

# Political Economy of the Mining Sector in Ghana

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## Abstract

With a focus on the institutional set-up and the political environment as central to understanding and rectifying the poor impact of mining on Ghana's economic development, this paper highlights the vulnerabilities in mining sector governance along the industry value chain. The authors explain why it has been difficult to implement policies that would have improved social welfare. They find that incentive problems in institutions directly or peripherally involved in mining governance are a major factor, as are an excessively centralized policy-making process, a powerful executive president, strong party loyalty, a system of political patronage, lack

of transparency, and weak institutional capacity at the political and regulatory levels. The paper argues that the net impact of mining on economic development is likely to be enhanced with appropriate reforms in governance. Most importantly, there should be a greater awareness of incentive problems at the political level and their possible implications for sector performance and the economy at large. The set of checks and balances, as stipulated by the Constitution, have to be reinforced. Furthermore, capacity building at different levels and institutions is needed and should be combined with efforts to enhance incentives for institutional performance.

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## EXECUTIVE SUMMARY

Despite a remarkable history of its mineral endowment that led to the country being known in colonial times as the Gold Coast and despite being Africa's second largest gold producer after South Africa, modern day Ghana has not succeeded in translating its mineral wealth into overall economic development. The net impact of the mining sector on Ghana's development has been relatively modest. This fact has been recognized by the Government and is also manifested in increasing public discontent with the sector. The environmental consequences of mining, especially of the old mines, are substantial, while transfers from the sector to the economy as a whole seem inadequate, particularly given the high expectations from mining in segments of the Ghanaian society.

With a focus on the institutional set-up and the political environment as central to understanding and rectifying the poor impact of mining on Ghana's economic development, this paper highlights the vulnerabilities in mining sector governance along the industry value chain and attempts to explain why it has been difficult to implement policies that would have improved social welfare. Incentive problems in institutions directly or peripherally involved in mining governance are clearly a major factor in this explanation as are an excessively centralized policy-making process, a powerful executive president, strong party loyalty, a system of political patronage, lack of transparency, and weak institutional capacity at political and regulatory levels.

Despite fairly complex political and institutional challenges, there are a number of opportunities that may facilitate an improvement in the governance of the mining sector. They include (i) the shift in power after the 2008 election to the National Democratic Congress, which may allow the government to explore practical ways of implementing its election manifesto; (ii) the apparent willingness on the part of some of the larger mining companies to review the terms of their investment agreements; (iii) the constructive initiatives from the National Coalition on Mining and the Commission on Human Rights and Administrative Justice (CHRAJ) to initiate a dialogue and move towards development-friendly solutions; (iv) the considerable interest among stakeholders generated by oil discovery to review the challenges in the mining sector and draw policy lessons to avoid pitfalls and thereby make oil and mineral resources welfare-enhancing.

The paper argues that the net impact of mining on economic development is likely to be enhanced with appropriate reforms in governance. Most importantly, there should be a greater awareness of incentive problems at the political level and their possible implications for sector performance and the economy at large. The set of checks and balances, as stipulated by the Constitution, have to be reinforced. Besides, capacity building at different levels and institutions are needed and should be combined with efforts to enhance incentives for institutional performance.

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## Abbreviations and Acronyms

|           |  |
|-----------|--|
| AERs      | Annual Environmental Reports                           |
| ASRF      | Ahafo Social Responsibility Forum                      |
| CDD       | Centre for Democratic Development                      |
| CELD      | Centre for Environmental Law and Development           |
| CEPIL     | Centre for Public Interest Law                         |
| CEPS      | Customs, Excise and Preventive Service                 |
| CHRAJ     | Commission on Human Rights and Administrative Justice  |
| CSOs      | Civil Society Organizations                            |
| DAs       | District Assemblies                                    |
| DACF      | District Assemblies Common Fund                        |
| DCE       | District Chief Executive                               |
| EARs      | Environmental Audit Reports                            |
| EIAs      | Environmental Impact Assessments                       |
| EITI      | Extractive Industries Transparency Initiative          |
| EPA       | Environmental Protection Agency                        |
| ERP       | Economic Recovery Programme                            |
| FoE-Ghana | Friends of the Earth-Ghana                             |
| GACC      | Ghana Anti-Corruption Coalition                        |
| GDP       | Gross Domestic Product                                 |
| GEITI     | Ghana Extractive Industries Transparency Initiative    |
| GEO       | Green Earth Organization                               |
| GNPC      | Ghana National Petroleum Corporation                   |
| GPRS      | Ghana Poverty Reduction Strategy                       |
| GSD       | Geological Survey Department                           |
| IDEG      | Institute for Democratic Governance                    |
| IDMC      | Inspectorate Division of Minerals Commission           |
| IEA       | Institute of Economic Affairs                          |
| IRS       | Internal Revenue Service                               |
| ISODEC    | Integrated Social Development Centre                   |
| ISSER     | Institute of Statistical, Social and Economic Research |
| LTU       | Large Taxpayer Unit                                    |
| MC        | Minerals Commission                                    |
| MDAs      | Ministries, Departments and Agencies                   |
| MMDAs     | Metropolitan, Municipal and District Assemblies        |
| MTEF      | Medium Term Expenditure Framework                      |
| MPs       | Members of Parliament                                  |



|       |                                      |
|-------|--------------------------------------|
| NADeF | Newmont Ahafo Development Fund       |
| NCOM  | National Coalition on Mining         |
| NEAP  | National Environmental Action Plan   |
| NEP   | National Environmental Plan          |
| NGGL  | Newmont Ghana Gold Limited           |
| NGO   | Nongovernmental Organization         |
| NDC   | National Democratic Congress         |
| NPP   | New Patriotic Party                  |
| PNDC  | Provisional National Defense Council |
| RAGB  | Revenue Agencies Governing Board     |
| TPU   | Tax Polity Unit                      |
| TWN-G | Third World Network-Ghana            |
| VATS  | Value Added Tax Service              |
| WTO   | World Trade Organization             |

