

FREEZING LOCAL REVENUE TO STABILIZE FOREIGN MINING COMPANIES

A CASE OF ASUTIFI NORTH DISTRICT IN GHANA



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WITH SUPPORT FROM
TAX JUSTICE NETWORK AFRICA, NAIROBI, KENYA



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EXECUTIVE SUMMARY

INTRODUCTION

Mining is an important economic activity in Ghana contributing towards government revenue, export earnings, gross domestic product, employment creation and local level development. In the last ten years the mining sector accounted for an average of about 6% of Gross Domestic Product (GDP), 26% of total Government revenue and 40% of total merchandise export earnings. One of the challenges facing metropolitan, municipal and district assemblies (MMDAs) in Ghana is the ability to raise sufficient revenue to meet their expenditure for any given period as required of them by the Local Governance Act, 2016 (Act 936). Mining investment presents opportunities for revenue mobilization by MMDAs that host mining projects. In addition to royalties they have the power to impose local taxes as way of mobilizing revenue locally. However, central government policies and practices have the potential of freezing the opportunities and powers of local government authorities from mobilizing mineral revenue locally.

Asutifi North District Assembly (ANDA) hosts one of the largest foreign mining companies operating in Ghana. Newmont Ghana Gold Limited (NGGL) operates the Ahafo Gold Mine Project with many of the fixed properties of the mine located in the ANDA. The fixed properties present an opportunity for the ANDA to impose and collect property rate from the

company on annual basis. In 2003 and before the pouring of the first bullion of gold from the project, NGGL entered into an investment agreement with the Government of Ghana. The agreement gave NGGL wide range of concessions including payment of fixed rate of royalty and non-payment of local/municipal taxes during the life of the mine. In 2015, the investment agreement with NGGL was revised enabling the ANDA to collect property rate and other applicable local taxes from the company.

OBJECTIVES OF THE STUDY

The purpose of this study is to examine the effect of the 2003 investment agreement of NGGL on local revenue mobilization in the Asutifi North District (ANDA) of Brong Ahafo Region. The specific objectives of the study is to:

1. Identify opportunities and challenges on local level revenue mobilization
2. Determine the revenue losses to the ANDA as a result of the NGGL investment agreement
3. Document key concerns affecting the integrity and transparency of the agreement

SIGNIFICANCE OF THE STUDY

The results of the study are valuable in a number of respects. In the first place, the results provide policymakers, local authorities, mining companies and civil society with important lessons on the contribution of mineral revenue for local level development and service delivery. Also, the findings contribute to the debate on the proportion of mineral royalty to cede to local authorities in mining areas in Ghana.

Further, the data and information generated by the study serve as stock of reference. The credible and evidence-based findings provide basis for advocacy for revenue transparency and the efficient mobilization and utilization of revenue.

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METHODOLOGY

The study used a case study approach combining qualitative and quantitative methods to estimate revenue losses and documentation of opportunities and challenges of local level revenue mobilization as well as the key concerns of the 2003 investment agreement to the Asutifi North District Assembly in the Brong Ahafo Region of Ghana. Arithmetic approach was used to estimate the revenue losses to the ANDA while the qualitative approach was used to assess and document the opportunities and challenges in local level revenue mobilization as well the key concerns affecting the integrity and transparency of the 2003 investment agreement. The case study approach helps narrow the boundaries of the study and allows for in depth interaction, description, interpretation, verification and evaluation of the issue under investigation with key actors, in particular staff and members of the ANDA.

DATA COLLECTION METHODS

Relevant files and documents were reviewed along side direct observation and interview with staff and members of the ANDA. Structured questionnaire were administered to the ANDA, NGGL and the Brong Ahafo Regional Office of the Administrator of Stool Lands. Information was also sought from the Presiding Member and Assembly members of the ANDA as well as Chiefs, NGOs and opinion leaders from the five local

communities in the study area.

KEY FINDINGS

Key findings from the case study assessment are as follows:

1. Opportunities: The study found variety of economic activities (banking, hospitality, transport, trade in mining equipment and contractors in services and construction) in the ANDA brought about by industrial mining operations. These activities present an opportunity for the ANDA to expand its revenue mobilization base. The revenue sources include a share of mineral royalties from the Ahafo Gold Mine Project; property rates from fixed property of mining companies and other businesses; registration fees from small-scale miners and sand winners, basic rate from migrant workers, special levies on other businesses such as the guesthouses, banks and transport operators. The ANDA also stand the chance of receiving donations as part of the corporate social responsibility of NGGL.

2. Eligible Ratable Properties of NGGL: The study found that the ANDA identified 221 properties of NGGL that are eligible for chargeable property rate.

3. Effective Date of Receipt of Property Rate from NGGL: The study found that the ANDA began receiving property rates from NGGL in 2013. The property rate received from NGGL in 2013 was 100% of the total property rates collected for that year and 75% in 2014.

4. Estimated Property Rate on 221 NGGL Properties: The estimated amount due to ANDA from the 221 properties for a four-year period was Ghc375, 656.06 the equivalent of

US\$89,441.92. However, NGGL paid a negotiated property rate of Ghc365,000 the equivalent of US\$ 86,904.76 in 2015 for a four-year period (2015-2018).

5. Annual Average Property Rate:

The average revenue in property rate that ANDA should earn from NGGL per annum is estimated at GHC93,914.01 using the estimated amount of Ghc375,656.06 (US\$89,441.92) derived from the 221 properties of NGGL. In other words the property rate that ANDA should earn per annum from NGGL is 93,914.01 (US\$22,360.47).

6. Revenue from Property Rate Forgone:

The ANDA has forgone estimated total revenue of GHC939,140.15 (US\$223,604.79) for the period 2003 to 2012 due to the freeze by the 2003 investment agreement on local taxes. In other words, without the freeze on local taxes, this amount of money GhC939,140.15 (US\$223,604.79) was available to the ANDA for use on the delivery of basic public services such as education, health, water and sanitation in the district.

7. Mineral Royalties as Per Cent of IGF:

Mineral royalties received form a significant portion of the total internally generated funds of the ANDA. In 2008 and 2011, mineral royalty alone constituted 39% and 48% of the total IGF of the ANDA respectively.

8. Mineral Royalties Received: The study found that during the period 2008-2012 the ANDA received revenue in mineral royalties from NGGL amounting to GHC12,789,628.20 the equivalent of US\$3,045,149.57 (an annual average earnings of GHC1,421,069.80 or US\$338,349.95) at the rate of 3% of the value of gold output and exported).

9. Potential Revenue in Royalties: If government increased the royalty rate from 3% to 3.5%, ANDA would have earned GHC13,440,742.27 (US\$3,200,176.73) during the same period. However, due to the inability of government to raise the royalty rate, ANDA has forgone a minimum of GHC1,850,106.01 (US\$440,501.43) during the period 2008 to 2016. Again, if government increased the royalty rate to the 6% ceiling or 5% fixed rate, ANDA would have earned a total of GHC25,579,256.40 (US\$6,090,299.14) or GHC19,201,060.42 (US\$4,571,681.05) respectively for the period 2008-2016. This would give an average annual revenue in royalties at GHC2,842,139.60 (US\$676,699.90) at 6% or GHC2,133,451.15 (US\$507,964.55) at 5%.

10. Revenue in Royalties Forgone:

Due to the inability of government to raise the royalty rate beyond 3%, the ANDA has forgone a minimum of GHC1,850,106.01 the equivalent of US\$440,501.43 and a maximum of GHC12,789,628.20 the equivalent of US\$3,045,149.57 (at 6%) or GHC7,680,424.15 or US\$1,828,672.41 (at 5%) for the ten year period. This gives the minimum of an annual average of revenue forgone in royalties at GHC205,567.33 (US\$48,944.60) and a maximum annual average of revenue forgone at GHC1,421,069.80 or US\$338,349.95 (if 6%) or GHC853,380.46 or US\$203,185.82 (if 5%) for the period. If this amount of money was collected, the ANDA could have used it to provide the people in the district with education, health, water, infrastructure, water and sanitation.

11. Guidelines for Mineral Revenue Utilization:

The study did not find guidelines specific for the utilization of revenue received from mineral

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national strategy for economic transformation.

6. The Asutifi North District Assembly (ANDA) should put in place a comprehensive strategy and plan to fully exploit the revenue opportunities brought about by mining.
7. The Assembly should develop a comprehensive list of taxable activities (database) showing clearly the different types of businesses eligible for taxation, the

thresholds for taxation and incentives for tax compliance. The Assembly should then make use of the Assembly members to register businesses that are eligible.

8. The registration exercises should be preceded and continue with robust public education and campaigns in collaboration with the taxpayers themselves (businesses), the traditional councils, the chiefs, civic educators, trader associations, and NGOs operating in the District.

royalties at the ANDA, the Stool and the Traditional Council in the study area.

12. Following the development of the guideline, the share of the mineral royalties that go to the district/communities should be increased to 30%. This is one strategy of using the vast mineral resources of the country to deepen decentralization through improved financial resources. The capacity of staff of the receiving MMDAs should be built to enable them accurately estimate their share of the mineral royalty. This is an incentive to deepen the role of the MMDAs in monitoring the level of production of mining companies operating in their districts.

13. Transparency and Integrity: Further the 2003 investment agreement lacks transparency and integrity, as there was no record of stakeholder consultation nor a link to local revenue mobilization strategy for the host Assemblies and an industrial mining strategy of Ghana that aims to lace mining activity to the transformation of the rest of the economy.

CONCLUSION AND RECOMMENDATIONS

The study concludes that the 2003 investment agreement was a tax subsidy given by the Government of Ghana to NGGL. While depriving local governments, in particular the ANDA of the revenue it needs to tackle poverty and deliver services to the population. In other words the agreement makes revenue less available for the Assembly to invest in education, health, economic development and job creation. On the basis of the findings and conclusion,

the study makes the following policy recommendations.

1. The Minerals Commission in collaboration with the Ghana Revenue Authority and the National Aggregator of EITI should conduct and publish annual tax incentives analysis on beneficiary mining companies, showing figures on the cost and benefits of such agreements to the host Assemblies, central government and the companies. This exercise is part of the transparency agenda, which the Government of Ghana, mining companies and civil society have collectively agreed to promote under the EITI, the ECOWAS Mining Directives and the Africa Mining Vision (AMV).

2. Royalty should be excluded from being part of the list of negotiable incentives on investment agreement with mining companies and the fixed royalty rate enforced. The complexity of the mining tax system often results in tax avoidance, underpayment, transfer pricing among others resulting in revenue losses to the state. Among the milieu of complex tax calculations royalty tax on gold mining is among the most predictable and the largest source of mineral revenue. Royalties should therefore not be a subject for negotiation if government is to maximise its share of the mineral revenue.

3. The Minister for Lands and Natural Resources through broader stakeholder consultation should develop specific guidelines for the utilization of minerals royalties received by host MMDAs, Stools and Traditional Councils.

4. Investment agreements such as the 2003 should be linked to the medium

term development plans of host assemblies and the overall national strategy for economic transformation.

5. The Asutifi North District Assembly (ANDA) should put in place a comprehensive strategy and plan to fully exploit the revenue opportunities brought about by mining.

6. A joint and sustained public education and awareness programme of the ANDA in collaboration with NGOs in the District should be organized to help businesses and the population appreciate the need to pay the applicable local taxes.

CHAPTER NINE

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3. The Minister for Lands and Natural Resources through broader stakeholder consultation should develop specific guidelines for the utilization of minerals royalties received by host MMDAs, Stools and Traditional Councils.

4. Following the development of the guidelines, the share of the mineral royalties that go to the district/communities should be increased to 30%. This is one strategy of using the vast mineral resources of the country to deepen decentralization through improved financial resources. The capacity of staff of the receiving MMDAs should be built to enable them accurately estimate their share of the mineral royalty. This is an incentive to deepen the role of the MMDAs in monitoring the level of production of mining companies operating in their districts.

5. Investment agreements such as the 2003 should be linked to the medium term development plans of host assemblies and the overall

guidelines specific for the utilization of royalty revenue receipts by the Stool and the Traditional Council. This matter is so sensitive that no one was willing to discuss it with the research team. Even top government officials feel nervous to raise the issue with the beneficiary Chiefs and Queen Mothers for fear of a negative. While the beneficiary chiefs and traditional councils do not account for the use of

their share of mineral royalty revenue, they are entitled, and they often do, to approach the Assemblies for development projects in their communities that could otherwise be financed by their share of the royalties. This is an issue that requires a reflection and discussion at both the national and local levels.

ACKNOWLEDGEMENTS

The production of the book *Freezing Local Revenue to Stabilize Foreign Mining Companies a Case of Asutifi North District, Ghana* is a result of the collective effort of several actors. The author acknowledges with sincerity the contributions of the various actors.

This is to acknowledge the role of Richard Adjei-Poku, Executive Director for Livelihood & Environment Ghana (LEG). Richard initially conceived the research work leading to the production of this book.

The support of Hon. District Chief Executive and the Coordinating Director for the Asutifi North District are duly acknowledged for facilitating access to data and information relevant to the research. Also the planning and budget officers of the district deserve commendation for their role in providing and interpreting data. The Chiefs and staff of the Traditional Councils for Kenyasi No1, Kenaysi No2, Ntotrotro, Wamahinso and Gyedu as well as the Honourable Presiding Member, Honourable Assembly Members and other key

informants of the Asutifi North District Assembly equally deserve commendation for volunteering information during the interviews. Peres Ofori, Mohammed Ibrahim and Umar Moro are acknowledged for their role in the collection of primary data.

It is key to acknowledge the financial contribution and technical guidance provided by Ghana Integrity Initiative (GII), Livelihood & Environment Ghana (LEG) and Tax Justice Network-Africa (TJNA). The report benefited from comments of independent reviewers facilitated by GII.

My family and friends are acknowledged for the sacrifices they have made to give time and space for the production of this Book

For all those who have not been mentioned in this report, your contributions are hereby deeply acknowledged with gratitude.

The overall layout, designs and desktop publishing were done by **Kricyimage**.

PREFACE

Ghana has chosen decentralization and local government as the preferred approach towards democratic and participatory development. Local level revenue mobilization is critical for ensuring the autonomy and financial viability of local authorities. It is also a guarantee for the effective and efficient service delivery in a sustainable ways. Therefore, various laws have been passed to empower local authorities to mobilize revenue locally. Central government policy and action has the potential to erode local power as exemplified by the mining investment agreement between the government of Ghana and Newmont Mining Company. This book was motivated by the absence of a documentary analysis of the effect of government investment agreement with a foreign mining company on the power of a local authority to impose and mobilize revenue locally. The book contributes to the growing interest in domestic revenue mobilization, tax justice and revenue transparency.

The book has nine (9) chapters. Chapter one is the general introduction and two is the methodology leading to the production of the book. Chapter three is the study area Asutifi North District in Brong Ahafo of Ghana and four presents a brief profile of the foreign mining company Newmont Ghana Gold Limited a party to the 2003 investment agreement with the Government of Ghana. Chapter five outlines the policy, legal and institutional framework for mining in

Ghana and proceeds to post the fiscal regime for mining in the country so as to provide context for a discussion of the provisions of the NGGL agreement. Chapter six discusses the opportunities and challenges in local level revenue mobilization with particular emphasis on mining. Chapter seven examines key concerns affecting the transparency and integrity of the 2003 NGGL Investment Agreement. The chapter explores the trend of foreign direct investment in Africa and the mining sector, examines in brief the concept of stabilization before a discussion on the process and substantive fiscal provisions of the 2003 NGGL agreement. Chapter eight estimates the revenue losses to ANDA as a result of the 2003 NGGL investment agreement and nine is the conclusion with recommendations.

