</p> <p>1. Improve national capacity to physically audit mineral production and exports.</p> <p>Expected Accomplishment 2: Improved management and use of mineral revenue.</p> <p>1. Explore strategies for investing windfall earning and mineral rent into sovereign wealth funds including stabilization funds and infrastructure funds.</p> <p>2. Develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities.</p>
<p>2.1 Assess possibility of setting up in-country processing units.</p> <p>2.2 Promote diversified mineral production.</p>	<p>1. Improve national capacity to physically audit mineral production and exports.</p> <p>2. Review mineral regimes in terms of optimizing revenues.</p>

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<p>c. Facilitate the linkages with other sectors of the economy at the local, national and regional levels.</p>	<p>2.3 Promote integrated in-country or regional mineral value addition.</p>	<p>3. Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws.</p>	<p>3. Develop mechanisms to facilitate local communities' access to jobs, education, transport infrastructure, health services, water and sanitation.</p>
<p>d. Improve fiscal systems to ensure fairness, and that the interests of Member States and Investors are adequately catered for</p>	<p>2.4 Promote the establishment of local private sector in the upstream, downstream and sidestream linkages with other sectors of the economy.</p>	<p>4. Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls.</p>	<p>4. Develop the capacity of local communities to negotiate partnership agreements.</p>
<p>e. Adopt the principle of Resource Rent Tax in the fiscal regimes of Member States.</p>	<p>2.5 Promote transparency and sustainable management of mineral resources.</p>	<p>5. Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion (e.g. transfer pricing)</p>	<p>5. Develop systems for strengthening capacities for national and sub-national bodies for revenue management.</p>
<p>f. Ensure a transparent and effective mineral revenue collection and equitable distribution of these revenues between local and national authorities for local and national development.</p>	<p>2.6 Promote effective mineral revenue collection and its equitable distribution for local and national development.</p>	<p>6. Review terms of double taxation agreements and BITs with host' countries of mining companies including the principle that minerals should be taxed at the point of extraction.</p>	<p>6. Compile best practice guidelines on mineral revenue management and deployment for implementation at the REC and national level.</p>
		<p>7. Build capacity and systems to auction mineral rights where applicable.</p>	

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<p>f. Ensure a transparent and effective mineral revenue collection and equitable distribution of these revenues between local and national authorities for local and national development.</p>	<p>2.6 Promote effective mineral revenue collection and its equitable distribution for local and national development.</p>	<p>8. Review the current fiscal environment in African mining countries to develop guidelines & standards for optimizing revenue (e.g. tax & dividends) packages in a manner that does not discourage mining investment.</p> <p>9. Develop mineral taxation guidelines for implementation at the REC & national levels.</p> <p>10. Develop typical financial models for mineral projects for member states and run training workshops at REC level.</p>	<p>6. Compile best practice guidelines on mineral revenue management and deployment for implementation at the REC and national level.</p>
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Appendix 5: Contributions of the Mining Sector to Revenue Collections

Year	Corporate Income	Royalties	PAYE	NRL	Total Mining Taxes	Mining as a percentage to total IRS collections
1990	2.83	1.89			4.72	8.9
1991	0.82	3.02			3.84	6.3
1992	4.56	4.55			9.1	12.2
1993	4.39	7.49	2.65		14.54	12.8
1994	7.21	12.78	4.81		24.81	14.9
1995	20.39	20.91	7.95		49.29	17.9
1996	9.16	35.49	16.83		62.74	14.8
1997	9.87	34.59	25.02		77.85	12.9
1998	14.45	49.84	31.02		95.31	12.1
1999	31.12	48.62	27.84		107.58	11.9
2000	15.79	118.74	59.24		193.77	13.7
2001	24.81	127.36	76.11	4.25	232.53	11.9
2002	23.5	153.45	101.46	26.47	304.89	10.7
2003	68.14	194.39	14.105	16.78	420.36	11
2004	100.33	215.74	134.36	53.19	503.62	9.4
2005	235.95	269.9	154.37	19.52	679.73	11
2006	215.66	316.25	182.71	15.83	730.5	9.66

Source: Akabzaa and Ayamdoe (2009).

Appendix 6: Trends in Mineral Production in Ghana from 1980 to 2007

Years	Gold	Diamond	Bauxite	Manganese	Total Mineral Export	Total Merchandise Exports	Mineral export as a percentage of total export
1996	612.4	13.4	8.4	7.1	641.3	1571	40.82
1997	579.2	11.3	10.8	11.6	612.9	1489.9	41.14
1998	687.8	10.6	7.4	12.1	717.9	2090.8	34.34
1999	710.8	9	7.6	21.7	749.1	2005.3	37.36
2000	702	11.8	13.1	29	755.9	1936.3	39.04
2001	617.8	20.5	16.4	36.7	691.4	1867.1	37.03
2002	689.1	21.1	15.1	28.6	753.9	2063.9	36.53
2003	830.1	23.4	11	29	893.5	2297.1	38.9
2004	840.2	26.4	8.7	29.2	904.5	2704.5	33.44
2005	945.8	35.7	16	37.3	1034.8	2802.2	36.93
2006	1277	31.3	22.6	40.6	1371.8	3726.7	36.81
2007	1360	26.3	19.7	37.4	1444.1	4292.6	33.64