## I. Introduction

1. Ghana has a long history of mineral endowment, which led in colonial times to the country being known as the Gold Coast. Despite being Africa's second-largest gold producer, modern-day Ghana has experienced disappointing results in translating this mineral wealth into broad economic development. The net impact of Ghana's mining sector on its development has been modest. This fact has been recognized by the government of Ghana and has also manifested in increasing public discontent with the performance of this sector. The negative environmental consequences of mining, especially of the old mines, have been substantial. Transfers from the sector to the economy as a whole have been particularly disappointing because of several factors, including contractual arrangements that give the government a limited share of revenues and the problem of transfer pricing.
2. Institutions and the political environment are central to understanding and rectifying the poor impact of mining on Ghana's economic development. This section highlights the vulnerabilities in mining sector governance along the natural resource management value chain and explains why it has been difficult to implement policies that could improve social welfare. Major factors contributing to these vulnerabilities include incentive problems in institutions directly or peripherally involved in mining governance, an excessively centralized policy-making process, a powerful executive president, strong party loyalty, a system of political patronage, and a lack of transparency. As a result, Ghana's mining sector faces weak institutional capacity at the political and regulatory levels and a lack of incentives to meaningfully reform the sector.
3. Ghana is an interesting case in natural resource management because of the international community's recognition that it has functioning democratic institutions with a relatively successful democratic tradition. Nevertheless, several analysts (Ayine 2009; Gyan 2009) have argued that the true test of Ghana's democracy is whether the country manages its newly found oil resources better than it has managed its gold mining sector and whether lessons can be drawn from the mining sector. Discussion about the country's ability to gain from oil is spurred partly by the experiences of other petroleum-rich countries in Africa and partly by the fact that Ghana's democratic institutions are vulnerable and need to be strengthened.
4. Despite its democratic record, political power appears highly concentrated in the executive branch. Thus, limited access to information makes it difficult for the electorate to judge the incumbents, and the system of constitutional checks and balances remains fragile. Political science scholarship repeatedly has pointed to patronage as a severe problem in the Ghanaian party system and few efforts have been made to resolve these issues (Booth et al. 2005; Gyimah-Boadi 2007, 2009; Saffu 2007a, 2007b; Lindberg and Zhou 2009). Some of the remaining challenges in Ghana's democracy are precisely the kind of problems that concentrated nonrenewable natural resources tend to exacerbate. For detailed explanation and suggested policy recommendations on the resource curse phenomenon, see Auty (1993); Sala-i-Martin and Subramanian (2003); Rosser (2006); Collier and Goderis (2007); Humphreys, Sachs, and Stiglitz (2007); and Kolstad and Søreide (2009). Undoubtedly, the emerging oil sector will pose challenges in addition to those experienced in the mining sector. The stakes are higher in the oil sector: revenues—and rents—likely are larger and

more concentrated, and thereby tend to induce more severe corruption than mining. Over the next decade, the world will follow Ghana's ability to manage in parallel its political and economic development, and hopefully, it will make effective use of its growing revenues from extractive industries.

5. Despite fairly complex political and institutional challenges, a number of opportunities may facilitate an improvement in the governance of the mining sector. They include (i) the shift in power after the 2008 election to the National Democratic Congress (NDC), which may allow the government to explore practical ways of implementing its election manifesto; (ii) the apparent willingness of some of the larger mining companies to review the terms of their investment agreements; (iii) the constructive initiatives from the National Coalition on Mining (NCOM) and the Commission on Human Rights and Administrative Justice (CHRAJ) to discuss and find solutions to the problems; and (iv) the renewed interest among stakeholders (generated by the recent oil discovery) to review mining sector challenges, assess policy implications to avoid pitfalls, and ensure that oil and mineral resources contribute to the country's welfare.
6. Among the questions that have motivated this study is whether the net impact of mining on the country's development can be improved with appropriate reforms in governance. Is capacity building at different levels and institutions adequate and potentially linked to the efforts to enhance incentives for institutional performance? Or, like so many other resource rich economies, will the country have to face the risk of incentive problems at the political level as well in order to get the most out of the mining sector?
7. The findings of this study are based on a review of the literature and interviews with representatives of public institutions, politicians, civil society groups, the private sector, and academics in Ghana. Section 2 provides an overview of the mining sector and the political and institutional environment in which it is embedded. Section 3 discusses governance difficulties along the natural resource management value chain. Section 4 analyzes issues of land appropriation and management of mining sector revenues. Section 5 concludes and links such governance challenges with the underlying political economy and draws implications for the design of mining sector reforms and the country's emerging oil industry.

## **II. Political Economy**

8. What are the specific features and structure of the mining sector and how do they contribute to the Ghanaian economy? This section addresses the political environment for mining governance and discusses whether institutional barriers are strong enough to prevent conflict of interest, corruption and other agendas that may lead to governance failure. After assessing the existing democratic mechanisms and how they may influence politics in general, we analyze the core issues of checks and balances at the political level that have a direct bearing on the implementation of mining policies.