The book serves variety of purposes including educating readers on how state policy can legalize the flight of mineral wealth from already marginalized rural areas in Ghana. It provides lessons for the respect for the policy space for local authorities, advocacy for improved domestic revenue mobilization, fair taxation and transparency in investment agreements. The book also contributes to the long-standing debate on the role of mining for the Ghana beyond aid policy of the President of the Republic of Ghana. The research began in August 2016 and concluded in January 2018. It was a case study with active participation of the Asutifi North District Assembly and other key stakeholders. The major problem encountered was the inability of staff of Newmont Ghana Gold Limited to volunteer information. It was amazing to note the level of perceived corruption citizens have about public officials. Over 80% of citizens including elected Assembly Members believed

and NGGL, the ANDA has earned a total of GHC12,789,628.20 in royalties for the period 2008-2016 (an average annual earnings of GHC1,421,069.80) at the rate of 3% of the value of gold output and exported.

If government increased the royalty rate from 3% to 3.5%, ANDA would have earned GHC13,440,742.27 during the same period. However, due to the inability of government to raise the royalty rate, ANDA has forgone a minimum of GHC1,850,106.01 during the period 2008 to 2016.

Again, if government increased the royalty rate to the 6% ceiling or 5% fixed rate, ANDA would have earned a total of GHC25,579,256.40 or GHC19,201,060.42 respectively for the period 2008-2016. This would give an average annual revenue in royalties at GHC2,842,139.60 at 6% or GHC2,133,451.15 at 5%.

Revenue forgone from Royalties: Due to the inability of government to raise the royalty rate beyond 3%, the ANDA has forgone a minimum of GHC1,850,106.01 and a maximum of GHC12,789,628.20 (at 6%) or GHC7,680,424.15 (at 5%) for the ten year period. This gives the minimum an annual average of revenue forgone in royalties at GHC205,567.33 and a maximum annual average of revenue forgone at GHC1,421,069.80 (if 6%) or GHC853,380.46 (if 5%) for the period. If this amount of money was collected, the ANDA could have used it to provide the people in the district with education, health, water, infrastructure, water and sanitation.

The share of the mineral royalty that go to the district/communities should be increased to 30%. This is one strategy of using the vast mineral resources of the country to deepen decentralization

through improved financial resources. The capacity of staff of receiving MMDAs should be built to enable them accurately estimate how much they are entitled. This is an incentive to deepen the role of the MMDAs in monitoring the level of production of mining companies operating in their districts.

Mineral revenue from royalties received forms a significant portion of the IGF of the ANDA. In 2008, revenue from mineral royalty alone constituted 42% of the total revenue of the ANDA, it dropped sliding to 39% in 2009 but picked up to 48% in 2010 and drop again to 45% in 2011.

Despite the size of revenue from mineral royalties, the study did not find guidelines specific for the utilization of royalty revenue receipts. The Assembly relies on the procedure for financial disbursement approval and the discretion of the Chief Executive who is the head of the administration. The Chief Executive may cause disbursement of aspect of the mineral royalty revenue and submit to the Assembly for ratification. The District Chief Executive leads the technocrats of the Assembly to prepare annual action plan derived from the medium term development plan and cost them. The general assembly meeting is the body responsible for approving financial disbursement. The draft plan with the projects and cost is submitted to the Finance Sub-Committee of the Assembly for review before submitting for approval by the general Assembly at its meeting. In some cases the projects are submitted directly to the general assembly meeting for approval. The financial disbursement approval procedure of the Assembly serves as a check to the exercise of discretion by the District Chief Executive.

Similarly, the study did not find

Table 7: Calculation of Royalty Revenue Loss to ANDA (2007 – 2016)

Year	Royalty Received (GHC) by ANDA at 3%	Royalty (GHC) at 3.5%	Maximum Royalty (GHC) at 6%	Min. Revenue Lost (GHC)	Max Revenue Lost (GHC)	Remarks
Revenue Losses to ANDA under the Sliding Royalty Rate at 3%-6%						
2008	639,451.89	746,027.20	1,278,903.78	106,575.31	639,451.89	
2009	716,498.00	835,914.33	1,432,996.00	119,416.33	716,498.00	
2010	1,128,218.70	1,316,255.15	2,256,437.40	118,036.45	1,128,218.70	
2011	1,612,688.00	1,881,469.33	3,225,376.00	268,781.33	1,612,688.00	
2012	2,146,354.03	2,504,079.70	4,292,708.06	357,725.67	2,146,354.03	
2013	120,534.51	140,623.59	20,089.08	241,069.02	120,534.51	
2014	1,116,857.52	1,303,000.44	186,142.92	2,233,715.04	1,116,857.52	
2015	311,338	363,227.66	622,676.00	51,889.66	311,338.00	
2016	3,728,695.61	4,350,144.87	7,457,391.22	621,449.26	3,728,695.61	
TOTAL	12,789,628.20	13,440,742.27	25,579,256.40	1,850,106.01	12,789,628.20	
Revenue Losses to ANDA under the Fixed Royalty Rate at 5 %						
Year	Royalty Received by ANDA at 3%	Royalty (3.5%)	Maximum Royalty (5%)	Min. Lost revenue	Max Lost revenue	Remarks
2008	639,451.89	746,027.20	1,065,753.15	106,575.31	426,301.26	
2009	716,498.00	835,914.33	1,194,163.33	119,416.33	477,665.33	
2010	1,128,218.70	1,316,255.15	1,880,364.50	118,036.45	752,145.80	
2011	1,612,688.00	1,881,469.33	2,687,813.33	268,781.33	1,075,125.33	
2012	2,146,354.03	2,504,079.70	3,577,256.72	357,725.67	1,430,902.68	
2013	120,534.51	140,623.59	200,890.85	20,089.08	80,356.34	
2014	1,116,857.52	1,303,000.44	1,861,429.20	186,142.92	744,571.68	
2015	1,580,329.94	363,227.66	518,896.66	51,889.66	207,558.66	
2016	3,728,695.61	4,350,144.87	6,214,492.68	621,449.26	2,485,797.07	
TOTAL	12,789,628.20	13,440,742.27	19,201,060.42	1,850,106.01	7,680,424.15	

Source: Fieldwork, 2017

The research estimates royalty revenue losses to the ANDA by using simple arithmetic to compute the difference between the royalty rate of 3% fixed by the 2003 investment agreement and the presumptive rate of 3.5% and the legally establishing ceiling rates of 6% and 5%. The difference between the 3% and the presumptive rate 3.5% is the minimum revenue losses to ANDA while the difference between the 3% and the legally ceiling rates (6% and 5%) gives the maximum revenue losses to

ANDA. The estimates used royalties received by the ANDA from NGGL.

In table 7, the total mineral royalties received by ANDA for the period is GHC12,789,628.20. The highest mineral royalties received by the ANDA was GHC3,728,695.61 in 2016 while 2013 recorded the least annual revenue received by the Assembly at GHC120,534.51.

Under the 2003 investment agreement between the government of Ghana

that local taxes only go to enrich public officials.

Livelihood & Environment Ghana, Ghana Integrity Initiative, Tax Justice Network-Africa, Kwesi Wreko Obeng,

the Hon Chief Executive and Coordinating Director and staff of the Asutifi North District, family and friends are acknowledged for their various roles in the production of this book.

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(939,140.15) was available to the ANDA for use on the delivery services such as education, health, water and sanitation in the district.

8.2 Estimation of Revenue Losses from Mineral Royalties

The Large Tax Unit of the Ghana Revenue Authority (GRA) collects royalties from the mining companies and lodge into the consolidated fund. Out of the total royalty paid 80% is retained in the consolidated fund; 10% is transferred to the Minerals Development Fund and the remaining 10% to the Office of the Administrator of Stool Lands (OASL). Article 267 of the 1992 Constitution provides that “10% of the revenue accruing from stool lands be paid to the office of the Administrator of Stool Lands to cover administrative expenses; and the remaining revenue be disbursed in the following proportions: 25% to the stool through the traditional authority for the maintenance of the stool in keeping with its status; 20% to the traditional authority; and 55% to the District Assembly, within the area of authority of which the stool lands are situated”. The OASL takes and retains 1% (or 10% of the total amount of the 10%) to cover administrative expenses. The remaining 9% (90% of the total amount of the 10%) is disbursed to the following located in the operational area of the mine: 1.80% to the Traditional Council; 2.25% to the Stool; and 4.95% to the District Assembly.

The precise rate applicable for a particular mine for a given period is determined according to regulations, which set out a formula for determining the applicable rate that

mining companies pay royalties to government. The Minerals and Mining Act 2006, (Act 703) provides for the payment of a sliding royalty rate at 3% to 6% calculated on the basis of the total revenue from minerals produced. The Minerals and Mining (Amendment) Act, 2015, (Act 900) changed the sliding royalty rate to a fixed rate at 5% for mining operations. Implementation of the fixed rate at 5% started since 2012. The Minister of Finance made proposed changes to the prevailing tax regime in a budget speech on 16 November 2011, which included a change from the sliding royalty rate at 3% to 6% to a fixed royalty rate at 5%. According to GHEITI (2014) Parliament passed the changes on 1 February 2012 and they were subsequently gazetted on 9 March 2012. The 2003 investment agreement between the Government of Ghana and NGGL was effective from 2003 to 2014. This means that three different royalty rates were implemented during the life of the agreement namely; the 3% fixed rate for NGGL under the agreement; the sliding rate at 3% to 6% from 2006 to 2011; and a fixed rate at 5% from 2012 to date. In addition, the study considers a fourth rate at 3.5%. The 3.5% was a presumptive royalty rate set by the study in recognition of an increase in the royalty rate in response to a rise in the global price of gold. Given the opportunity and flexibility of policy, government would want to raise more money for service delivery by adjusting upward the rate of royalty under the sliding royalty rate regime. However, given its own mantra of FDI attraction the study anticipated a marginal increment to show good will and friendliness towards the industry.

Table 6: Rates Collected by ANDA 2007 -2016

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Rates	23,628.33	22,761.59	23,500.40	93,955.06	58,243.00	47,588.00	18,010.02	13,508.00	19,026.40	399,018.00
Property Rates	23,628.33	22,761.59	23,500.40	91,582.66	54,816.00	21,516.00	-	3,254.00	-	398,868.00
NGGL	-	-	-	-	-	-	18,010.02	10,254.00	19,026.40	399,018.00
Others	-	-	-	2,372.40	3,427.00	-	-	-	-	-

Source: Ministry of Local Government and Rural Development and ANDA, 2017

Table 6 shows that the ANDA collected property rate for the entire ten-year period 2007 to 2016. The table also shows a big rise in property rate from 2009 to 2010 and there after it shows a consistent decline from 2011 to 2014.

The table also shows that ANDA began receiving property rates from NGGL from 2013. The non-payment of property rate was corroborated by the GHEITI (2014) when the report says "With the exception of Newmont Ghana Ltd, all the companies were liable to pay property rate in 2012 and 2013." The property rate received from NGGL in 2013 was 100% of the total property rates collected for that year and 75% in 2014.

In 2015, the properties of NGGL were assessed. The assessment was based on 221 of the 250 properties that the ANDA identified to be in use. The ratable value estimated by the Land Valuation Division of the Lands Commission for the 221 was Ghc7, 513, 121.34. The approved 5% as the chargeable rate on the ratable value of Ghc7, 513, 121.34 giving an estimated amount in property rate from NGGL at Ghc375, 656.06. Based on negotiation NGGL paid Ghc365, 000 for four years starting from 2015 to 2018 after which the 5% chargeable rate would be revised. If the 5% approved rate gave an amount of Ghc375, 656.06 for a period of four years then the property rate earned by the ANDA per annum from NGGL is 93,914.01.

Using the annual property rate earnings from NGGL at 93,914.01 means that the ANDA has forgone an estimated total of 939,140.15 for the period 2003 to 2012 (93,914.01 per year) due to the freeze by the 2003 investment agreement on local taxes. In other words, without the freeze on local taxes, this amount of money

CHAPTER ONE

GENERAL INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Revenue mobilization is critical for nation-building, service delivery and citizens participation to democratic governance. The International Monetary Fund and the World Bank Group (2016), reports that domestic resources are the largest untapped source of financing to fund national development plans. As clearly recognized by the Addis Agenda, without effective mobilization of domestic resources, the Sustainable Development Goals cannot be achieved. The use of domestic resources for development purposes is becoming more and more important as access to foreign resources becomes increasingly difficult. Improved domestic resource mobilization has the potential for widening the policy space, minimizing the impact of externally imposed volatility and serving as alternative to expensive financial aid in loans.

Since 1988, Ghana has been implementing decentralization reforms with the main aim of promoting citizens participation and efficient service delivery. Decentralization can move the government closer to the people and

thereby ideally increases the accountability and responsiveness of service providers (Wetterberg & Brinkerhoff 2012: 6 & 44). Wetterberg & Brinkerhoff further argue that decentralization matches services to the needs and preferences of users, increases allocative and technical efficiency of service delivery, and creates positive incentives for performance.

In 1992, Ghana voted and adopted onto itself a Constitution. The 1992 Constitution provided for decentralization and local government in a full chapter (Chapter 20) making decentralization and local government the preferred vehicle for democratic and participatory development. The Constitution creates a three-tier system of local government at the district and sub-district levels with the Regional Coordinating Council as the coordinating body at the regional level. The Constitution also sets out the composition and functions of the various structures of the decentralised local government system namely; the Regional Coordinating Councils (RCCs), Metropolitan, Municipal and District Assemblies (MMDAs), Sub-Metropolitan District Councils (SMDCs), Urban, Zonal, Town and Area Councils (UZTACs), and Unit Committees (UCs). By the constitutional injunction, decentralization and local government remains a central strand of the multi-party democratic dispensation with emphasis on participatory democracy and development.

The decentralization reform process in Ghana has led to the devolution of some functions and responsibilities hitherto played by central state to local governments. The Institute of Local Government Studies and Friedrich Ebert Stiftung (2016) outlines

three main functions of MMDAs in Ghana namely; executive, legislative and deliberative. They further point out that the District Assembly exercises political and administrative authority and provides guidance, gives direction to and supervises all other administrative authorities in the district. The Local Governance Act, 2016, (Act 936) gives power and authority to MMDAs to promote development, in particular local economic development. Section 12 (3) (a) of the Act 936 states that a District Assembly shall be responsible for the overall development of the district. Responsibility for the overall development is an onerous task and should necessarily come with resources to enable the execution of the development. Indeed, sustainable local level revenue mobilization is key for ensuring the autonomy and efficient service delivery by local authorities. In recognition for the importance of resources for development the Act 936 further states in section 12 (3) (b) that a District Assembly shall formulate and execute plans, programmes and strategies for the effective mobilization of the resources necessary for the overall development of the district. The Local Governance Act, 2016, (Act 936) proceeds to point out strategies and sources from which MMDAs can mobilise local level revenue. Section 144 of the Act empowers MMDAs to impose and collect levies by stating, “A District Assembly shall be the only authority to levy rates for a district despite any customary law to the contrary”.

Further, section 145 (1) of the Act also states “A District Assembly shall levy sufficient rates to provide for the total estimated expenditure to be incurred by the District Assembly during the period in respect of which the rate is levied.”