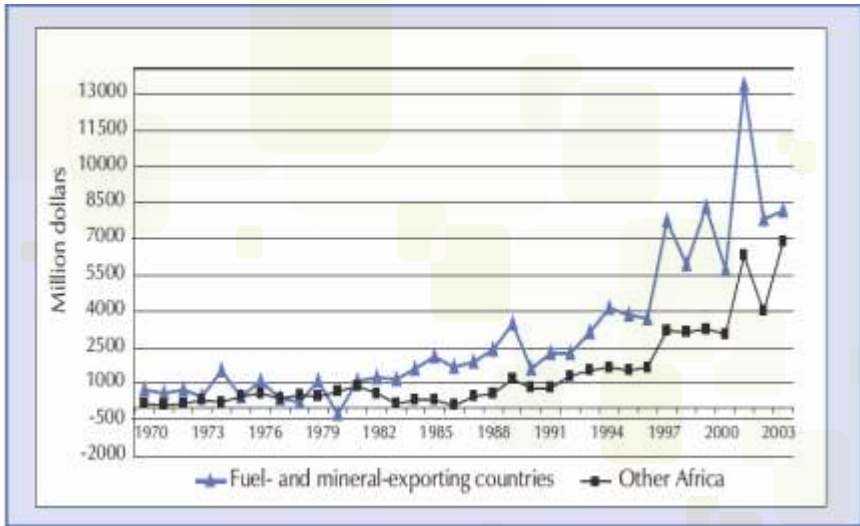
Sources: Akabzaa and Ayamdoo (2009)

Appendix 7: Calculation of Royalty Revenue Losses to Government

Year	Total mineral export (us\$)	Royalty(3 per cent)	Royalty (6 per cent)	Minimum revenue lost	Royalty (12 per cent)	Maximum revenue lost
1990	232.3	6.97	13.94	6.97	27.876	35.25
1991	351.8	10.55	21.11	10.55	42.22	36.09
1992	388.7	11.66	23.32	11.66	46.64	45.17
1993	473.6	14.21	28.42	14.21	56.83	56.38
1994	588.2	17.65	35.29	17.65	70.58	63.82
1995	678.9	20.37	40.73	20.37	81.47	56.59
1996	641.3	19.24	38.48	19.24	76.96	54.31
1997	612.88	18.39	36.77	18.39	73.55	67.75
1998	717.81	21.53	43.07	21.53	86.14	68.36
1999	749.11	22.47	44.95	22.47	89.89	68.24
2000	755.95	22.68	45.36	22.68	90.71	60.29
2001	691.4	20.74	41.48	20.74	82.97	69.73
2002	753.9	22.62	45.23	22.62	90.47	84.63

Sources: Akabzaa and Ayamdoe (2009).

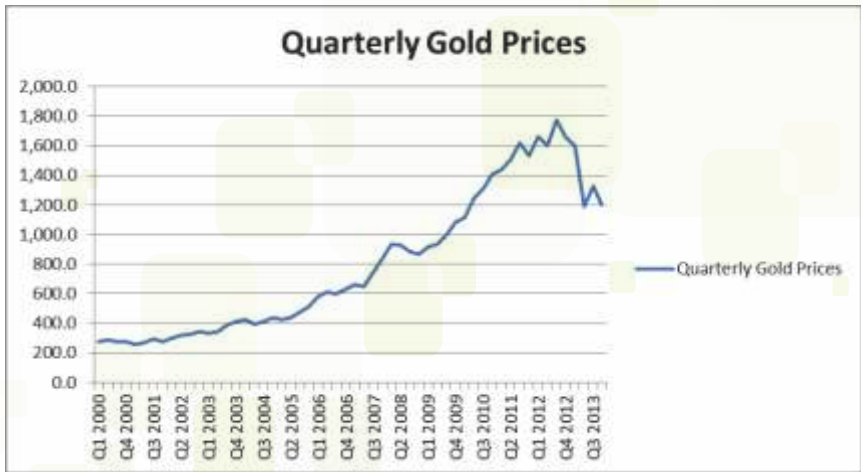
Appendix 8: FDI Inflows to African Fuel and Mineral Exporting Countries Compared to other African Countries from 1970 to 2003



Sources: UNCTAD Secretariat Computations based on UNCTAD FDI/TNC Database (as appears in UNCTAD, 2005).