## 1. Mining Sector Background

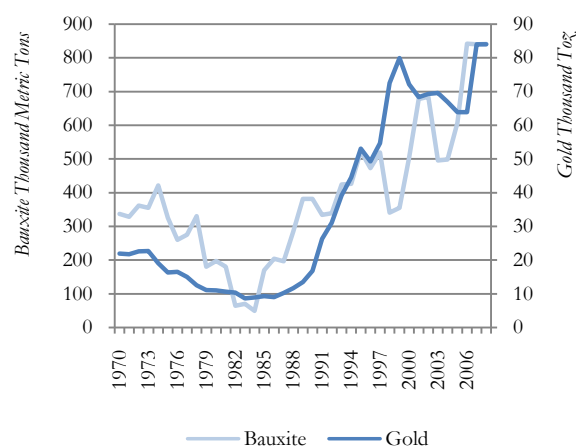
9. Ghana is endowed with sizable deposits of manganese, diamonds, and bauxite, but gold remains the key resource for the country's economy (see Table 1), accounting for more than 95 percent of mineral revenues. Although the output of other minerals has decreased, the production of gold grew from 63 tons in 2004 to approximately 80.5 tons in 2008 (Ghana Chamber of Mines 2000–08; Mineral Commission 1996–2006). The country is the second-largest gold producer in the continent after South Africa. The largest gold deposits are found in the Ashanti, Western, Central, and Brong-Ahafo Regions. The mining sector currently contributes approximately 41 percent of total exports earnings, 14 percent of total tax revenues, and 5.5 percent of Ghana's gross domestic product (GDP) (for official statistics, see appendix A). Despite the fact that mineral exports increased 50 percent and tax revenues derived from mining almost tripled between 2004 and 2008, as a share of total tax revenues they have decreased in the same period (see ISSER 2009).

**Table 1: Production of Mineral Commodities (thousand metric tons unless otherwise specified)**

| Commodity             | Unit            | 2004   | 2005   | 2006   | 2007   | 2008   |
|-----------------------|-----------------|--------|--------|--------|--------|--------|
| Bauxite, gross weight |                 | 498    | 727    | 886    | 748    | 738    |
| Diamond               | thousand carats | 920    | 1,013  | 973    | 895    | 643    |
| Gold                  | kilograms       | 63,139 | 66,852 | 69,817 | 83,558 | 80,503 |
| Manganese:            |                 |        |        |        |        |        |
| Ore, processed        |                 | 1,597  | 1,715  | 1,659  | 1,173  | 1,090  |
| Mn content            |                 | 559    | 600    | 580    | 410    | 380    |
| Salt                  |                 | 265    | 250    | 123    | 124    | 150    |
| Silver                | kilograms       | 3,329  | 3,571  | 3,142  | 3,300  | 3,200  |
| Steel                 |                 | 25     | 25     | 25     | --     | --     |

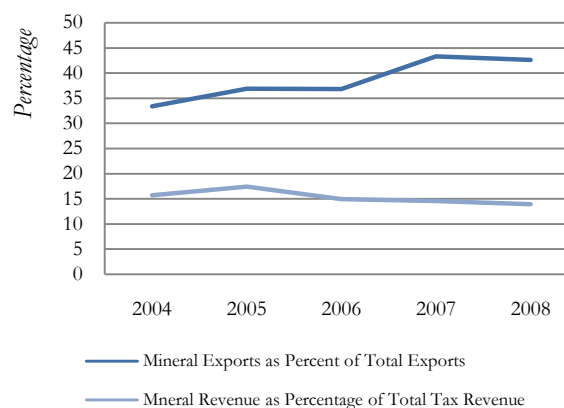
Source: USGS Mineral Commodity Review, Ghana 2009.

**Figure 1: Bauxite and Gold Production (1980-2009)**



Sources: USGS 2009.

**Figure 2: Contributions of the Mining Sector (2004-2008)**



Source: Revenue Agencies Governing Board (RAGB).

## a. Mining Reform

10. In the last decade, Ghana has achieved impressive growth performance and is continuing on its path to poverty reduction. This economic development, however, has long coped with political instability, a mixed development paradigm, and policy reversal, notably from independence in March 1957 to the early 1980s. The state-led policies in the First Republic (1957–66) combined with an adverse falling in the price of cocoa resulted in the deterioration of internal and external balances and in Ghana's economic situation. In the following years (1966–72), political turmoil and short-lived reforms preceded a period of economic chaos until the early 1980s—all contributing to an environment unfavorable to investment, entrepreneurship, and growth (World Bank 2007). With the goal of promoting national industries, the country protected domestic sectors, thereby failing to develop an integrated industrial base and create room for competitive supply industries. As a result, the industrial contribution to real GDP decreased in 1975–82, and by 1983, it was at its lowest level since independence. The protectionist policies strangled the export sector and investment in the mineral sector (Leith 1996; Oduro 1996).
  
11. An Economic Recovery Program (ERP) was implemented in 1983 by Rawlings' Provisional National Defense Council (PNDC) government. This program included policies to improve industrial recovery through restructuring and better access to finance; increase opportunities to import inputs; and rehabilitate key industries. It also encouraged investment or expansion in industries consistent with Ghana's comparative advantages (Hutchful 2002; Leith 1996). Several measures to revive the mining sector were adopted under the ERP. The program introduced significant changes in the sector's regulatory framework, including the following: immediate improvements in access to critical inputs through export rehabilitation credits, the grant of foreign exchange retention accounts ranging from 20 percent to 45 percent to the mining companies, substantial recapitalization funding for the gold mines, reorganization of the marketing arrangements for diamonds, and legalization of small-scale gold and diamond mining (see Hutchful 2002; Leith 1996). The most important step, however, was the introduction of the Minerals and Mining Law in 1986, which established the Minerals Commission (MC) to regulate the sector and further liberalized the mining climate, extending significant new benefits to investors in the area.<sup>1</sup> This measure, coupled with the rise in the gold price, sparked substantial new interest in Ghana by international mining companies (Campbell 1998). More than 55 gold prospecting licenses were issued between 1986 and 1989, and three gold mining companies commenced production in the late 1990s.<sup>2</sup> As a result of improvements in the mining climate, Ghana was voted among the top 10 emerging markets for mining (the only African country to be ranked so highly) in a 1995 survey of international mining analysts (*Business in Africa* 1997).
  