Local level revenue mobilization is a strategic response to failure and volatility of external finance to local authorities. The Local Governance Act, 2016, (Act 936) empowers Metropolitan, municipals and District Assemblies to mobilise revenue for local level development. Section 144 of Act 936 states that “A District Assembly shall be the only authority to levy rates for a district despite any customary law to the contrary”. Extractive resources, in particular mining presents great opportunity for local level revenue mobilization. MMDAs that host mining projects have the opportunity to levy mining operations and rake in enormous revenue for service delivery and development.

Ghana is endowed with a variety of commercial minerals. The four most prominent commercial minerals are gold, diamond, bauxite and manganese. There are also occurrences of other commercial minerals such as iron ore, limestone, clay, mica, silica sand, and stone materials. It is believed that small amounts of steel are produced in Ghana. Table 1 presents a summary of the mineral endowment of Ghana for the period 2001 to 2005.

CHAPTER EIGHT

ESTIMATION OF REVENUE LOSSES TO ANDA

One of the key objectives of this study is to estimate revenue losses to the ANDA arising from the NGGL investment agreement. This section estimates the losses using property rate and royalties received by the Assembly. In table 4, rates and royalties are key sources of mineral revenue to the IGF of the ANDA. Based on data obtained from the ANDA, NGGL has 250 facilities (properties) that are eligible for property rate. There are 128 at the plant site, 89 at MKV, 27 at Rank Camp and 6 at Kenyasi Camp. Yet, the 2003 investment agreement between the government of Ghana and NGGL freeze local taxes on the company and

limits the royalty rate to 3%. The research interest is to estimate the revenue forgone by the ANDA as a result of the freeze on local taxes and the limits on royalty payment. Again, in table 4, royalties and rates present an interesting scenario for investigation. Royalties have recorded consistent increase from 2010 to 2013, while rates recorded consistent decline for the same period.

8.1 Estimation of Revenue from Property Rate

Property rates as the name indicates are levies that are imposed on immovable assets such as buildings as well as plants and machinery that are fixed to the ground. The Local Governance Act, 2016 (Act, 936) gives power to Metropolitan, Municipal and District Assemblies (MMDAs) determine and impose property rates. Section 145 of the Act 936 states that a “District Assembly shall levy sufficient rates to provide for the total estimated expenditure to be incurred by the District Assembly during the period in respect of which the rate is levied”. Table 6 presents the performance of the ANDA on rates in general and property rates in particular for the period 2007 to 2016.

the 2003 NGGL Investment Agreement, there was conscious effort on the part of Government and Parliament to engage the public in the process for the consideration and possible approval of the TCA and DA. In a letter signed by Kofi Menkah dated 28th March 2018, the Joint Committee on Mines and Energy and Finance requested the National Coalition on Mining (NCOM) to submit input for the consideration of the Committee.

Despite the transparent and open process adopted for the consideration of the agreements there is no guarantee that the lessons of the review of the 2003 NGGL investment Agreement would influence the substantive content of the agreements. In response to the request by the Joint Committee of Parliament on Mines and Energy and Finance the NCOM raised a number of concerns regarding the quality of the agreement. In an analysis of the agreement the NCOM argued as follows:

The TCA grants AGAG various tax concessions all of which amount to reductions or waiver of taxes payable to the state. These concessions are then frozen (stabilised) for ten years under the terms of the DA, with an

option to be extended another 5 years if certain conditions are met. The covering Memo from the Minister of Finance offers a conservative estimate of US\$275m of revenue foregone because of these concessions. Government projects to earn US\$304m as revenue during the first ten years of the redeveloped mine. This makes the \$275m a huge giveaway that leaves the Government with less than US\$30m as revenue. These reductions and waivers comprise of

- a. reduced corporate income tax rate,
 - b. concessionary treatment of unutilised capital allowances carried forward,
 - c. waiver of import duties (amounting US\$177m) in respect of goods to be imported for the project,
 - d. a special sliding scale for royalties starting at 3%, i.e., below the current fixed rate of 5%, and
 - e. exemption from the application of section 62 (1) of the Income Tax Act, 2015 (Act 896)."
- If this analysis of the Coalition is ignored the agreement would appear to be a re-run of the 2003 Investment Agreement between NGGL and the Government of Ghana.

Table 1: Mineral Endowment of Ghana 2001 -2005

Mineral	Unit	Period				
		2001	2002	2003	2004	2005
Bauxite	Tonnes	692 620	683 654	494 716	498 060	606 700
Primary aluminium	Tonnes	161 670	131 858	15 909	—	13 400
Diamond	Carats	1132 102	963 493	904 089	905 344	1,065 923
Gold, mine	kilograms (metal content)	70 049	69 575	70 756	63 140	66 530
Manganese ore	Tonnes	1076 666	1135 828	1509 432	1,597 085	1719 589
Crude petroleum	Tonnes	450 000	350 000	410 000	370 000	*370 000
Salt	Tonnes	68 076	99 593	*250 000	*265 000	*265 000
Silver, mine	Kilograms (metal content)	1900	2 129	3 080	3 035	*3 300

Source: British Geological Survey 2007

Key: — nil and * estimated

Mining in Ghana is generally categorized as large-scale, artisanal and small-scale mining. The latter two types are often grouped together as Artisanal Small Scale Mining (ASM) due to the commonalities between them in terms of size of labour, capital, ownership structure and method of production (Darimani et al, 2013).

Historically, the mining sector has been critical to the economic development as well as international trade and investment relations of Ghana with the rest of the world (Darimani 2011). The Minerals Commission (2017) reports that in the last ten years the mining sector accounted for an average of about 6% of Gross Domestic Product (GDP), 26% of total Government revenue collected by the Domestic Bulk Tax Division of the Ghana Revenue Authority (GRA), and 40% of total merchandise export earnings. In respect of employment the large-scale sub-sector contributes over 20,000 direct employment while the ASM sub-sector employs over one million people. Gold is by far the most prominent mineral in Ghana contributing over 90% of all mineral revenues annually over the past several decades. Ghana is among the top 10 gold producing countries in the world and the second largest gold producing countries in Africa after South Africa.

The mining sector has witnessed significant expansion in the last three decades following its liberalization under the aiges of the World Bank Group (WBG) and the International Monetary Fund (IMF). The Minerals Commission (2009) reports that by January 2009 a total of 225 minerals concessions for reconnaissance, prospecting and mining have been granted. Foreign investment inflows

into the sector for the period 1983-2013 stood at about \$13.7billion. As at 2005, over 31,231 km² representing 13% of the total landmass of Ghana was under large-scale mining activities (EPA, 2005). The increased participation in the sector correlates positively with gold production and export earnings. For instance, gold production increased from 2.24 million ounces in 2002 to over 375 million ounces in 2016. Also export earnings from gold increased from US\$1.3 billion in 2007 to US\$2.35 billion in 2008. In 2012 alone, the mining sector attracted over US\$1bn in total investment inflows in Ghana comprising of Mining Support Services, Exploration and Production Systems.

The expansion in mining activities and the growth in revenue from the activities present opportunities for local revenue mobilization. The opportunities available for local revenue mobilization from mining include mineral royalty, property rate, annual ground rent and local procurement. The 1992 Constitution of Ghana provides that metropolitan, municipal and district assemblies (MMDAs) where mines are located are entitled to a share of the mineral royalty payable by mining companies. MMDAs also have the mandate under the Local Governance Act (936) to impose and collect applicable rates and charges on properties and development undertakings in their administrative jurisdiction. Further, Stool landowners of mining concessions are also entitled to a share of the annual ground rent payable by mining companies. How much revenue (in quantum) a particular MMDA mobilizes from mining locally is mediated by the fiscal policies of both central government and the MMDA for the mining sector in the

the host government to vary or amend national tax policies by fixing the taxes making it easy for tax avoidance by NGGL. The GEITI (2014) describe the 2003 investment agreement as an agreement that “establishes a fixed fiscal and legal regime, including fixed royalty and tax rates, for the life of any Newmont project in Ghana”. According to the GHEITI (2014), under the Investment Agreement NGGL will pay corporate tax not exceeding 32.5% and fixed gross royalties on gold production of 3.0% (3.6% for any production from forest reserve areas). Habiyaemye A. and Soete L. (2010) report that before “the current global recession, many resource-rich African countries were recording unprecedented levels of growth due to a raw material price boom.” Ghana was unable to vary the royalty rate fixed by the agreement and therefore could not take advantage of the price rise to increase revenues from NGGL with whom it has entered into the investment agreements.

Other provisions of the agreement have frozen the power and authority of the local authorities hosting the concession to impose and collect local taxes. By freezing the power and authority of the local authorities the agreement is contradictory to national laws, in particular the Local Governance Act, 2016 (Act, 936) and its predecessor Act (Act 153), which gave MMDAs the power to impose and collect rates. The 2003 investment agreement was signed at the time the Mineral and Mining Act, 1986 (Act 153) did not make provision for stabilization and development agreement and yet it became a legal commercial contract that override national laws. Again, by depriving government of revenue and its sovereign rights, the agreement has the potential to promote the violation of the social and economic

rights of local communities as well as the abuse of general environmental and human rights.

The 2003 agreement did not provide for time limit and yet extend all its benefits to subsidiaries of NGGL. Indeed, the Ministry of Lands and Natural Resources (2015) point out that the 2003 investment agreement “gave wide unlimited concessions to NGGL which could easily be abused by the company to the detriment of the national economy.”

These issues of concern raise questions about the integrity and transparency of the agreement and compelled the Government of Ghana to set up a Renegotiation Committee, which revised the 2003 Newmont Investment Agreement approved by Cabinet and ratified by Parliament in 2015. The Revised Agreement sets an upper time limit of 15 years; reduces the scope of coverage by making NGGL to be subjected to taxes on income in accordance with the general laws of Ghana; pay local taxes and duties imposed by local authorities; and provides for royalty rate for gold starting from a floor of 3% (where gold price is below \$1,300 dollars an ounce to 3.5%, where gold price is between \$1,300 and \$1,499.99 and 4% between \$1,450 and \$2,299.99 and 5% where the gold price is not less than \$2,300) (Ministry of Lands and Natural Resources, 2015). The next section estimates the effect of the stabilization on the revenue of the ANDA.

Perhaps some lessons have been learnt from the review of the AGGL Investment Agreement. In 2018, the Republic of Ghana was in negotiation with AngloGold Ashanti (Ghana) Limited for (i) Tax Concession Agreement (TCA) and (ii) Development Agreement (DA) for the Obuasi Mine Redevelopment. Unlike

health and safety, confidentiality, and governing law.

The agreement made wild provisions providing for a fixed fiscal regime for NGGL, not only diminishing government revenue but also depriving the local assemblies of their power and authority to impose and collect local taxes (in particular general and special rates from NGGL). Some of the provisions of the 2003 investment agreement relevant to local level resource mobilization from mining are summarized as follows:

Duration: There was no time limit for the period of stabilization, during which special tax and other exemptions granted to NGGL were applicable. Special taxes could not be imposed and exemptions could not be removed as long as the NGGL mining leases and any extended leases remained valid (Section 3).

Scope of Coverage: The terms of the agreement were to be extended automatically to any new investment made anywhere by NGGL, NGRL or their affiliates. The agreement states under section 24.3 "Any permitted Assignee under Section 24.1 above of a part of the interests of NGG, Rank, or Golden Ridge under this Agreement, and any Affiliate of NGG, Rank, or Golden Ridge that has acquired a Prospecting License under Section 13.1 above, a Mining Lease under Section 15.2 above or additional areas to a Mining Lease under Section 15.6 above, shall be joined as an additional Party to this Agreement and shall have all of the rights and obligations of its assignor or, as the case may be, of a Party holding a Prospecting License or Mining Lease under Law and this Agreement".

Royalty: Royalty rate for gold is fixed at 3% (3% for NGGL) with additional

0.6% for gold mined in forest reserves (3.6% for NGRL), at a time the law set a sliding royalty ranging from a rate of 3% to 6%. Section 5.1 (a) and (b) state " Each of NGG, Rank, or Golden Ridge shall within thirty days after the expiration of every quarterly period pay to the Government in Dollars a royalty at the percentage rate specified below on the gross value of Minerals won by NGG, Rank, or Golden Ridge from their respective Production Areas in that quarter: (a) Gold, three percent (3%), or three and 6/10 percent (3.6%) for gold mined in a forest reserve area; and (b) All other Minerals, at a rate to be agreed but not to exceed three percent (3%) provided that NGG, Rank and Golden Ridge shall not pay a royalty for such other Minerals that are found in association with gold unless, in their discretion, they decide to recover and sell such Minerals from the gold produced from the Production Area".

Local/Municipal Tax: NGGL and NGRL are not liable to pay local and municipal taxes including property rate (Section 6).

Taxes and Duties: There is no time limit for the exemptions on taxes and duties for the NGGL and NGRL (Section 6).

Government's 10% Carried Interest: Government entitlement to its automatic 10% free carried interest is conditioned on repayment of all outstanding long-term inter-company loans (Section 12).

Offshore Retention: NGGL and NGRL are entitled to retain 100% of the foreign exchange earned from the sale of gold in foreign bank accounts.

Some of these provisions impose limitations on the sovereign right of

country. However, there has been a long-standing debate regarding the benefits and cost shared between national governments, foreign mining companies and host communities.

As noted earlier, the SAP has triggered a mining boom in mineral producing African countries including Ghana. The African mining boom has generated a number of questions and concerns ranging from the disproportionate benefits earned by foreign mining companies compared to host countries and local communities; pressure for greater transparency in the relations between companies and national governments over the transfer and use of mining revenues, demands for greater corporate accountability in relations

between companies and mining affected communities as well as concerns about environmental degradation and destruction of livelihoods of affected communities and violations of their rights. The lack of linkages between mining enclaves and the rest of national economies have attracted demands from citizens groups for a re-examination of the incentive regimes enjoyed by foreign mining companies.

The surge in mineral prices have sharpened and widened public debates about the costs and benefits of mining. The prices of minerals and metals have been rising dramatically on the world markets since 2000 reaching unprecedented peak levels around 2008 (Figure 1).

Figure 1: Minerals Ores and Metals Price Index for the period 1960 - 2008
UNCTAD Minerals, Ores and Metals Price Index



Source: UNCTAD, 2009

The long debate about the benefits of mining was suddenly replaced with a consensus to re-examine the mining sector economics and governance. In a number of countries governments and legislatures lined up alongside civil society organizations (CSOs) in seeking the revision of existing mining contracts as well as the conditions under which they were granted. In Zambia, the government, against the backdrop of the huge increase in the world price of copper (by nearly 400% between 2000 and 2007) has raised its share of mining revenue in the face of great hostility and threats from foreign mining firms. In the Democratic Republic of Congo, diverse CSOs were raising questions about the terms of contracts signed with mining companies and the government has agreed to revise some agreements. Ghana also initiated a process to revise the mining code it adopted in 2006 (only three years ago). Across the continent there were discussions about how to respond to the opportunities and challenges posed by the high demand from Asia, particularly China and India, which has fuelled the price surges. Long standing discussions in some of Africa's regions, such as the Southern Africa Development Community (SADC), about common approaches on mining sector norms acquired a new urgency; and new initiatives emerged and began in some regions such as the Economic Community of West African States (ECOWAS).