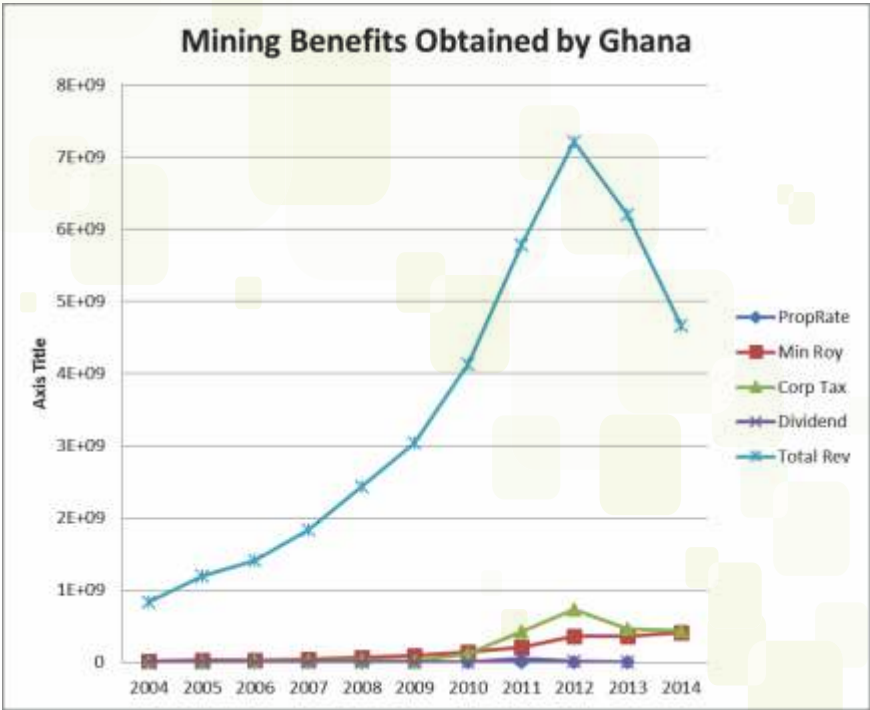
Note: Fuel- and mineral-exporting countries as defined by the World Bank: Algeria, Angola, Botswana, Cameroon, Central African Republic, Egypt, Ghana, Guinea, Kenya, Libya, Mauritania, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, South Africa, Sudan, Togo, Zambia, and Zimbabwe

Appendix 9: Quarterly Gold Prices from 2000 to 2013



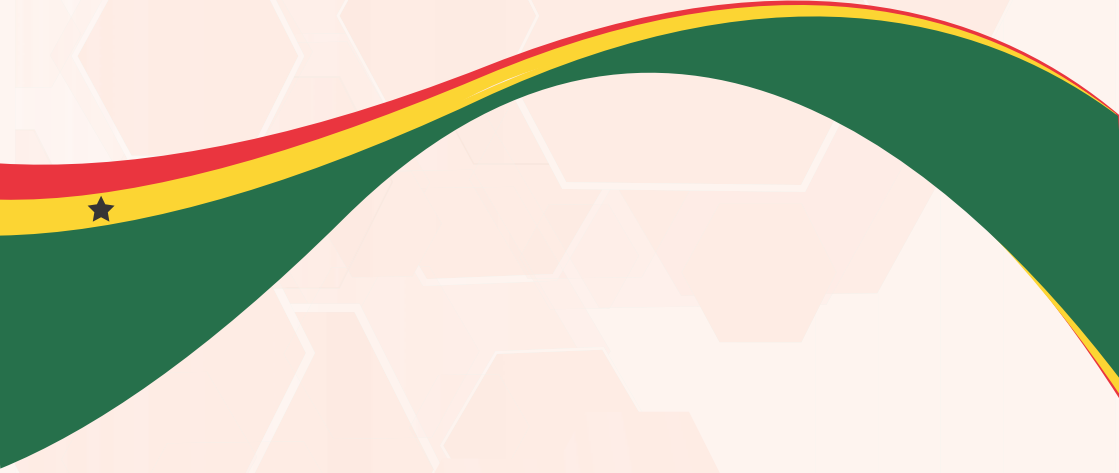
Source: World Gold Council.

Appendix 10: Mining Revenue Obtained by Ghana from Key Sources



Appendix 11: List of Interviewees

Name	Title and Organisation
Mr. Ben Aryee	Former CEO of Minerals Commission and Mining Adviser at the Ministry of Lands and Natural Resources
Dr. Toni Aubynn	Former CEO of Ghana Chamber of Mines and CEO of Minerals Commission
Prof. Akilagpa Sawyerr	Chairman, Government Negotiating Team
Prof. Joe Amoako-Tuffour	Director of Research, Africa Centre for Economic Transformation
Dr. Yao Graham	Third World Network - Africa
Dr. J. R. Dankwah	Senior Lecturer, University of Mines and Technology, Tarkwa
Mr. William Baidoo	Principal Officer in charge of Mines, ECOWAS Commission
Mr. Sulemanu Koney	CEO, Ghana Chamber of Mines
Mr. Richard Afenu	Manager, Sectoral Policy, Minerals Commission
Mr. Saban Parimah	Tax Manager, Anglohold Ashanti
Mr. Benoni C. D. Ocansey	Chief Revenue Officer, Ghana Revenue Authority
Mr. Delali Klubi	Assistant Commissioner, Ghana Revenue Authority
Mr. Kofi S Boahen	Lead Research Fellow, IMANI Ghana
Mr. Edwin Acquah	Investment Promotion Officer, Ghana Investment Promotion Centre




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