12. Ghana's development during the 1980s and 1990s and the country's policy framework for the mining industry were strongly influenced by international trends and recommendations from the development community. Historically low mineral prices, high political and economic risks (expropriation of mining rights, disregard of arbitration clauses in contracts, and generally poor investment climate), ballooning external debt, and the pressing need to increase foreign earnings forced many resource-rich governments to reverse course to attract foreign direct investment. In most African countries, the sector policies shifted from

excessively restrictive to very liberal. As a result, government revenues from mining activity have been small in comparison with the sector's size and output (UNCTAD 2007, 161).

13. A current problem is that the generous concessions granted in the past cannot be altered even when the conditions in which they were signed change substantially or unexpectedly *ex-post*. Royalties and tax concessions often are frozen by an investor-friendly stabilization clause for a set period of time. Higher prices will not necessarily imply a proportional increase in the state revenues to mineral-rich developing countries. Ghana's government has accepted its contractual commitment to the stabilization clauses and has not renegotiated the deals. Rather, it has continued to follow what it deems as an investor-friendly path. The World Bank 2011 *Doing Business Report* places Ghana as number eight in the category: "Doing business became easier," which is based on the cumulative ranking for the last five years. Despite efforts to attract foreign investment, however, Ghana's industrial sector grows slowly.

#### **b. Net Benefits from Mining**

14. Opinions on the extent to which Ghana has benefited from mining vary widely. Those who point at disappointing results from the sector accuse the government of having accepted a power imbalance between corporate and community interests. Mining is seen as benefiting primarily the foreign interests and elites in Ghana.<sup>3</sup> Conversely, the Chamber of Mines,<sup>4</sup> the industry's business organization, argues that mining companies have contributed immensely to the country's development. According to the Chamber of Mines, these contributions cannot be measured in terms of revenues only, but also by the impacts of the mining companies' very existence in the rural communities. What the Chamber points at are how their presence has contributed to better communication technology, banking, electricity, health, education, human resource development, and technology transfers in general. In 2008, for instance, chamber members spent in excess of US\$12 million on these voluntary social responsibility projects (Eijgendaal 2009). As an enduring national legacy, the mining industry helped create the University of Mines and Technology in Tarkwa, in the Western Region.
15. At the local level, mining companies have launched corporate social responsibility initiatives that enhanced capacity for sustainable livelihoods, respect for cultural differences, and skill building for employees, the community, and the government.<sup>5</sup> For instance, Newmont Ghana Gold Limited (NGGL) has a series of initiatives with a sustainable development focus for the Ahafo Mine, which covers two districts (Asutifi and Tano North).<sup>6</sup> Moreover, the multinationals' home-country regulations or standards, accounting rules, production technology, and procurement procedures have contributed to improving the performance of the mining sector in Ghana.
16. An assessment of the net benefit of the sector to the Ghanaian society would require estimates of the various benefits from the mining sector, including royalties and taxes, infrastructure, technology transfers, employment generation, as well as their multiplier effects, and how they compare with costs, such as environmental consequences, health problems, cultural difficulties, and loss of agricultural land. These different factors are

difficult to estimate in a way that stakeholders with conflicting views will agree on. At the core of this debate, however, are the financial transfers versus environmental consequences.

17. As a source of revenue, gold is the main mineral resource for foreign earnings (the highest single foreign exchange earner since 1999), but its actual contribution to development remains limited. These contributions are especially limited when compared with popular expectations about the benefits that should accrue to the populations from the mining sector (see Box 1). The mining sector's share of revenue is modest, at less than seven percent of GDP. Industrial mining is capital intensive and employs only around 20,000 people, whereas an additional 500,000 people work in artisanal or small-scale mining (ISSER 2008; World Bank 2008b). As the domestic supply sector is negligible and further processing capacity has not been developed in the country, the mining sector truly has an enclave character in the economy.<sup>7</sup> Financial transfers and infrastructure are the main returns from mining to the society at large. Compared with Ghana's generally weak industrial performance, the mining sector, led by the gold industry, has performed well with steady output growth since the mid-1980s reform.

### **Box 1: High Expectation from the Mining Industry**

The government, civil society organizations (CSOs), mining communities, and most citizens have high expectation of the mining industry's contributions to the country's socioeconomic development. This expectation is fueled mainly by the perception that the industry is enjoying a windfall because of the increased commodity prices and production figures from the gold mines, which are hard to ascertain. At the same time, this perception overlooks the challenges facing the mining companies, such as the highly depreciated value of the U.S. dollar; the increased production costs resulting from higher energy prices and interrupted supply; higher fuel costs; insecurity on imported vital supplies; and a poor rail haulage infrastructure (Eijgendaal 2008).

The expectations of returns from the sector have been particularly high at the community level. These mining communities typically are located in deprived areas whose conditions have worsened because of chronic poor service deliveries. This is an unintended consequence of development centralization, even though the country has been implementing a rather ambitious decentralization program. The communities tend to expect the mining companies to provide basic amenities and infrastructure that the central government has failed to provide, as if they were surrogate governments. Some CSOs have argued that some of the unrealistic demands by the communities may be traced to unfulfilled promises made by some of the mining companies at the beginning of their operations. This information has not been verified by this study. What we know for sure is that these inordinate expectations have caused frustration among the youth in the communities, tension or rivalries among the various mining communities, and several cases of illegal mining (Anderson 2008).