At the continental level, steps were taken to pull together mining initiatives centred around NEPAD and the African Mining Partnership (AMP) into a single stream led by the Africa Union in collaboration with the Economic Commission for Africa (ECA). In February 2007, the ECA and ADB a policy 'Big Table', organized by

the ECA and ADB, concluded that two decades of mining sector liberalization and the resultant growth in FDI inflows had failed to fulfill the development expectations of African countries and they should therefore consider reforming their mining codes. The conclusions of this high level meeting of continental policy makers confirmed what CSOs have been saying for years from a variety of standpoints. Recommendations from the Big Table led to various processes resulting in the adoption of the Africa Mining Vision (AMV) together with its Action Plan in February 2009 by African Heads of States and Government to move the continent away from a rent seeking approach to mining to a developmental mineral resource extraction. The AMV calls for transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development.

1.2 Objectives of the Study

A well-designed system of domestic resource and revenue mobilization is key to an efficient and impartial service delivery by local governments and a successful decentralization reform in general. Without clear and successful local level resource mobilization local governments will remain an extension of small units of the Executive Arm of Government. The degree at which local governments can exercise discretionary spending has direct correlation to internally generated funds or local level revenue mobilization. Domestic resource mobilization has the propensity to move local governments much closer to the people and thereby ideally increases the accountability and responsiveness of service providers. (Bahl 1999) cited in Gonschorek, et al (2014) argues that just focusing on one

(1) of our standing orders after a motion to approve it is moved by the Committee Chairman. At the end of the debate the Speaker would put the question and a vote is taken either to approve or reject the agreement." Further interviews with some staff of the Parliament of Ghana coincided with the views expressed by the Honourable Pelpuo. They however added that in some cases a joint Committee between the Committee on Finance and a technically relevant Committee on the subject matter is established. So that the Committee on Finance deals with the financial matters while the Technically relevant Committee deals with the technical matters relating to the particular agreement. What is common however, is the mandatory 48hours required for both a Bill and a loan/investment agreement. Order 77 of the Standing Orders of the Parliament of Ghana provides an exception for the mandatory 48hours on the basis of urgency or others and leave of the Speaker of Parliament.

Based on the GNA reports, it took barely one week (December 12-18, 2003) for the Parliament of Ghana to ratify the NGGL investment agreement. This is an agreement of 40 pages with two appendices. Without doubt on the credibility and hard-working character of the Parliament of Ghana and its Honourable Members, it is difficult to understand how it took barely one week for Parliament to go through the procedure laid out by the Standing Orders to ratify the NGGL investment agreement. Based on the GNA report and if the mandatory 48hours was respected then Parliament would have spent five out of 7days including weekends to ratify the NGGL investment agreement. This suggests an action on an urgent matter. However, it is even more

difficult to understand how a mining investment project that would last for decades with all the accompanying potential negative environmental and social impacts could be treated as an urgent matter. Perhaps only a summary portion of the investment agreement was submitted to Parliament for consideration. During the interviews with some staff of the Parliament of Ghana it was indicated that there were no requirements on the extent of details and accompanying materials for agreements submitted to the Parliament of Ghana. The informants at the interviews also reported that the Parliament of Ghana is working on a definite requirement on what must be included in an agreement going to Parliament for ratification.

7.2.2 Substantive Content of the NGGL Agreement

The 2003 NGGL investment agreement was signed in 10 originals on the 17th day of December, 2003 jointly by the Ministers responsible for Mines and Finance and Economic Planning on the one hand and the Directors of Newmont Ghana Gold Limited, Golden Ridge Resources Limited and Rank Mining Company Limited on the other. It is a forty page agreement with two appendices A and B. Appendix A is the Investment amounts made and costs incurred prior to effective date. Appendix B is the Mining List including the Mining List 8th Edition 2000; and the Serial Number 252 Supplement to the Mining List 8th Edition 2000. The agreement has 35 sections covering various issues including definitions, income taxation, royalties, other payments to Government, financial reporting, undertakings of the Government, government carried forward interest, land and facilities, ground rental,

2003 and was referred to the Committee of Mines and Energy for consideration and subsequently ratified on Thursday 18th December 2003. The Ministry of Lands and Natural Resources (2015) confirmed the existence of the agreement when it reports that in 2003, the Government of Ghana and Newmont Ghana Gold and Newmont Golden Ridge (NGGL) signed an investment agreement “for the development of the Ahafo and Akyem gold mining projects”. The agreement covered two mining projects the Ahafo Gold Mine Project in Asutifi North and Tano South Districts in Brong Ahafo region as well as the Akyem Gold Mine Project in Birim North District of Eastern region.

7.2.1 Procedure for Parliamentary Ratification of Agreements

The Parliament of Ghana has a well and clearly laid down procedures for enacting laws and ratifying loans and investment agreement. The Standing Orders of the Parliament of Ghana provides clear procedures for the enactment of laws and the ratification of loans and investment agreements. Based on a review of the Standing Orders of the Parliament of Ghana a summary of the stages of passing a bill by Parliament is provided as follows:

- i. A Minister or a Member of Parliament introduces the Bill to the House
- ii. The Speaker of Parliament calls the Bill to be read by the Clerk of Parliament. The Clerk reads the Title of the Bill, which is considered the First Reading of the Bill.
- iii. The Bill so read for the first time is referred to the appropriate Committee to “examine in detail and make all such inquiries in relation to it as the Committee considers expedient or necessary” (Order. 124).
- iv. The Committee examines the Bill and submits a report to the House for the second reading.
- v. On a motion being made that a Bill be now read a Second Time, A debate on the principle of the Bill takes place on a motion tabled that the Bill be read a Second Time. If the motion is carried the Clerk reads aloud the Title of the Bill. This reading is considered the Second Reading of the Bill.
- vi. After the second reading the Bill is taken through the “Consideration Stage in the House which shall not be taken until at least forty eight hours have elapsed (this period not including days on which the House does not sit)” (Order 128).
- vii. When a Bill has passed through the Consideration Stage, the Third Reading is taken after at least twenty-four hours have elapsed (this period not including days on which the House does not sit) (Order 132).

In an interview in January 2018 with Dr Rashid Pelpuo Honourable Member of Parliament for Wa Central Constituency and some staff of the Parliament of Ghana, the procedure for the ratification of loans and investment agreements is much shorter and simpler compared with passing a bill into law. According to the Honourable Member “when an agreement is laid before Parliament from the appropriate Minister the Speaker refers it to the Finance Committee which will scrutinize it and report back to the House. The report is laid and debated after a mandatory 48hours in accordance with order 78

element of a fiscal decentralization reform (e.g. revenue sharing) is most likely to hamper its positive effects, rather the entire system needs political autonomy, a significant amount of taxing power, budget autonomy, transparency, and hard budget constraints. A review of the literature on decentralization reforms in Ghana suggests that MMDAs in Ghana have the legal power to mobilize revenue locally. The purpose of this study is to examine the effect of the 2003-investment agreement of NGGL on the power and authority of the Asutifi North District Assembly (ANDA) to mobilize local revenue from the Ahafo Gold Project. The specific objectives of the study is to:

1. Identify opportunities and challenges local level revenue mobilization
2. Determine the revenue losses to the ANDA by the NGGL investment agreement
3. Document key concerns affecting the integrity and transparency of the agreement.

1.3 Significance of the Study

The results of the study are valuable in a number of respects. In the first place, the results provide policymakers, local authorities, mining companies and civil society with important lessons on the contribution of mineral revenue for local level development and service

delivery. Also, the findings contribute to the debate on the proportion of mineral royalty to cede to local authorities in mining areas in Ghana. Further, the data and information generated by the study serve as stock of reference. The credible and evidence-based findings provide basis for advocacy for revenue transparency and the efficient mobilization and utilization of revenue.

1.4 Organization of the Book

The report is organized into eight (8) sections. Section one is the introduction and section two is the background highlighting the mineral reserve potential of Ghana, the historical importance and growth of the sector as well as the objectives and significance of the study. Section three is the methodology and four presents the policy, legal and institutional framework for mining in Ghana showing the mineral fiscal regime and the legal framework for mobilizing mineral revenue at the local level. Section five presents opportunities and challenges in local level revenue mobilization. Section six documents key concerns affecting the integrity and transparency of the 2003 NGGL Investment Agreement. Section seven presents estimates of revenue losses to ANDA and eight is conclusion and recommendations.

CHAPTER TWO

METHODOLOGY

2.1 INTRODUCTION

The case study method of qualitative research was used in exploring mining and local revenue mobilization in the Asutifi North District in the Brong Ahafo Region of Ghana. Njie & Asimiran (2014) report that Yin (2003) defines "case studies as an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident." The case study approach allows for in depth interaction, description, interpretation, verification and evaluation of the issue under investigation (Peshkin, 1993). The nature of case study approach provides maximum participation of key stakeholders and informants in the research. Case study also helps in narrowing the boundaries of the study, which enables the type of focus and concentration needed to bring to light the issues under investigation.

2.2 Access to the Field

Interest for this study was generated by three complementary factors. The first was the personal involvement of the researcher as a member of a national task force set up by the Ministry of Local Government and Rural Development to harmonize and consolidate laws pertaining to local governance in Ghana. The second was

generated from the involvement of the researcher and access to mineral revenue data through local and regional level tax justice campaign. The third was information provided by a community based NGO Livelihood & Environment Ghana (LEG) on concerns of the Asutifi North District regarding non-payment of property rates.

The field entry began with the collection of general information through desktop literature research. This was followed by preliminary and informal consultations with management of the Asutifi North District to determine their interest in the research who eventually provide input into the formulation of the title of the questionnaire. The consultations led to recruitment and training of three field assistants to help with interviews and data gathering. During the training, emphasis was placed on how to explain different revenue concepts such rate, tax and market tolls. Finally, a guided questionnaire was developed discussed, edited and used for conducting interviews with key informants.

2.3 Method of Data Collection

Three main approaches were employed in the collection of the required data set. These were review of relevant files and documents, direct observation and interview. The study began with a review of existing and current literature in the area of mining and local level revenue mobilization in Ghana. This initial review of literature helped in the formulation of both the topic and the key research questions as well as a draft of the questionnaire to be used for gathering the relevant data. Also, during the fieldwork files and other documents of the ANDA

(b) *be adversely affected by subsequent changes to*

(i) *the level of and payment of customs or other duties relating to the entry of materials, goods, equipment and any other inputs necessary to the mining operations or project,*

(ii) *the level of and payment of royalties, taxes, fees and other fiscal imports, and*

(iii) *laws relating to exchange control, transfer of capital and dividend remittance."*

The Minerals and Mining Act, 2006 (Act 703) also introduces a new provision requiring the government of Ghana through the Minister of Lands and Natural Resources to enter into a development agreement with the holder of a mining lease. Section 49 (1) of the Act states: The Minister on the advice of the Commission may enter into a development agreement under a mining lease with a person where the proposed investment by the person will exceed US\$ five hundred million. Section 49 (2) further provides that a development agreement may contain provisions on stability terms as provided under section 48. Act 703 requires both agreements (Stability agreement and Development agreement) to be subject to ratification by the Parliament of Ghana.

The mining industry viewed the introduction of these new provisions as an improvement of the mining fiscal regime in Ghana. Civil society and campaign groups in Ghana thought differently. In a memorandum issued by the National Coalition on Mining (NCOM) to Parliament in May 2005 the group argued that the two agreements "simply seeks to empower the

Minister to waive many provisions in the mining and minerals laws of Ghana to favour the interest of transnational mining companies. Specifically, Act 703 did not make any provision relating to how the development agreement should contribute in measureable and enforceable terms to local and national development effort and outcomes. The Group further argues that the two agreements put together give unequal treatment to other mining companies registered under the laws of Ghana but who may not have their investment capitalization up to the US\$ five million or more, and concludes that the emphasis on the attraction of FDI has influenced the government of Ghana to jettison the non-discriminatory provision contained in ARTICLE 17 of the 1992 Constitution of the Republic of Ghana.

7.2 The 2003 NGGL Investment Agreement

In 2003 and before the enactment of the Minerals and Mining Act, 2006 (Act 703), the Government of Ghana signed an investment agreement with Newmont Ghana Gold Limited (NGGL) for the development of the Ahafo and Akyem gold mining Projects. The public notice about this agreement to Ghanaian civil society was provided by the Ghana News Agency-GNA of Thursday December 18, 2003 indicating that Parliament has ratified an investment agreement between the Republic of Ghana and NGGL for the exploration, development and production of minerals in the country. According to the GNA, the Ahafo mining lease was granted for 30 years covering an area of 286.33km² in the Tano North and Asutifi North Districts of Brong Ahafo region. The GNA further reports that the agreement was first laid before Parliament on Thursday 12 December

into special agreement in the investment agreement for the mutual interest and benefits of the parties. One of such special agreements that tend to provide special protection for the security of investment, tenure and profitability is stabilization (Stability Agreement). Stability agreement is an instrument for attracting and protecting transnational capital investment. Stabilization guarantees transnational capital a fair degree of investment stability as well as certainty and predictability of the fiscal regimes for a specified period. Stabilization is common with medium to long-term large capital investment. It is therefore not unseal that stability agreement is becoming a common feature in mineral policy making and international investment agreement arrangements among mineral producing countries in Africa. Stabilization has evolved to take on an expanded role in national mining laws and international investment agreements. Within the framework of the liberalized mining regimes stabilization has become a prominent feature of the fiscal regimes for mineral resource extraction in many African countries including South Africa, Zambia, Tanzania, the Democratic Republic of Congo and Ghana. The popularity of stability agreement on the continent is a product of the sad history of puppet and autocratic governments in Africa. Given this sad history, stabilization has become integral part of the mining sector reforms to give assurance of good behaviour and a departure from the poor governance regime to good governance practices.

Within the context of the mining sector reforms, governments of mineral producing African countries view stabilization as an instrument for attracting foreign direct investment

into the mining sector. The attractive role of stabilization has helped to redefine the character of fiscal terms between states and investors in the mining sector. Indeed, the fiscal regimes for mining in mineral producing countries in Africa are characterized by high incentives manifested in low tax rates and long list of exemptions as well as mining investment contracts featured with open-ended concessions and timeframe for mining companies, which sometimes may contradict national laws and promote tax evasion and avoidance. It is in this context of policy contradiction that this study examines the effect of the NGGL 2003 investment agreement on the power and authority of local governments to mobilize revenue from the mine project locally.

In 2006, Ghana revised its Minerals and Mining Act 1986 (Act, 153) to introduce stabilization that permits the government of Ghana to enter into a stability agreement with mining companies for a specified period. Section 48 (1) of the new Minerals and Mining Act, 2006 (Act 703) states that the Minister may enter into a stability agreement with the holder of a mining lease "to ensure that the holder of the mining lease will not, for a period not exceeding fifteen years from the date of the agreement,

(a) *be adversely affected by a new enactment, order, instrument or other action made under a new enactment or changes to an enactment, order, instrument that existed at the time of the stability agreement, or other action taken under these that have the effect or purport to have the effect of imposing obligations upon the holder or applicant of the mining lease, and*

were reviewed to uncover relevant details about mineral revenue collection.

Interviews were conducted with informants. Structured questionnaire were administered to the ANDA, NGGL and the Brong Ahafo Regional Office of the Administrator of Stool Lands. The administration of the questionnaire was followed by detailed discussion and interaction with staff of the ANDA to clarify certain responses and also gather more data as the case may be. This was complemented by semi-formal interviews with chiefs, assembly members, NGOs and other opinion leaders in the five selected communities. These informants were purposely selected due to their involvement, experience and knowledge in mining sector and local level revenue mobilization.

2.4 Data Sources and Type

The study explored both primary and secondary data. The primary sources

of data included staff of the ANDA, NGGL, the Regional/District Offices of the Administrator of Stool Lands and non-governmental organizations working on mining taxation and in the study area. Information was also sought from Chiefs, Assembly members and representatives of five local communities in the study area. The primary data was collected using a structured questionnaire prepared mainly for the ANDA. This was complemented with the administration of semi-structured questionnaire on the other key informants. The secondary sources included a review of books, articles, reports and statements relevant to the subject under investigation. The review of literature is key part of data collection and span through the entire study from commencement through fieldwork to writing of the report.

CHAPTER THREE

THE STUDY AREA

The study took place in the Asutifi North District of Brong Ahafo Region of Ghana. The District was selected for this study for a number of reasons. The district hosts the Ahafo Gold Mine Project belonging to Newmont Ghana Gold Limited (NGGL) one of the largest foreign multinational mining companies operating in Ghana. NGGL is among the top four gold producing foreign mining companies in Ghana and hosts over 50 immovable ratable properties in the District. Further the right of the ANDA to collect property rate was frozen by an investment agreement between NGGL and the Government of Ghana. The District

and NGGL were the first to experience implementation of stability agreement in Ghana and under the Minerals and Mining Act, 2005 (Act 703). Also, gold production for the Ahafo Gold Mine Project of NGGL has experienced some consistent rise over a period of six years from 202,126oz/mt in 2006 to 566285oz/mt in 2011 (Minerals Commission, 2013).

The District is located between latitudes 6°40' and 7°15' North and Longitudes 2°15' and 2°45' West (Figure 2). The District capital Kenyasi is about 50km from Sunyani the Regional capital of Brong Ahafo. The District has a total land surface area of 936km² of which a part of 286.33km² is the gold mining concession for NGGL. The Ahafo Gold Project of NGGL is easily accessible by the main Accra-Kumasi-Sunyani highway, which converges with the Sunyani-Ntotroso-Kenyasi Road. Additionally, there is a good road network interconnecting the concession via Kumasi-Hwidiem-Kenyasi Road.

The extractive sector in Africa, in particular mining is one area in which the flow of FDI clearly manifested (Figure 6). FDI in the extractive sector is not a new phenomenon on the continent. According to a report of the International Study Group (2011) the competition to find and control sources of raw materials, including minerals, was one of the main drivers of European penetration and eventual colonial partition of Africa in the last quarter of the 19th century." Between 1870 and the Great Depression of 1929 the pre-colonial patterns of production and consumption of minerals, where these activities were firmly located and integrated in the local economy, were radically altered and replaced by a colonially-induced pattern, in which foreign-owned mining enclaves dominated most colonial African economies." In the 21st century, the ownership of extractive projects in Africa, particularly mining projects is a re-run of the colonial project. The FDI dominance in the mining sector of Africa is a simple derivative of the World Bank inspired reforms that were introduced under structural adjustment programmes in the early 1990s through mid-1990s. Under structural adjustment the mining was targeted for massive policy and institutional reforms leading to liberalization and the privatization of hitherto state owned mining corporations. The Africa wide liberalization of the mining sector triggered a boom in large-scale foreign direct investment into the sector as the policies and institutional reforms were primarily designed to attract foreign direct investment. The reforms offered very generous incentives and stable (protection) regimes to foreign investors.

Ghana was a pioneer in the structural adjustment programme in Africa and

the mining sector was a key area for reforms under the SAP. Other areas included the financial sector, agriculture and timber. Following liberalization of the mining sector it became the highest recipient of FDI, accounting for an estimated 60% of the total foreign direct investment inflow. In view of the large proportion of total FDI inflow into the mining sector over the years Abdulai (2005) argues that the issue of FDI in Ghana was becoming synonymous with the mining sector in Ghana. According to Abdulai (2005) while the non-mining sector record an accumulated net flows of a little over \$1.6 billion between 1980 and 2003 the total FDI into the mining sector during the same period was over \$5 billion with an average annual inflow of well over \$200 million. Between 1986 and 1999, about 13 new large-scale mines mainly foreign mining companies came on stream. By January 2009, a total of 225 mining companies were awarded mining leases and exploration rights to operate in Ghana (Minerals Commission, 2009). Out of the 225 mining companies, nine (9) were large-scale foreign mining companies, which produce the bulk of Ghana's gold, bauxite and manganese. The remaining 216 were junior exploration companies and medium-size operators spread across the length and breadth of the country. Newmont Ghana Gold Limited (NGGL) is among the top three producers of gold in Ghana.

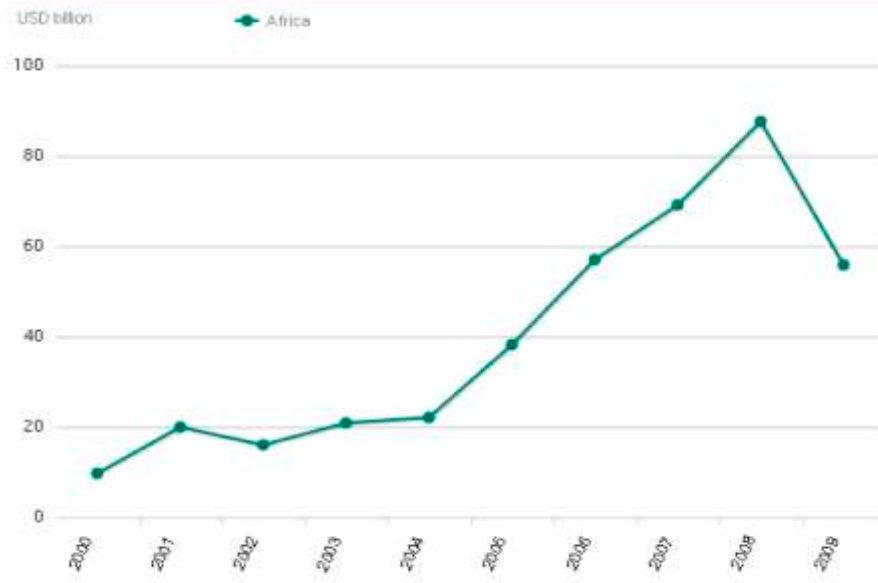
7.1 Stabilization

Chapter five presents a range of incentives that were provided under the laws of Ghana to attract foreign direct investment. In addition to the incentives provided under the minerals and mining laws it is permission for private mining companies (foreign or local) to enter

preference for long-term debt as a source of development financing gave impetus to the growing significance of FDI. Unlike in the 1970s when FDI was not a popular consideration in development financing, developing countries, in particular African countries, have been falling over themselves to attract as much FDI as they can. Abdulai (2005) reports that developing countries, like Ghana, have made FDI the centre of attention for policy makers. The shift in the stance of developing countries and Africa toward FDI is influenced by globalization and its accompanied

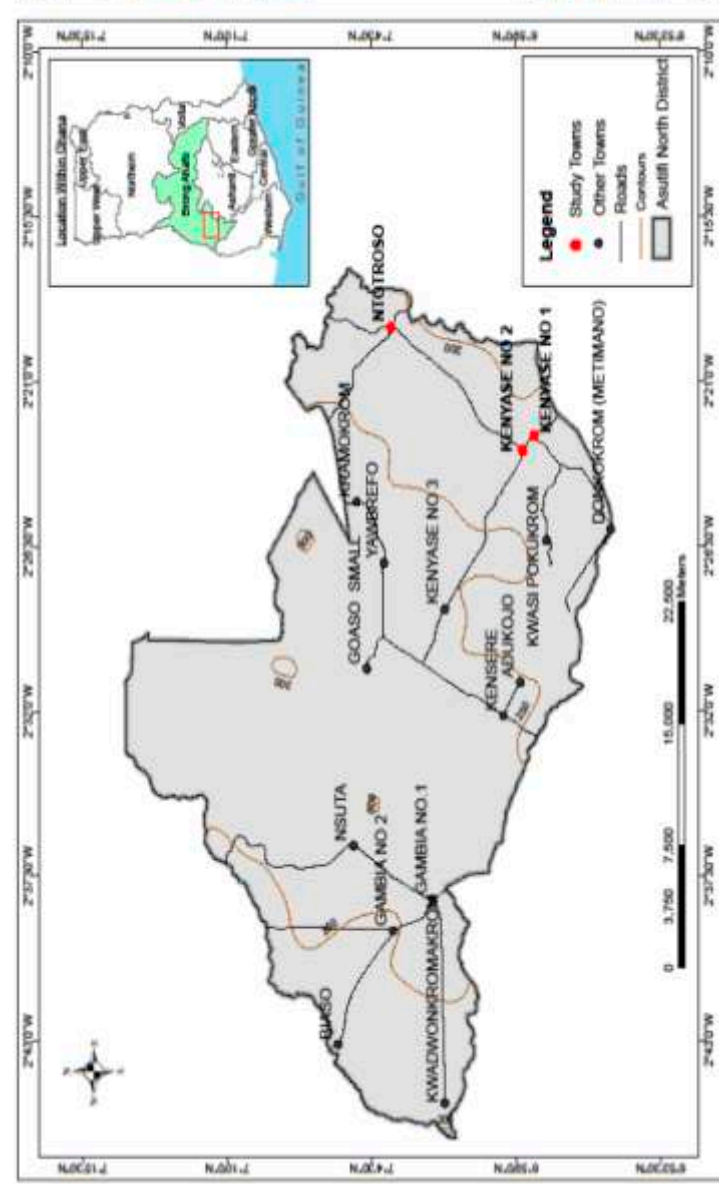
rapid liberalization in the broader sense, but even more specific sense by the prescriptive policies of bilateral and multilateral actors and institutions. By the 1990s FDI has emerged as a predominant source of external finance for developing countries recording a quantum leap from a mere US \$11billions or so in 1970 to more than US\$80b in 1980 and to over US\$100 billions in 1990. There was a further sharp increase in the next two years after 1995 until the Asian crisis.

Figure 6: FDI flows into Africa 2000 to 2009



Note: 2009 (preliminary estimates).
 Source: UNCTAD, March 2010.

Figure 2 : Map of Asutifi North District



Source: Richard Adjei-Poku, 2017

Population and Settlement Distribution

According to the Ghana Statistical Service, Asutifi North District the 2010 Population and Housing Census recorded the total population of the District at 52,259 comprising 26,761 males and 25, 498 females. This number represents 2.7 percent of the population of the Brong Ahafo Region. The population density of the Asutifi North District is 55.81m² per land. This has implication for future combination of traditional agriculture and the spread of surface mining activities in the District and therefore requires some planning attention. The population of the District is housed in over 139 settlements majority of which are scattered in rural areas making the District predominantly rural. The major urban settlements are Kenyasi No.1, Kenyasi No.2, Ntotroso, Wamahinso, Gyedu, and Gambia No2.

Economic Activity

Agriculture, in particular cash and food crop farming constitutes the main economic activity and source of income in the District, accounting for an estimated 51.1% of all incomes (DPCU, 2013). Wage and salary earning is the second largest economic activity and source of income, constituting about 19% of all incomes. Mining is gaining momentum as the most financially rewarding form of economic activity in

the District with NGGL being the largest single employer in the District. The employment record of NGGL stood at 3721 in 2007, it rose to 4664 in 2008, and further to 4765 in 2009 but fell to 3578 in 2010 but rose to 4957 in 2011 the highest in the period 2007 to 2011. There are also scores of small-scale gold miners dotted across the District and employing over twenty thousand youth. The results of the 2010 Population and Housing Census showed that 20,236 persons representing 38.7 percent of the population of the District are migrants compared to the Regional total migrant population of 75, 1196. The Asutifi North District Assembly believes that the presence of NGGL and the potential of gold deposits in the District and agricultural opportunities account for the relative high migrant population in the District.

Other economic activities in the study area include petty trade, food vending, hairdressing, carpentry, mason, driving and hospitality services. There are variations in the scale of these activities between the urban areas and the rural areas. The scale of the activities is much less in the rural areas compared with the urban centres. Despite the size of employment creation from mining agriculture, in particular crop farming remains the largest source of income for a majority of the population in the district (Table 2).

Table 2: Source of Income of Sampled Households, Asutifi North District

INCOME	PERCENTAGE
Crop Farming	51.1
Livestock Farming	2.3
Small Scale Industry	4.5
Business and Trading	17.0
Wages and Salaries including Mires Workers	19.0
Pensions, Rents and Remittances	4.1
Others	2.0
TOTAL	100

Source: Socio-Economic Survey by Asutifi District Assembly in 2010

CHAPTER SEVEN

STABILIZATION AND FOREIGN DIRECT INVESTMENT IN MINING

7.0 Foreign Direct Investment in the Mining Sector

Foreign direct investment (FDI) is basically an investment involving management control of a resident entity in one economy by an enterprise resident in another economy. FDI involves a long-term relationship reflecting an investor's lasting interest in a foreign entity. It is inevitably a force for far-reaching social, environmental and economic change throughout the world. The ascent of globalisation as policy, practice and law, transmitted through more corporate power as governments deregulate and privatise, as the IMF's power expanded to more countries and its restrictive macroeconomic policies combined with liberalization, has provided a super highway for capital account movement across the world. FDI is thus increasingly becoming the global market driven by intense competition between transnational corporations (TNCs) to invest in new markets and to seek access to low cost resources. FDI involves enormous changes in the amounts and the pattern of capital flows between countries and regions. In terms of ownership, the developed

industrialized countries and the economies in transition account for more than two thirds of the world's foreign direct investment stock. As the world economy has liberalised and become financially more integrated FDI has become a major influence on the changing sources of the external resource flows to developing countries in the last decades following globalization.

In the 1970s, long-term debt was the predominant source of finance for developing countries. During the immediate post-independence era, one of the priorities which young African states that emerged from the anti-colonial struggle set for themselves was the construction of strong, educated and industrialized nations. This goal was to be pursued simultaneously with a quest for the transformation of the anti-colonial nationalist fervour into a force for the integration of societies that had been fractured into multiple ethnic and cultural groupings upon which the colonial divide-and-rule system rested with import substitution approach to industrialization. After an initial partial success for some countries, the post-colonial experiment revealed that the state building and the import substitution approach towards industrialization were much more complex than had been imagined. The geopolitical dynamics manifested in the cold war began and continue to squeeze the oxygen and energy required of the young independent African states to industrialize and transform their economies. Indeed the geopolitics tended to create serious restrictions on the path towards import substitution industrialization.

In the 1980s, as a consequence of the debt crisis, long-term debt as a source of investment financing became relatively less important. The less

have few employees who may be close relatives or dependents, and physical address (fixed location) for ease of access. For example, at an interview with the Assembly, it was reported that the Assembly does not collect revenue from the numerous artisanal small-scale miners (ASM) operating in the area because the miners have not been registered. One of the disincentives for registering the ASM is due to their migratory nature. They dig, leave the holes and disappear only for new set of people to take over the area.

A key challenge is how to determine responsibility and accountability for revenue mobilization. This challenge is compounded by the fact that the prevailing power blocks (the Assembly Administration, Assembly Members and Traditional Authorities) look up to the other for revenue mobilization.

The other challenge is the absence of direct and relevant plan and strategy for sustained benefits from mining. The sustainable flow of revenue from mining to the area appears to be dependent on the NGGL Ahafo sponsored foundation, which is setting aside some funds for use after the life of the mine.

The role of Local governments in negotiating mining investment agreements is limited with the potential for mining agreements ignoring the peculiarities of local authorities. Local governments are central for ensuring the achievement of national sustainable development goals, as they are responsible for service delivery and the overall

development of their areas. Yet the role of local authorities in the negotiation for mining investment agreements is limited to administrative requirements.