18. The mining sector's importance to the country's economy is not adequately linked with other economic growth-promoting activities.<sup>8</sup> Except for the employment of a semiskilled labor force, most mining sector inputs are imported, whereas the mineral products are exported with little or no value added domestically.<sup>9</sup> In other words, the multiplier effect that could have accelerated growth is lower than would be the case if mining activities were integrated properly into the economy (Tsikata 2007).

19. Another challenge is the social and environmental costs associated with mining.<sup>10</sup> Few of the developmental benefits expected to accompany the exploitation of minerals have materialized in the host communities. The population in mining areas suffers from such problems as displacement of indigenous communities, loss of livelihoods, and adulteration of local culture, conflicts and human rights abuses, diversion of watercourses, and loss of biodiversity due to the environmental destruction (Akabzaa, Seyire, and Afriyie 2007; Salami 2001).<sup>11</sup> These problems also have been highlighted by the NCOM, an umbrella organization comprising development-oriented nongovernmental organizations (NGOs),<sup>12</sup> which advocates for the communities. In addition to environmental degradation, NCOM points at the limited compensation for expropriated land. Considerable environmental problems are associated primarily with the old mines—that is, mines developed before 1990.<sup>13</sup>

### c. Regulatory Institutions

20. Since the 1980s, the government increasingly has privatized the mining sector and it now plays a regulatory role. The institutional framework for mining governance is complex.<sup>14</sup> At the central level, it includes the presidency, Parliament, central government ministries, and various departments and agencies. The Ministry of Lands, Forestry and Mines—through the Mineral Commission (MC), the Geological Survey Department (GSD), the Inspectorate Division of Minerals Commission (IDMC), and the Precious Minerals Marketing Co. Ltd. (PMMC)—regulates Ghana’s mining industry. The MC regulates the use of mineral resources and coordinates mineral policy. The GSD is responsible for keeping geological information and a repository of geoscientific data. The IDMC is in charge of monitoring and enforcing health, safety, and environmental standards in mines as established by the mining and mineral laws. PMMC markets the country’s precious minerals and jewelry industry. At the local state level, there are District Assemblies (DAs) and Traditional Institutions (see Table 2).

**Table 2: List of Mining Sector Players**

|                         |   |
|-------------------------|---|
| State level             | Executive President, Parliament, Judiciary, MoFEP, MLFM, EPA, MoSE MLGRDE, OASL, BoG, MC, IRS, LTU, GEITI |
| Local level             | 14 District Assemblies, which have mineral deposits   |
| Non-state               | National Coalition on Mining, WACAM, TWNG ISODEC, Chamber of Mines  |
| Mining companies        | 21 mining companies such as Newmont, Ashanti Goldfields, AngloGold Ashanti, Bogoso, Chirano               |
| International players   | Bilateral and multilateral institutions the CIDA, DfID, World Bank, African Development Bank (AfDB)       |
| Collective players      | Citizens<br>Constituencies; Communities   |
| Traditional authorities | Traditional councils, chiefs  |



21. In addition to the Government, several categories of players are involved in Ghana's mining sector, namely, NGOs, mining companies, international agencies, citizens, and community and traditional authorities. Eight of the 13 large-scale mining companies are major gold companies. In addition, more than 300 small-scale mining companies operate in the country. The mining communities, unlike the other players, are not a formal institution but legitimate stakeholders in terms of representing the areas where the mines are located. The stakeholders have differing and sometimes contradictory perspectives. To some degree, they control each other, yet tensions continue because of an imbalance in representation and influence on mining sector governance decisions. In particular, there is an imbalance between corporate and community interests. Development for all is expressly on the political agenda, but the government's responsiveness to the poor and other marginalized groups is repeatedly criticized by NGOs. Some NGOs have claimed that the state has not developed a culture of community engagement, especially pertaining to resource issues, whereas representatives of mining communities point at weak political accountability related to mining. Policy making is centralized in national institutions that have no direct accountability to communities or even the District Assemblies (DA). Overall, Parliament has not been as supportive of communities affected by mining as it could have been.

## 2. Political Economy Context

22. A country's constitution and democratic mechanisms dictate the transparency of decision-making processes and thereby determine the degree to which politicians are held accountable. When a democracy functions poorly, politicians may stay in power regardless of their efforts to sustain growth and development. As a consequence, incentives to perform for better sector regulation, revenue administration, and budget processes may dwindle. Politicians may realize that positions and associated benefits can be secured through patronage networks and party loyalty. Sector management policy decisions thus may be biased toward such incentives, rather than motivated by welfare improvement for society at large. Despite progress toward democratic consolidation, the international praise of Ghana's democracy, and the well-organized 2008 election, some sector challenges probably are due to the remaining democratic weaknesses.

23. Since Ghana's independence in 1957, political power has vacillated between civilian and military rules and it has taken time for democracy to get established. Since the return to multiparty rule in 1993, Ghana has been politically stable. Five successive national elections have been held every fourth year, resulting in two alternations of power in 2000 and 2008.<sup>15</sup> The inauguration of President Mills in 2009 signified Ghana's second peaceful transition of power from incumbent party to opposition. Since then, Ghana has been ranked "free" by Freedom House and is widely regarded as one of Africa's success stories (APRM 2006). Despite persistent challenges, the electoral commission's independence and administrative capacity improved with each election, and public interest in national elections remained high (evidenced by voter turnouts consistently above 70 percent). In addition, the country's key democratic institutions—such as the judiciary and the CHRAJ—have continued to develop and solidify. Media freedom and human rights expanded from one election to the next (Ayece 2007; Gyimah-Boadi 2009).