Further, the district as a whole is not economically viable for taxation purposes, only a small number of towns like Kenyasi and Ntotroso are active economically with business with the potential for taxation. The rest of the communities are villages and small town engaged in peasant production with very little or no data on their activities and income. Due to the predominant informalisation, it is difficult to determine the activities from which taxes can be imposed and collected. It is equally difficult to differentiate between illegal businesses and legal businesses that are operating illegally.

Informants also reported inadequate information on the benefits and uses of taxation. Majority of the respondents interviewed reported that they do not have information on what the use of monies collected by the ANDA. Some believe that the taxes they pay simply end up in the pockets of officials of the Assembly and tax collectors. The situation is complicated by lack of knowledge of the types of taxes the Assembly imposes and collects. For instance, most informants complained of double taxation. However, an explanation of the double taxation clearly shows lack of understanding of the different types of taxes imposed and collected by the Assembly. For example, a coupled in Kenyasi complained paying market toll and roadworthy for heir vehicle.

Geology and Minerals

The geology of an area helps to determine the distribution of minerals as already put forth. The geology, with regard to the District gives an insight into the general nature and pattern of the soil and the potential occurrences of specific mineral resources. The geology of the District also has major influence on underground water availability and access especially the drilling of wells and boreholes. The geology of the Newmont Ahafo Gold Project is similar to that of old mining towns in Ghana such as Obuasi, Tarkwa, Prestea, Konongo and Bibiani. The Ahafo deposits occur within the Birimian rocks.

The Asutifi North District Assembly (2014) reports that the Birimian and Dahomeyan formations and rocks have high potentials for such minerals as Manganese and Bauxite. Other potential deposits noted by the Assembly include granites, clay, sand, and diamond. According to the Assembly studies have shown that diamond abounds in large quantities at Wamahinso and exploration is yet to begin. There is also a widespread deposit of sand and clay in the District. The sand and clay deposits can be found at Kenyasi, Gambia No.2 and Gyedu. There are rounded out-crops of granite found over the Birimian rocks at Kwadwo Addaekrom, Goa Asutifi, and other smaller communities which have high potential of iron and bauxite.

Vegetation, Topography and Drainage
The district lies within the wet semi-equatorial ecological zone. This area also marks the boundary between the forest belt and Guinea Savannah ecological zones of Ghana. Tree species like Odum, Mahogany and

Sapele, which form the basis of the flourishing Timber Industry in Ghana, are found in the vegetation of the district. Some parts, which hitherto were known to be wet semi-equatorial ecology, have been transformed into dried wooded savanna areas. Such transitional zones are observed in communities like Goamu-Koforidua, Kenserere and Dadiesoaba. The road from Ntotroso to Kenyasi No.2 used to be closely laced vegetation with tall trees enveloped continuously with canopy of creepers. This naturally occurring scenery of plants is giving way to piles of rock tailings, which appear on the side of the road as growing artificial hills.

The topography of the District is generally flat with spots of gently rippling slopes with network of streams and rivers. Most of these streams take their sources from the Subin River. These streams and rivers serve as sources of domestic water, fishing and light industrial activities for several settlements including farmhouses in the area. Mining facilities of NGGL including Mine Pits at Subika, Awonsu, Apensuand and Amoma; Waste Rock Dumps; Haul Roads; Ore Processing Plant; Tailing Storage Facility; Water Storage Facility; Environmental Control Dams; Workshops and; the Subika Exploration Decline either traverse the streams and rivers or are sited near their sources. These facilities and the effluent they release into environment have been a major focus of concern of many civil society organizations and the neighbouring communities. The focus of this study is the extent to which the presence of these facilities and the Mine as a whole contribute towards local level revenue mobilization.

CHAPTER FOUR

NEWMONT GHANA GOLD LIMITED

Newmont Ghana Gold Limited (NGGL) is a subsidiary of Newmont Mining Corporation. Newmont Mining Corporation was founded in 1921 in New York City and publicly traded since 1925. The Company has its headquarters in Greenwood Village, Denver, Colorado, United States of America (Newmont Ghana, 2008). Newmont (2017) reports that it has approximately 30,000 employees and contractors, with the majority working at managed operations in the United States, Australia, Ghana, Peru, and Suriname. Newmont describe itself as “an industry leader in value creation and the only gold producer listed in the S&P 500 index, with the purpose “to create value and improve lives through sustainable and responsible mining” guided by “five core values: safety, integrity, sustainability, inclusion and responsibility.” As at 31st December 2016 the combined proven and probable gold reserves of Newmont Mining Corporation in Africa mainly Ghana stood at about 215,500 (x1000 tonnes).

NGGL operates two large-scale open-pit gold mines in Ghana the Ahafo and Akyem gold mine projects. The Ahafo Gold Project is the first gold project of the company in Ghana located in portions of Asutifi North and Tano North Districts of Brong Ahafo Region.

The concession was acquired from an Australian gold mining company Normandy Mining Limited and activities commenced on the concession in February 2002 after the acquisition. The Akyem project is located in the Birim North District of Eastern Region. The development of the Akyem project has generated a lot of public outrage due to the potential environmental impacts on the Ajenua Bepo Forest Reserve. The Akyem concession falls in portion of this forest reserve, which both regulators and civil society believe would have irrecoverable impacts on the reserve. Approximately 71 hectares of the open-pit facility would be located in the Ajenua Bepo Forest Reserve. The development of the mine and production of gold would further directly affect 1,875 hectares of the reserve through removal of vegetation, soil and subsoil.

In 2006, the Environmental Protection Agency (EPA) failed to accept Newmont's mitigation plan due to the size of the open-pit in the reserve and inadequacy of the purported reclamation plans of the Company. The EPA believed then that the height of the waste rock dump, in particular posed extreme danger to both the biodiversity and the communities in the area. Based on the identified concerns the Agency requested Newmont Ghana Gold Limited to address the concerns and resubmit a revised mitigation plan. In a sign-on-letter to the President of the Republic of Ghana dated 20th May 2008 the national Coalition on Mining (NCOM) a grouping of communities, individuals and NGOs expressed concerns about the location of the concession in the reserve. NCOM argued that the request by the EPA for a revision of the mitigation plan was not adequate; rather the agency should have rejected

two sites was over Two Thousand people. The ANDA can mobilize revenue by imposing and collecting tolls from the traders. The Assembly can also mobilize revenue through annual registration of miners in the district.

There are other economic activities brought about by mining from which the ANDA can mobilize revenue. They include transport services, hospitality services, banking, fuel dumps and mine equipment shops. The study found scores of young men who have taken up Okada riding as a business transporting small-scale miners and other commuters to and from their operational sites. There were only two guesthouses (Allabama guesthouse and Government guesthouse) in the district capital before the commencement of the Ahafo Gold Mine Project development. Today the number of guesthouses has increased to Nine (9) and a hotel; 6 and 1 hotel in Kenyasi-2, 1 in Kenyasi-1 and 2 in Ntotroso. Commercial banks in the district has increased from 1 in pre-mining period to 3, Ecobank and ADB have been established in addition to the only Asutifi Rural Bank.

In sum, the opportunities for mobilizing revenue from mining in the district include

- Levies on the NGGL and other businesses
- Rates on businesses and their properties
- Payment of royalty entitlement to the District
- Fees from registration of local businesses and small-scale miners
- Income from the provision of specialized services to the mine
- NGGL corporate social responsibility
- NGGL sponsored foundation the Newmont Ahafo Foundation

6.3 Challenges in Mobilizing Revenue Locally

Local level revenue and resources mobilization for development purposes is becoming more and more important for MMDAs as it is used as a measure of performance to access more resources. It is also important for determining the depth of decentralization and the autonomy of the district assembly. Despite the importance, the performance of MMDAs in local level resource mobilization over the years has suggested that the task is more difficult than anticipated.

According to ANDA (2013) the challenges that the District faces in the mobilisation of local revenue include: (i) inadequate permanent collectors, (ii) over reliance on commission collectors (iii) lack of vehicle for revenue mobilization, (iv) low morale among revenue staff, (v) poor supervision of revenue staff, (vi) non-functional sub-District structures, making it difficult for them to support revenue mobilization (vii) negative attitude of some community leaders towards revenue mobilization, (viii) absence of valuation list for commercial, industrial and residential properties, and (ix) high cost of prosecuting defaulters discourages the Assembly from prosecution as a deterrent.

In addition to the challenges summarized by the ANDA, local level revenue mobilization is also challenged by the structure of the local economy. Majority of the taxable workers are in the informal economy that are not captured by the Assembly for the purpose of taxation. Business and income generating operators do not keep records of accounts; they

National Strategic Environmental Impact Assessment (NSEIA) report prepared in 2007 makes similar claims and goes further to provide data analyses which illustrate that communities proximate to mining projects are generally poorer than those further away from mining and also show a clear trend of decreasing poverty with distance away from the mine (NSEIA, 2007). On the other hand other studies have cited the jobs created under mining as well as increased in mining revenues paid to local authorities as direct and indirect ways in which mining impacts local livelihoods positively.

Field visits to the study area show graphic poverty occasioned by deprivation of populations from access to farmlands, and sources of livelihood and income. The visits also reveal a host of opportunities brought about by investment in the extraction of gold. Section 144 of the Local Governance Act, 2016, (Act 936) empowers MMDAs to impose and collect general and special rate on immovable property. The ANDA reports that NGGL Ahafo Mine Project alone has over 50 facilities (immovable properties). This is an opportunity for the Assembly to mobilize local revenue by imposing the appropriate annual rates on the property.

The Assembly also has a share of the mineral royalties payable and annual ground rent collected by the Office of the Administrator of Stool Lands in respect of mining. Section 23 (2) of the Minerals and Mining Act, 2006 (Act 703) states that "payments of annual ground rent shall be made to the owner of the land or successors and assigns of the owner except in the case of annual ground rent in respect of mineral rights over stool lands, which shall be paid to the Office of the

Administrator of Stool Lands, for application in accordance with the Office of the Administrator of Stool Lands Act 1994 (Act 481). Article 267 of the 1992 Constitution of the Republic of Ghana assigns 55% of 10% of the revenue accruing mineral royalty to MMDAs that host mining projects. The location of the NGGL Ahafo Gold Mine Project is an opportunity for the ANDA to mobilize revenue from the mine through receipt of ground rent and royalties.

As part of the overall objective of NGGL to increase income and employment for local communities in the Ahafo Gold Mine Project, the company set up the Ahafo Linkages Programme (ALP) with support from the International Finance Corporation (IFC) to: (i) support the development of 42 local businesses through capacity building; (ii) improve the competitiveness of 49 local non-mining businesses; and (iii) develop and improve the capacity of Ahafo Local Business Association and other local providers of business development services in order to provide long-term sustainable business support, training and other services to the local business community. The company has also set up the Newmont Ahafo Development Fund (NADeF) that creates employment, provide income generating activities and alternative livelihood programmes. All of these provide opportunity for the ANDA to increase the scope of local taxes in the medium to long-term.

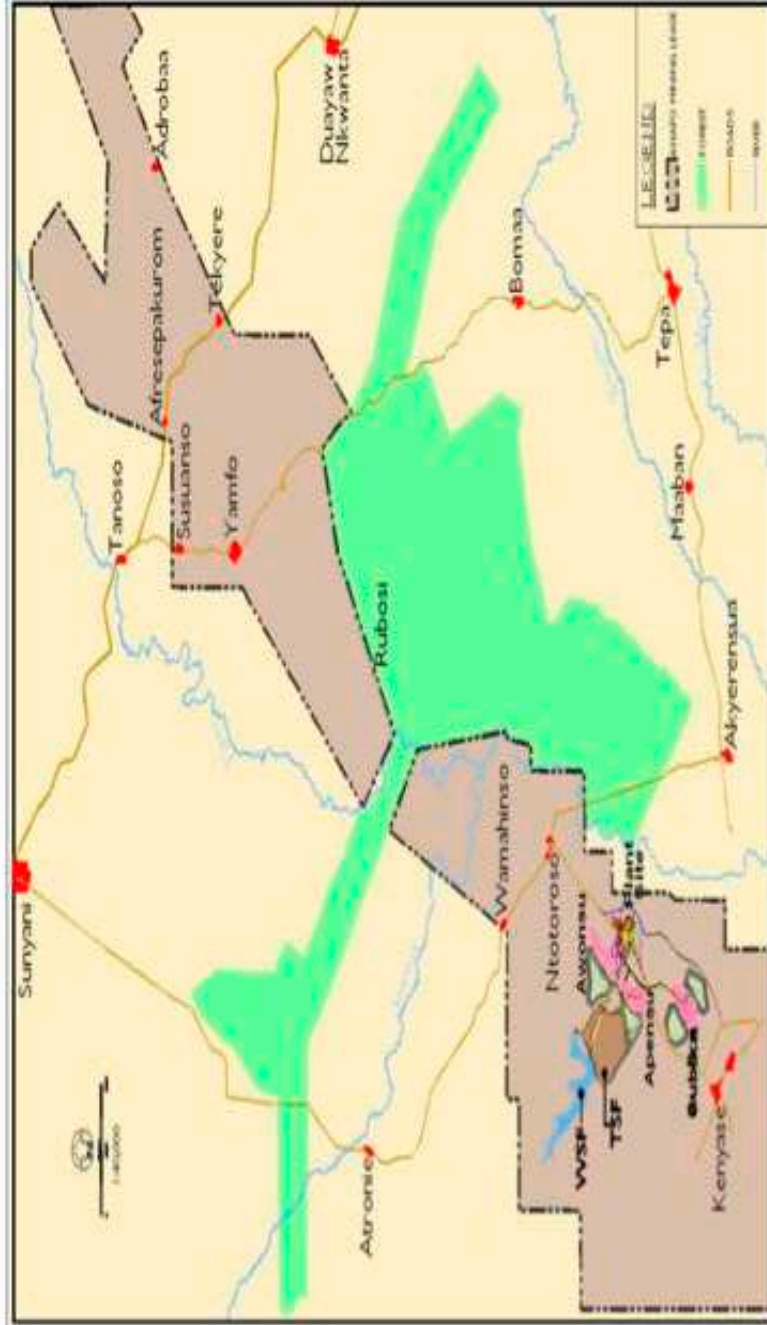
The geological potential of the ANDA has attracted scores of small-scale and artisanal miners (SSAM). There are two main sites on which SSAM extract gold in the ANDA namely Akantansu and Sika-Mnaso. A head count of miners and traders operating in the

outright a permit for the company to operate open-pit mining in the Reserve. According to NCOM the revision would affect only the size of the pit, but other things such as proximity to communities, volume of wastes and noise would not change.

The Ahafo project (Figure 3) traverses two administrative districts the Asutifi North and Tanoh North Districts in the Brong Ahafo Region. There are two components of the project in the two Districts. The portion that lies within Asutifi North District is the Ahafo South Project while the Tano North District portion is the Ahafo North Project and directly affects five communities namely; Adrobaa, Afrisipa, Techire, Susanso and Yamfo. The Ahafo South Project, which is the subject of this study, is about eight hours drive from Accra the national capital. The project directly affects five communities (Kenyasi No.1, Kenyasi No.2, Ntotroso, Gyedu and Wamahinso). The three paramountcies are Kenyasi No.1, Kenyasi No.2 and Ntotroso while the remaining two communities Wamahinso and Gyedu fall under divisional chiefs. All the three Paramount chiefs and the two divisional chiefs report directly to the Ashantihene. The Paramount Chief is the highest level of designation for a

chief in a customarily and traditionally designated area. From pre-independence to date, chiefs continue to play important and lead role in the development of their communities and the maintenance of peace and security. They represent the cultural identity of a people, symbolizes the expression of unity, and serve as the custodian of traditional values and assets, the medium between the state and the locality, and mobilizing agents for local economic and social development. The Paramount chief in each of the paramountcies was a key interlocutor in the allocation of land use right for the concession. Under the laws of Ghana mineral right does not cover ownership for land. Therefore the mineral right holder requires separate arrangement to enable him exercise his mineral right. The 1992 Constitution of Ghana vests the ownership of land in stools. Section 267 (1) of the Constitution states that "All stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage." This provision also applies to families and skins as the case may be. The ownership of land also gives rights to landowners a share of mineral royalties and land rent relating to minerals produced on their land.

Figure 3: NGGL Ahafo Gold Project



Source: EPA, 2012

6.2. Opportunities for Improving Local Level Revenue from Gold Mining

Gold, a reddish yellow, malleable and ductile, is a heterogeneous naturally occurring metal, which results from weathering of parent sedimentary or metamorphic rocks. The concentration of gold is 4milligram per ton (ppb) in the upper layer and 0.01 milligram per m3 in seawater (Korte and Coulson, 2000). The location of this rare metal requires the extraction of the earth, the use of water and the application of gold trapping chemicals such as mercury and cyanide. Da Rosa and Lyon (1997) report that refined gold represents only about 0.00015% of all the raw materials used in the gold mining process, for a wedding ring of 14 karat gold 2.8 tones of ore would have been generated as waste.

Gold is used to produce variety of Jewelleries, decoration, door locks, and the protection of the value of currencies. In Ghana, gold is part of the regalia of Chiefs customary selected or elected persons. The number and size of gold or gold ornament a chief wears signify the social stature of the chief among his or her ethnic group.

Gold is extracted in many countries in the world. In recent times however, gold mining has tended to concentrate more in the developing countries than in the advanced industrialized countries. It is common to find multinational mining companies (MNCs) mainly from the United Kingdom, United States of America, Australia, Canada and more recently China, India and Brazil prospecting, exploring and extracting gold in developing countries. Some of the developing countries, which host multinational gold mining companies

are Papua New Guinea, West Papua, Venezuela, Uzbekistan, Indonesia, India, Peru, Philippines, and several other countries in Africa notably South Africa, Ghana, Mali, Burkina Faso, Tanzania and the Democratic Republic of Congo. It is important to note that MNCs from South Africa operate in many other mineral producing countries in Africa following the demise of the apartheid rule. Besides South Africa, the gold sector is dominated by MNCs. This dominance raises questions regarding the capacity of young, weak and small African states to negotiate with MNCs and secure terms of mining agreements that maximizes the benefits to the domestic economy while contributing to environmental rehabilitation.

The value-chain for producing gold is associated with vast opportunities for revenue mobilization. There are stages through which a final product of gold is produced. They generally include (i) prospecting, (ii) exploration, (iii) mine development, (iv) production, (v) processing, (vi) smelting and refining, (vii) fabrication and (viii) final product. Each of these stages comes with opportunities for local authorities and their communities to mobilize the mineral revenue. However, the results of a number of studies that have assessed the impacts of industrial mining on local communities have been mixed. For example some studies have painted a gloomy picture about mining in the localities. They contend that poverty is pervasive and endemic in mining communities (Botchie and Akabzaa, 2007), citing the annexing of vast land areas and depriving the local population of strategic sources of livelihoods and income. Rampant dislocations of communities for mining activities have tendered to foster poverty amongst displaced communities. A draft

Table 5: IGF of the ANDA for the Period 2010 -2013

Year	2010				2011		2012		2013		Total Mineral Revenue to ANDA 2012 -2016	
	Revenue Head	Amount GH¢	Amount GH¢	Amount GH¢	Amount GH¢	Amount GH¢	Amount GH¢	Amount GH¢	Amount GH¢	Year	Revenue GH¢	
	Rates	93,955.06	58,243.00	26,072.00	18,010.02	2012	2,299,569.18					
	Lands/Royalties	1,155,237.70	1,638,098.84	2,205,524.06	25,648.00	2013	120,534.51					
	Fees & Fines	1,473.70	17,150.00	13,250.50	12,341.80	2014	1,116,857.52					
	Li censes	28,092.50	14,032.00	16,017.00	13,777.00	2015	1,580,329.94					
	Rent	2,952.00	2,823.50	4,245.80	34,005.56	2016	4,893,825.92					
	Investment Income	333,811.70	542,268.26	7,057,397.40	3,089,608.70	Total	10,011,117.10					
	Miscellaneous	28,758.66	61,530.00	34,335.02	16,752.13							
	TOTALS	1,664,281.39	2,334,045.63	9,356,837.7	3,210,143.21							

Source: ANDA, 2010 and Fieldwork, 2017

The project was formalised around 19th December 2003 with the signing of an investment agreement between the Government of Ghana and Newmont Ghana Gold Limited. By 2004, NGGL had started preparation towards the development of the mine by engaging in resettlement and compensation payment negotiations with the communities affected by the mine and subsequently resettlement of hundreds of households. The Ahafo gold project is partly financed by a loan of USD125 million from the International Finance Corporation (IFC) of the World Bank Group. Actual gold production began in January 2006 and the NGGL poured its first gold of the project on 18th July 2006 and commenced commercial production in August 2006. NGGL currently operates four open pits at Ahafo with total reserves contained in 15 pits. An evaluation of the possibility for underground mining is underway with development of an underground exploration decline. Ahafo's proven and probable gold reserves, as at 31 December 2009, were estimated at 9.1Moz.

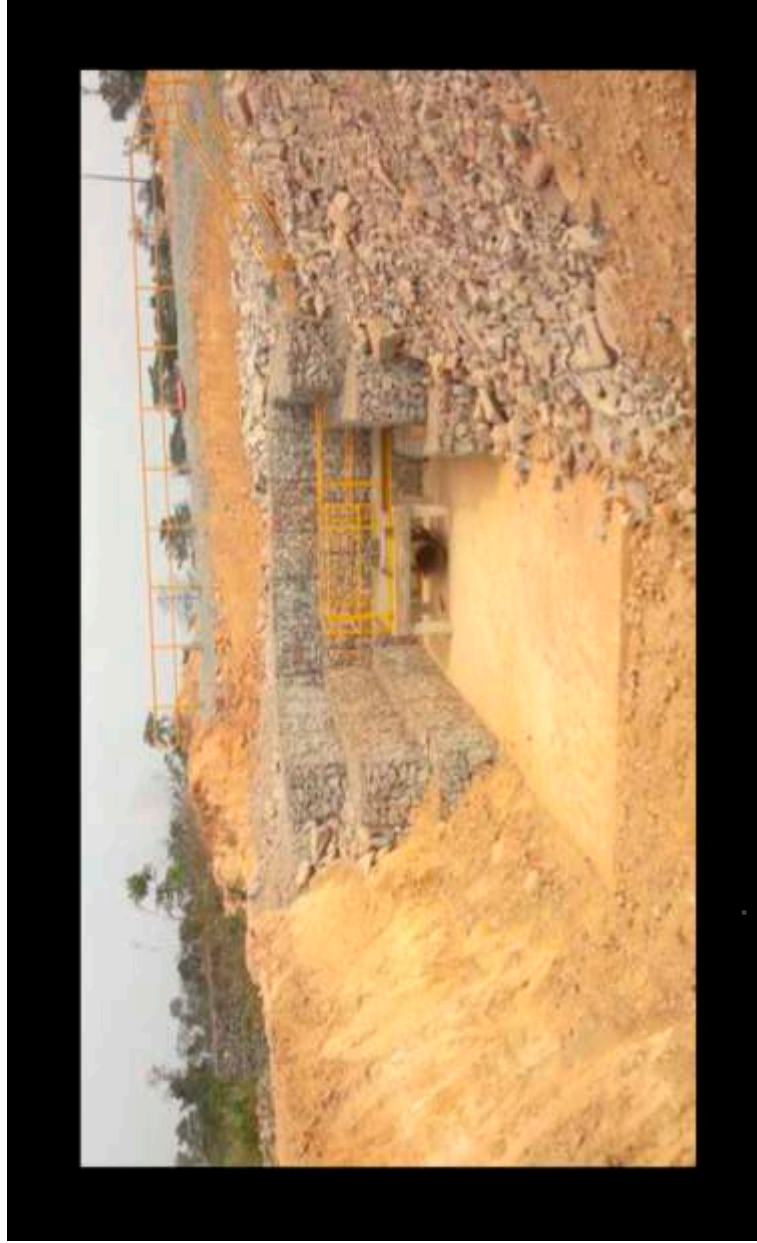
The NGGL Ahafo Gold Project is located along the Sefwi Volcanic Belt, approximately 307 Kilometers northwest from the national capital Accra. The communities directly affected by the entire Ahafo project are Kenyasi No. 1, Kenyasi No. 2, Ntotroso, Gyedu, Wamahinso, Susuanso, Terchire, Yamfo, Afirisipakrom and Adrobaa. However, the main communities directly affected by the mine in the Asutifi North District are Kenyasi No.1, Kenyasi No. 2, Ntotroso, Gyedu, and Wamahinso. It must be pointed out that there are other villages and cottages in the District directly affected by the mine.

In the Asutifi North District NGGL has

introduced innovative measures in responding to the negative impact of the mine on the communities, the environment and the national economy. With respect to the environment, NGGL undertakes dust suppression measures regularly, safety measures on the use of its machines and equipment as well as haulage of ore on the road. All haulage access ways and work sites/stations are clearly labeled with appropriate warning signs. NGGL has also put in place EPA approved measures for mitigating environmental pollution, which include the creation of environmental control dam (Figure 4) and the installation of aerators in ponds to boost up oxygen levels regularly for the maintenance of aquatic life. NGGL also carries out and supports tree planting and land improvement activities in the District through its livelihood and environmental conservation programmes.

Newmont Ghana Gold Limited (NGGL) has launched an ambitious community driven development Strategy in the Ahafo Gold Project area the Newmont Ahafo Development Foundation (NADeF). NADeF was established in May 2008 to execute corporate social responsibility projects in the operational area of the Ahafo Gold Mine Project. Newmont Ghana Gold Limited (NGGL) makes a quarterly allocation of \$1 per an ounce of gold produced and pay into NADeF. In addition, NGGL allocates 1% of the net profit from the Ahafo Mine and pay into the Foundation. The funds from the Foundation are used to support development projects under six main areas namely: (i) Human Resource Development; (ii) Economic Empowerment; (iii) Provision of Infrastructure; (iv) Natural Resources; (v) Cultural Heritage; and (vi) Sports

Figure 4: NGGL Environmental Control Dam, Asutifi North District



Source: EPA, 2012

and Social Amenities. Provision of infrastructure and human resource development in particular scholarship for school children appears to be the highest priority areas of investment of funds from the Foundation.

CHAPTER SIX

OPPORTUNITIES AND CHALLENGES IN LOCAL REVENUE MOBILIZATION

The policies and laws as well as the development and production of gold provide opportunities for revenue mobilization. This chapter outlines the revenue sources to the ANDA and the opportunities that gold mining brings for improving local level revenue mobilization. The section concludes by highlighting the challenges faced by the ANDA for local level revenue mobilization.

6.1 Sources of Revenue to ANDA

According to the DPCU (2014), the "Asutifi North District Assembly has two main revenue sources. These are

Internally Generated Funds (IGF) and External Financial Inflows from sources such as District Assemblies Common Fund (DACF), HIPC Fund, CWSP fund, GET fund, MP's Common Fund, Central Government monthly transfers to pay salaries of Assembly workers on Government pay roll, and lately District Development Facility Fund (DDF)." The DDF is a performance based grant introduced by the government of Ghana in collaboration with its development partners as incentive to enhance capacity and performance of MMDAs.

The IGF of the ANDA comes from a variety of sources which are summarized into seven main revenue heads namely: (i) Rates with sub-heads as basic rate, property rate and special rate; (ii) Land/Royalties with sub-heads as land, timber, minerals and building permits; (iii) Fees and Fines with sub-heads as exportation of goods and lorry parks; (iv) Licenses with sub-heads as herbalist, contractors, liquor distillers, and banking; (v) Rent with sub-heads as Assembly Quarters and premises; (vi) Investment income from hiring of Assembly Grader/Tractor/hall; and (vii) Miscellaneous such as sale of tender documents (ANDA, 2010 and Fieldwork, 2017). Table 5 illustrates the performance of the ANDA in IGF from 2010 to 2013.

Allowance	when a mining beginning from year two of production		
Carried Forward Capital Allowance	An allowance in lieu of expenditures incurred during the reconnaissance and prospecting phases of mining that are capitalized	Indefinitely	
Investment Allowance	Allowance given in addition to capital allowance	5%	
Carried Forward Losses	Losses made in previous years can be brought against profit in subsequent years	Up to five years	Deducted before tax
Off-shore Retention of Sales	Permission for mining companies to retain a proportion of their mineral sales income in off-share accounts	25% - 80%	To finance some expenses
Exemption from Expatriate Income Taxes	Exemptions or reduced taxation on income of expatriate employees of mining companies.	Obtained by deed of warranty or specific agreements	May be specific
Price Discovery			
	They are yet to be applied to mining in Ghana		

Source: Fieldwork, 2017 & Akabzaa and Ayamdoo (2009)

The fiscal terms constitute the revenue streams from mining. GHEITI (2014) classifies the revenue streams according to the National Budget and the International Monetary Fund Government Finance Statistics into six (Table 4).

Table 4: Mineral Revenue Streams in Ghana

*Revenue Stream	Receiving Entity
Mineral Right Fees	Pay to Minerals Commission as IGF
Ground Rent	Receive by OASL and pay to District Assemblies, Traditional Authorities and Stools
Property Rate	Impose, collect and spend by the District as IGF
Mineral Royalty	Collect by GRA pay into the consolidated fund; transfer 10% to Mineral Development Fund Account and another 10% to OASL. OASL retains 1% and transfers % to TA; % to Stools and % to District Assembly
Dividend	GRA collects and pays into the consolidated fund
Corporate Tax	GRA collects and pay into the consolidated fund

Source: Fieldwork, 2017 and GHEITI, 2014

Table 4 shows that MMDAs that host mining projects are entitled to a share of the mineral royalty and ground rent. MMDAs also have the legal power to impose and collect property rate from mining companies operating in their administrative jurisdiction.

A secretariat has been set up to manage the NADeF and consists of a Board of Trustees and full-time workers. The Board of Trustees draws its members from representatives of communities in the catchment area of the Ahafo Mine, the Asutifi District Assembly and NGGL. Each community in the mine catchment area has set up a Sustainable Development Committee (SDC). The community elects a number of facilitators to constitute the Sustainable Development Committees. The SDCs conceive, prepare and submit their projects to NADeF through the Ahafo Social responsibility Forum (ASRF). The ASRF and the Asutifi North District Assembly review the projects submitted by SDCs and submit to NADeF who then approves them or otherwise. The role of the Assembly in the review to ensure that there is no duplication of projects in the communities. Membership of the ASRF is drawn from the various SDCs and representatives of the Traditional Authority, the Asutifi District Assembly and NGGL. The Asutifi North District Assembly takes responsibility for monitoring implementation and maintenance of projects funded by the NADeF. As a sustainability strategy after the life of the mine, NGGL decided to set aside a portion of the funds into NADeF as Endowment Fund to be used only after the life of the Ahafo Mine. For the first five years, 5% of the total amount of going into NADeF will be ring-fenced for the Endowment Fund. The percentage contribution will increase to 10% in the first ten years and 15% in the first 15 years of the life of the Ahafo Mine.