24. The remaining democratic weaknesses involve the country's constitutional and legal practices. The literature on democracy in Ghana lists a number of critical challenges, including monetization of politics, political intimidation, vote manipulation, neo-patrimonialism, ethnoregional voting patterns, strong deference to leadership, expectations of personal favors in return for loyalty, pressure on politicians to reward benefactors after elections, and abuse of incumbency by government (Afari-Gyan 2009; Ayee 2009; Booth et al. 2005; Saffu 2007a and b). Perceived manipulation of democratic mechanisms has reduced the electorate's trust in the political system and incited public demand for reform of governance structures to enhance accountability and transparency. A central part of continued democratic weakness, however, is the concentration of political power in the presidency.<sup>16</sup>

#### **a. Executive Dominance**

25. Executive dominance reduces the country's ability to make a clean break with neo-patrimonialism (Booth et al. 2005; Gyimah-Boadi 2007; Posner and Young 2007; Prempeh 2008a). Unbalanced concentration of power in the hands of the executive has undermined institutional checks and balances and inter-branch accountability (Ninsin 2008; Prempeh 2003, 2008b; Saffu 2007a, 2007b). For instance, through the use of discretionary authority on temporary appointments, Ghanaian presidents can evade Parliamentary scrutiny of their favored appointees and undermine the tenure of the staff of the Serious Fraud Office, CHRAJ, and the auditor general (who are responsible for policing the executive) by keeping their appointees in "acting" positions (Gyimah-Boadi 2009). Similarly, presidents are free to appoint large number of ministers (nearly 90 in the Kufuor administration) and other executive branch staff. Appointments often are seen as biased, at the expense of the professional public service (Ayee 2009b). In addition, such executive power has made it possible for the president to unilaterally create and restructure ministries, departments, and agencies (MDAs) (Ayee 2009b; Gyimah-Boadi 2009).

26. A hegemonic presidency presents other perils as well. Several studies have pointed to a tendency by the president to encourage reliance on political patronage and corruption (Prempeh 2003, 2008a, 2003b). The president and the ruling party face few obstacles to abuse incumbency for personal as well as partisan electoral gain. At the same time, there is low transparency in the management of public assets, such as forests, mines, and state enterprises, and the executive rarely reacts as it should to poorly performing boards of state and parastatal organizations (Ayee 2007; Gyimah-Boadi 2009).

27. Executive dominance has made it possible for successive governments to resist the introduction of transparency-promoting instruments, such as access to information about legislation and public officeholder asset disclosure laws. In practice, Articles 107 and 108 of the 1992 Constitution give the president monopoly power. Consequently, no private-member bill has ever been introduced in the Parliament. The direct negative consequences for Ghanaian democracy include unregulated campaign spending and an active rumor mill that perpetuates unsubstantiated scandals involving political figures (Gyimah-Boadi 2009). In addition, the monetization of politics has led to a call for state support for political parties in order to reduce the risk of abuse of incumbency and vote-buying and contribute to a level

playing field, while meeting the demand for accountability on how campaign moneys are being used. (Ayee 2009a).

## **b. Weak Checks and Balances**

28. The architecture of the 1992 Constitution is complex. It is based on the principle of separation of powers, as well as a system of overlapping personnel, functions, and powers, resulting in a hybrid of the Presidential and Parliamentary systems of government. The president appoints ministers of state with the prior approval of Parliament, while the majority of the appointees should come from Members of Parliament (MPs) (Article 78:1). This hybridization of the Parliamentary and Presidential systems has given the executive a huge and unequivocal presence in Parliament. In effect, it undermines the constitutional system of checks and balances.
29. Executive power is exercised in Parliament through the president's majority party of which he becomes leader by virtue of his position as president. The strong executive power gives the president strong influence on party politics, including the Parliament members. Because the success or failure of the president's policies affects the electoral fortunes of the party, the president's Parliamentary party collectively and individually becomes a strong advocate of his policies and programs. All party-based representative democracies have elements of party loyalty. What may be observed in Ghana, however, is that the system allows the president, as an individual, exceptionally strong influence.
30. MPs who have not yet become ministers have an added incentive to favor the executive. Almost every MP aspires to be a minister. The MPs increase their chances significantly by making displays of loyalty in the Parliament. As a result, the president can rely on his party in Parliament to get through his policies and programs. Because this is a system with two parties, and the president's party has the majority, Parliament lacks control on the executive—and consequently, the will of the president is always met (Ninsin 2008). Hence, in practice, the Parliament in Ghana is not an autonomous organ of the state, able to define its relationship with the executive as one of equal and shared powers. Instead, the current relationship encourages the concentration of power in the executive and promotes its domination of Parliament. Therefore, it is difficult to bolster the independence of Parliament and insulate it from executive influence (Ninsin 2008).
31. According to the 2006 Minerals and Mining Act, MPs have a multitude of supervisory and administrative roles relating to the mining sector. Thus, they have a central role in governing the industry. Apart from passing the annual budget, Parliament is responsible for ratification of mining leases, contracts, and stabilization agreements. The Parliamentary Select Committee on Mines and Energy is headed by a senior MP and oversees the Parliament's responsibilities for natural resource management, examining the various proposals and forwarding them to Parliament for approval. However, as noted above, the performance of these responsibilities is affected by executive influence, and thus, the checks and balances supposed to secure independent control by the Parliament are rendered dysfunctional.

32. Mining leases and other agreements with the mining companies first are brought to the Select Committee through the MC before being ratified by Parliament and then awarded to the mining company. The Select Committee is responsible for conducting due diligence and examining the capacity, reputation, and finances of the company under review. If the company is deemed trustworthy and the proposal is in order, the contract or the agreement is cleared. Due precaution is supposed to be taken to avoid conflict of interest within the Parliamentary Select Committee. For instance, the present chairman of the Committee owns a quarry and another member owns a diamond mine. If any matter under consideration before the committee could cause conflict of interest, these members have to excuse themselves. This may happen in practice as well, but this is uncertain since the supervision by Parliament and its committees is not effective. A glaring example of how weak this supervision can be is the 2008 retroactive ratification of 21 mining leases to exploit the mines, which were awarded during 1994–2007 (see Table 3).
33. The third arm of government, the judiciary, which is supposed to have sufficient autonomy and promote checks and balances, is influenced by the President in subtle ways. The President appoints all superior court judges and has the power to nominate an unlimited number of Supreme Court judges. Besides, the Supreme Court’s control on constitutional institutions is only guided by the Directive Principles of State Policy in Chapter 6 of the Constitution, and not a clear rule of law (Quashigah 2009). Among the principles is the very foundation for governance – that is, the government exists to promote the welfare for the people of Ghana. The constitution refers to the misuse of power by MPs as “high crime” yet the definition of high crime remains unclear.

**Table 3: Mining Lease Agreements, 1994–2007**

| Name of Mining Company       | Location                            | Area (sq. km)   | Grant Date of Lease  | Lease Expiration Date |
|------------------------------|-------------------------------------|-----------------|----------------------|-----------------------|
| Goldfields Ghana Ltd.        | Tarkwa & Damang                     | 204.22 in total | 1997<br>1997         | 2027 &<br>2025        |
| AngloGold Ashanti Ltd.       | Obuasi & Iduapriem Bibiani          | 334.27<br>49.82 | 1994<br>1989<br>1989 | 2024<br>2019<br>2027  |
| Bogoso Gold Ltd.             | Prestea/Bogoso<br>Wassa<br>Pampe    | 129.05<br>50.00 | 1987<br>1998<br>2007 | 2018<br>2028<br>2012  |
| Chirano Gold Mines Ltd.      | Chirano                             | 36.0            | 2005                 | 2019                  |
| Sian Goldfields Ltd.         | Esaase                              | 46.93           | 1996                 | 2026                  |
| Narawa Company Ltd           | Nsuta                               | 3.0             | 2002                 | 2012                  |
| Newmont Ghana Gold Ltd.      | Yamfo<br>Ntrotronso<br>Kenyasi, Goa | 398.12          | 2001<br>2001         | 2031<br>2031          |
| Ghana Manganese Company Ltd. | Nsuta<br>Hotopo                     | 164.15<br>11.78 | 2001                 | 2031                  |
| Gulf Coast Resources Ltd.    | Banka                               | 29              | 2000                 | 2010                  |
| Med Mining Company Ltd.      | Dochi                               | 17.97           | 2005                 | 2010                  |
| Adamus Resources Ltd.        | Nkroful                             | 47.67           | 2005                 | 2010                  |
| Midras Mining Ltd.           | Datano                              | 49.67           | 1992                 | 2009                  |
| Talos Ghana Ltd.             | Konongo                             | 125.0           | 2000                 | 2010                  |
| Goldenrae Mining Company     | Kwabeng<br>Pameng                   | 44.24<br>40.04  | 1989<br>1989         | 2018                  |

|                                |             |       |      |      |
|--------------------------------|-------------|-------|------|------|
| West Star Mining Company Ltd.  | Ankobra     | 50.0  | 2007 | 2017 |
| Blue River Mining Company Ltd. | Ankobra     | 40.4  | 2007 | 2017 |
| First Canadian Goldfields Ltd. | Benso       | 20.38 | 2007 | 2011 |
|                                | Hwini-Butre | 40.38 | 2008 | 2012 |
| Kibi Goldfields International  | Pusupusu    | 49.95 | 1995 | 2015 |
| Ghana Bauxite Company          | Nsuta       | 29.39 | 1997 | 2022 |
| Savanna Cement Company Ltd.    | Buipe       | 50.0  | 2000 | 2030 |
| Chacem Ltd.                    | Yongwa      | 0.64  | 2004 | 2014 |

*Source:* Ghana, Republic of 2008a, 205.

### c. Representation of Mining Communities

34. Democratic representation for districts and communities is essential to ensure political attention is given to their welfare. Significant tension exists between mining communities and the mining industry—and many NGOs seek to support the communities in what appears to be a power imbalance between poor farmers and international multinationals. Mining communities have maintained that the government does not work in their interest.
35. Policy making is centralized in national institutions. Some institutions, such as the Minerals Commission (MC), are accountable to Parliament only indirectly through their supervising ministries. The state has not developed a culture of community engagement—especially on resource issues (World Bank 2008b). Several studies find that Parliament provides little support for communities affected by mining (Akabzaa 2000; Akabzaa, Seyire, and Afriyie 2007; Dalberg/World Bank Group 2007). One possible explanation might be that the MPs who have been appointed by successive governments to represent the state in company boards usually have been selected among those who represent mining communities. These appointments may be devised to ensure that mining community interests are represented in all bodies in which decisions influencing their welfare are made. To the contrary, however, the appointment of MPs from mining communities to company boards has strengthened the Parliamentarians’ support for the companies. This support may have created a conflict of interests, perceived to be in favor of the mining industry.

### d. Party Loyalty and Central Control on District Governance

36. Although the country has adopted decentralization as a political and development strategy since the advent of constitutional rule in 1993, little progress has been made to devolving real and genuine power to the district assemblies. The president appoints all district chief executives. These chief local representatives of the central government are responsible for the day-to-day performance of the executive and administrative functions of their District Assembly (DA). As a result, these district chief executives are viewed as part of a bigger patronage system (Ayee 2000, 2002, 2006, 2007).
37. In addition, the president appoints one-third of the DA’s membership. This rule is made to guarantee that each DA has some level of technical capacity, for example, in law, accounting, and management. Party loyalty, rather than technical competence, frequently has been the main criterion for these appointments. These informal party structures combined with the president’s formal authority have ensured that the DAs operate with direct influence from

the central government. In addition, local party leaders are heavily involved in the awarding of contracts at the district level, and several studies have found that local development suffers from awarding service-delivery contracts to party chairs and their cronies (Ayee 2007, 2009a, 2009b; Gyimah-Boadi 2009). This weakens the local institutions and creates direct lines of patronage from the center to the most remote provinces via executive control of appointments, contracts, and resources (Ayee 2008a). As a result, almost complete executive control on important decisions occurs at the district level, which creates opportunity for corrupt benefits.