In addition to NADeF, two other major components of the corporate social responsibility of NGGL in the area are Voluntary Donations and Matching

Fund. Under the Voluntary Donations the company sets aside funds for donations voluntarily to various "stakeholders" in the project area and Africa region as a whole. The staff of NGGL manages this strategy exclusively. The Ghana office of the company, which also serve as the Africa Regional office for this strategy receives and process requests and applications for payment. With regard to the Matching Fund NGGL has instituted a programme known as Day of Caring, which takes place annually. On the Day of Caring programme employees of the company independently select a specific project or service to deliver within a specified period. The company provides about 50% of the total cost of the selected project or service and the employees contribute the remaining 50% to deliver on the project. NGGL views the contribution of the workers as a way of encouraging its employees to care about the plight of people and communities by making financial contribution to help in addressing such plights, especially for communities in which the workers live and work.

NGGL and Newmont as a whole also have the dark side of their operations. The study found over 631 articles on the website of the Mines and Communities (MAC) covering the negative externalities of Newmont Mining Corporation. These negative externalities from various countries and organizations include environmental pollution, human rights abuses, forced resettlement, destruction of livelihood and a whole host of concerns from the operations of Newmont Mining Corporations. MAC a unique network of indigenous and solidarity NGOs, representing thousands of people directly affected by the mining industry launched its

website in 2001 to provide communities, NGOs, activists, the media and the general public with information about many aspects of global mining and its impacts. In Peru, the Yanacocha Mine in Cajamarca operated by Newmont was plagued with troubles. The Yanacocha mine is reported to be the second largest gold mine in the world measuring about 250km². According to Oxfam America (2009) since the Yanacocha mine began operations in 1993 local campesino organizations have staged protests against the project for a variety of reasons, including concerns that the Newmont compensated them unfairly for land taken by the mine and that the mine is contaminating local streams, which are used for irrigation and watering livestock. In 2000, a truck traveling from the mine spilled more than 650 pounds of liquid mercury on a road that passed through several communities. Nearly 1,000 villagers contracted mercury poisoning as a result. In 2001–2, communities protested violently over the spill and the company's perceived slow response and inadequate compensation. Two years later, in 2004, communities protested again, this time over the mine's plans to expand its operations onto Cerro Quilish, a mountain considered by many to be a key local water source. The protests, which turned violent and lasted several days, forced the company to scale back operations and ultimately to withdraw from Cerro Quilish.

Global civil society organizations and community based groups have given awarded Newmont Mining Corporations awards for poor environmental, social and human rights performance. In 2003, a collection of activists around the world awarded the Dirty Diggers Prize jointly

to Newmont, Rio Tinto & Placer Dome for their continued use, and advocacy of, Submarine Tailings Disposal (STD or DSTP) in the Asia-Pacific (MAC, 2001). The prize givers argue that despite numerous warnings of marine biologists and recent practical failures in the technology, these companies continue to pour millions of tonnes of toxic mine wastes into the ocean, smothering vital organisms on the seabed. Also, in 2009, a group of non-governmental organizations from around the world coordinated by Swiss organizations Erklarung von Bern and Greenpeace Switzerland gave the Public Eye Award to Newmont for the destruction of unique natural habitats, carrying out forced resettlement of local people and polluting the soil and rivers under its Akyem gold project in Ghana (Wikipedia, 2009).

The exploration, development, production and the processing of mineral ore has resulted in the destruction of land, environmental pollution and forced displacement and resettlements and destruction of streams and rivers in the Asutifi North District. The open pit technology of mining consumes large tracks of land and generates considerable waste than any other activity experienced by the District. In areas where active surface mining takes place, the landscape has become different. Huge craters of open pits (Figure 5), tailings dumps and cyanide containment lakes have become key features of the area that are potentially dangerous to local communities and wildlife. Some stream and rivers such as Apensu, Subri, Yaa Chain and Subika, which hitherto provided essential livelihood and spiritual services to communities in the area have either been polluted or completely destroyed to pave way for mining. River Subri, which was used

Table 3: Summary of Fiscal Imposts in Mining

Fiscal Elements	Description	Rate	Remarks
Imposts			
Royalty	Production tax imposed on gross market value of minerals produced	5%	
P. A. Y. E	Tax on income of employees/employers	Government policy	
Corporate Income Tax	Tax imposed on net profit of companies	35	
Capital Gain Tax	Imposed on sale of assets of a mine or sale of a mine	10	
Withholding tax	Imposed on dividends to shareholders, interest on loans and fees to management/Consultants/Contractors,	7%	
Property Rate	Rates levied on immovable properties of mining firms by local assembly including machineries.	Rates are set by the MMDAs through by-laws	Rate vary annually and from MMDAs
Ground Rent	Annual payment by mineral right holders to land owners through Office of the Administrator of Stool Lands.	Ghc1 a hectare for prospecting, & Ghc3 for mining lease	
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; 3. Transfer of License or Lease; 4. Principal Security; 5. Collateral Security; and 6. Transfer of Security.	Amount imposed: 1. Ghc0.5 2. Ghc5.0 3. 1% of value 4. 0.5% 5. 0.25% 6. 0.25%	1 & 2 is per hectare of land; 3 is value of transfer, and 4, 5 & 6 are on amount secured
Exemption Fees	Payment to MC to receive exemption for duty free imports. Rate is subject to parliamentary approval	Imposed by MC	Subject to periodic review
Licensing Fees	Fees paid to MC to obtain mineral rights (See table 1 for license types). Subject to parliamentary approval.	Fees imposed by MC	Subject to periodic review
All other Fees	Various fees imposed on mining companies for specific services such as acquisition of forms, cadastral search & documents processing. Fees are subject to parliamentary approval.	Imposed by the Minerals Commission	Subject to periodic review
Dividends	Government share of dividends.	Fix by Shareholders	Unpredictable
Free Carried Interest	An entitlement to government to hold a share in the Mine/Equity Participation	10% of total capitalization	No option to participate
Incentives			
Additional Profit Tax	A levy imposed on windfall profits or extra rents generated by mining firms, often arising from price hikes or discovery of unexpected high quality of grade of mineral deposit.	0%	It was 25% until 2006
Import License Tax/Import Levy	Levies on imports or regular payments made to obtain a license to import	Exempt	It was 10% before 1986
Import Duty	Additional duties on imports	Exempt	It was 5-35% before 1986
Foreign Exchange Tax	A tax charged for the use of foreign exchange earnings	Exempt	It was 33-75% before 1986
Gold Export Levy	A charge imposed on export of gold (usually in raw state)	Exempt	
Initial Capital Allowance	An allowance against taxable income when mining firm start production for the first time.	75% (80%)	
Subsequent Capital	An allowance against taxable income	50%	

5.3 Institutional Framework

The Minerals Commission established under the Minerals Commission Act, 1993, (Act) is the main institution responsible for regulating and managing the extraction of mineral resources as well as the coordination of policies relating to the extraction and development of mineral resources. Other key institutions with responsibility relating to the mining sector are: the Ministry of Lands and Natural Resources, Geological Survey Department, Environmental Protection Agency, Lands Commission, Precious Minerals and Marketing Company, Forestry Commission, Water Resources Commission, the Office of the Administrator of Stool Lands (OASL), and the Domestic Bulk Tax Unit of the Ghana Revenue Authority (GRA). The national laws are supported by international commitment for the extraction of mineral resources for economic transformation. To this end, Ghana has been key part in the drafting and adoption of the Africa Mining Vision and its action plan as well as the ECOWAS Mining Directives.

5.4 The Fiscal Regime for Mining in Ghana

The fiscal regime is “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” (Atta-Quayson, 2016). In this study, a fiscal regime refers to a system of taxes, incentives and other policy measures governing and regulating activities in an economy of a locality or a country. The fiscal regime for mining is therefore the policies and laws that determine the levels, scope, distribution and utilization of taxes, incentives and other charges relating to mining activities.

The Minerals and Mining Act, 2006 (Act 703) prescribes the fiscal terms for mining in Ghana. Key elements of the fiscal regime for the mining sector in Ghana are imposts, incentives and price recovery. Imposts constitute the taxes, royalties, levies, fees, rates, rents, and duties among others. Incentives comprise the exemptions and allowances granted to the investor. They are good instruments for attracting, retaining and protecting investment. Incentives may also be used as instrument for stimulating investment into government priority areas. Price recovery is a set of mechanisms for promoting transparency, the recovery of government expenditure and achieving the maximum developmental impact of an investment. The mechanisms used in price recovery include public tendering, auctioning, signature bonuses, and requirement for linkages to other developmental issues or sectors. Table 3 presents the fiscal terms for the mining sector of Ghana.

by several communities as their source of drinking water has been converted into the Water Storage Facility of the Company.

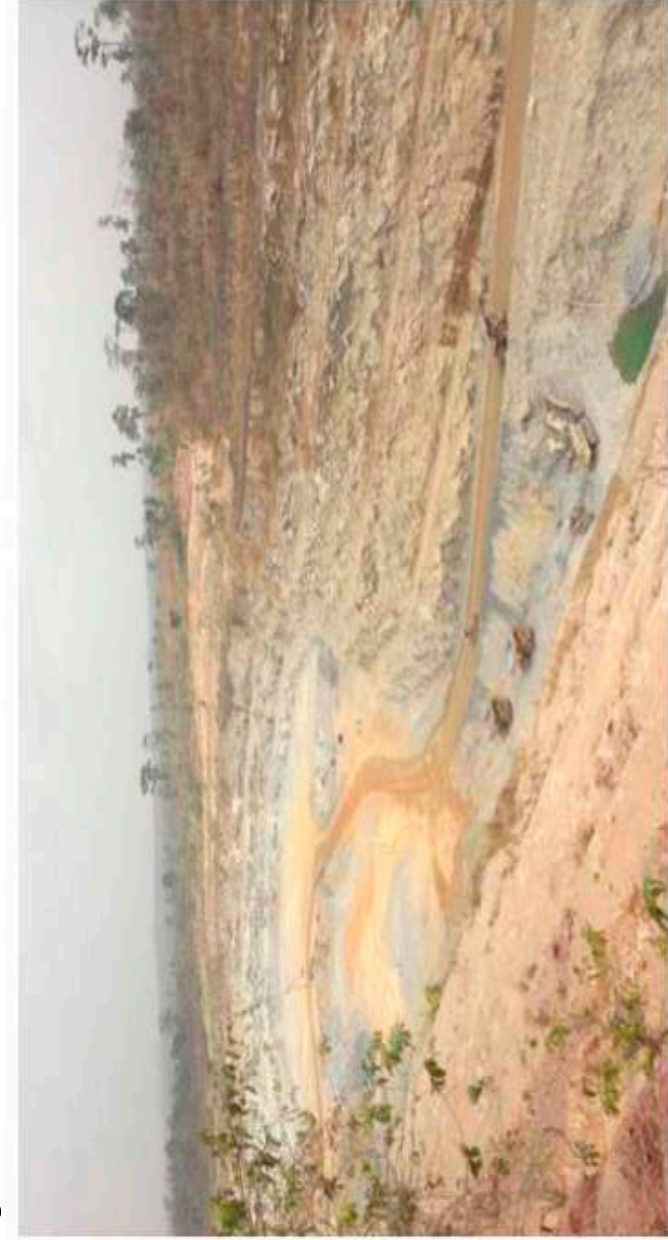


Figure 5 : NGGL Mine Pit at Asutifi North District

Source: EPA, 2012

In 2010, the Ministry of Environment Science and Technology Innovation (MESTI) of Ghana slapped a fine of 7million (USD 1.6 million) on NGGL for negligence and cover up of an accidental cyanide spill in the Ahafo Gold Project area. In October 2009, community members near the Ahafo Gold Project noticed scores of dead fish floating in a freshwater dam near the processing facility of NGGL. The community members and local NGOs blamed the death of the fishes on a cyanide spill by NGGL. The community members and other grassroots organizations led by Livelihood & Environment Ghana (LEG) submitted a petition to the Ministry of Environment, Science and Technology Innovation (MESTI). Following series of advocacy actions and dialogue between MESTI and NGGL a fine of 7 million (USD 1.6

million) was imposed on NGGL.

There are scores of media reports in which community members and non-governmental organizations accused NGGL the destruction of their livelihood, dust and water pollution, deprivation of access to farmland through resettlement, inadequate compensation, and human rights violations. Public Agenda (2015) reports that communities affected by the Newmont Ahafo Gold Project are asking the company “to fix the numerous environmental, social and human rights problems confronting” them. Newmont Ghana Gold Limited is the pioneer in entering into an investment agreement that has granted the company numerous open-ended. This agreement is the main subject of this study.

CHAPTER FIVE

POLICY, LEGAL AND INSTITUTIONAL FRAMEWORK FOR MINING IN GHANA

5.1 Policy Framework

The prospecting, reconnaissance, exploration, development and production of mining as well as the collection, sharing and disbursement of mineral revenue is guided by policy, law and practice. From 1983 to 2014 Ghana operated the mining sector without a written down national minerals and mining policy. The defacto national mineral and mining policy guiding the exploitation of mining has been the World Bank funded economic recovery programme, which prioritises increased exploration of mineral resources through increased attraction of foreign direct investment. Therefore, the Minerals and Mining Act, 1986 (Act 153) and its successor (Act 703) the main laws governing mining activities in Ghana were both passed in a policy vacuum. UNDP (2015) reports that it was only in 2014 that the minerals and mining policy for Ghana was finalised and adopted by Cabinet, providing the requisite written declaration of the framework of principles and policies that will guide Governments in the management of the mining and minerals sector, with key objectives outlined to support the sustainable

development of the national economy. The adoption of the national policy has shifted the debate from policy vacuum to policy credibility and quality.

5.2 Legal Framework

The 1992 Constitution of the Republic of Ghana vests the ownership of mineral in the Republic of Ghana and the President holds them in trust for the people of Ghana (Article 257 (6)). The 1992 Constitution proceeds to provide the legal framework for regulating the exploitation of mial resources. This framework includes the granting of power and authority to the Parliament of Ghana to pass laws or amend existing laws to establish institutions and mechanisms for the regulation and management of mineral resources in Ghana. As already indicated the main law for mining in Ghana is the Minerals and Mining Act, 2006 (Act 703).

In addition to the Act 703 there are other enactments and regulations governing the mining sector. These include: (i) Minerals and Mining (Amendment) Act, 2015, (Act 900); (ii) Minerals and Mining (General) Regulations, 2012 (LI 2173); (iii) Minerals and Mining (Compensation and Resettlements) Regulations 2012 (LI2175); (iv) Minerals and Mining (Support Services) Regulations 2012 (LI2174); (v) Minerals & Mining (Licensing) Regulations 2012, (LI2176); (vi) Minerals & Mining (Explosives), Regulations 2012, (LI2177); (vii) Minerals & Mining (Health And Safety) Regulations 2012, (LI 2182); (viii) Environmental Protection Agency Act, 1994 (Act 490); (ix) Environmental Assessment Regulations, 1999, IL 1652; (x) Water Resources Commission Act, 1996 (Act 522), (xi) Forestry Commission Act, 1999 (Act 571), and the (xi) Local Governance Act, 2016, (Act 936).