38. Furthermore, the main source of funding for the DAs, the District Assemblies Common Fund (DACF), is controlled by the Ministry of Finance and the Ministry of Local Government, Rural Development and Environment—which in many cases determine the items of expenditure for which this funding should be used. In other words, the DA budgets are influenced by policy directives from the two ministries (Ayee 2008a, 2009a).
39. The strong potential of Metropolitan, Municipal and District Assemblies (MMDAs) to provide a platform for citizen voice and citizen-state dialogue is not realized. Neither government nor citizens have implemented and used the legally mandated mechanisms for dialogue and consultation at the local level. For example, the various stipulations in the Local Government Act, Act 462 for information exchange and consultation (such as members of MMDAs periodically consulting their constituents) are generally not adhered to.<sup>17</sup>
40. Traditional leaders serve at the district level as well. They have an important role to play as custodians of community land. These positions are not politically appointed, yet incentives to react against executive control on districts to secure welfare benefits from mining are weak. The Constitution stipulates that royalties be disbursed to traditional authorities as follows: 25 percent to the stool<sup>18</sup> through the traditional authority for the “maintenance of the stool in keeping with its status” and 20 percent to the traditional authority. This rule has been reinforced with the establishment of an independent Office of the Administrator of Stool Lands (OASL). This implies that the traditional authorities have been the direct recipient of various forms of support from mining companies. The better the terms for the mining companies, the higher their transfers to the traditional authorities. At the same time, the auditing system at this level is weak or nonexistent. Thus, the mining sector presents opportunities for decision makers to benefit. In return for the transfers from mining companies, traditional leaders have moderated community dissent, although sometimes discontent has escalated because of the negative environmental impact and alleged human rights abuses.
41. Considering democracy at the district level, the executive branch’s strong grip on power and control of patronage has stalled the constitutionally mandated decentralization of administrative power to the DAs and their substructures. Any meaningful decentralization is impeded as a result. This, combined with opportunities for district-level politicians for personal gains, may explain a certain lack of responsiveness and accountability to the citizenry on the part of DAs and their officials.

#### e. Political Incentives Affecting Mineral Resource Governance

42. Substantial executive domination and uneven distribution of power is inherent in Ghana's governance framework. Horizontally, Parliament and the judiciary are weak and cannot act as oversight bodies of the executive. The inability of the two arms of government to promote horizontal accountability is reinforced by the wide powers of appointment given to the president by the Constitution. Democratic mechanisms that were set up to secure welfare-focused policies for the society, as a result, are not as effective as they could be.
43. Governance challenges at the political level are legion and include corruption, political power-building through means other than democratic elections, and undemocratic selection of candidates within parties.<sup>19</sup> If not sufficiently controlled, the incumbents' incentives to acquire the information they need to make informed decisions may decrease. Without consequences for politicians, decisions made without sufficient understanding of the relevant facts create an incentive problem with potentially severe implications on the quality of political performance.
44. The lack of institutional and constitutional barriers against biased decision-making at the political level in Ghana implies high risks that political incentive problems are behind governance failure in the management of the mining sector and its revenues. The lack of an overall mining policy and a sound fiscal regime and poor control on expenditures based on resource revenues indicate that far more could be done to secure sector governance that contributes to the country's wealth. Some incentive problems appear particularly relevant.

##### i. *Lack of Capacity*

45. Weak bureaucratic capacity prevents regulatory institutions from performing their functions effectively. This problem can be identified in almost all the MDAs, including the Ministry of Finance and the tax administration. This said, "lack of capacity" is a function of the lack of political incentives to meaningfully invest in sector reforms rather than a quantitative indicator of a government's scarce human and material resources. Tackling poor regulatory capacity in this arena has not been a consistent priority. As a result, the mining industry is not being regulated effectively, essential analyses are not being undertaken, and most policy proposals are accepted without sufficient understanding of their implication.
46. Following from this, capacity is lacking in the implementation of policies, programs, and projects. This general lack of capacity has not been addressed sufficiently at the political level. The Parliamentarians lack resources, and they may not be qualified to appreciate the intricate issues necessary to monitor the mining activity. Significant potential to improve sector governance exists in the recruitment of qualified and skilled support staff to follow up and monitor the sector and inform the politicians. For important decisions, members of Parliamentary committees are briefed by bureaucrats and technocrats and, after a short retreat, the proposals—including the budget proposals—are tabled for discussion and usually passed by the Parliament. With the ruling party in majority in Parliament, most budget appropriations and government proposals are passed without any significant

amendment. Thus, Parliament ratifies everything that is presented to it and the very idea of its oversight and supervision is called into question.

47. Furthermore, politicians in Ghana are rarely replaced despite responding inadequately to matters important for the country's development. As long as they are loyal to their party, they may not face consequences. Instead, few incentives exist to strengthen the process toward more informed political decision making.

*ii. Mechanisms for Reelection versus Accountability*

48. One reason for the lack of guidance and supervision by Parliament and its committees lies in the very nature of a Parliamentary democracy that creates incentives for MPs to focus on short-term gains and to please their constituents. A successful Parliamentarian need not be highly educated or well informed on vital issues but rather loyal to the party and close to the rural masses. To secure opportunities for reelection, MPs can have a narrow rather than a national perspective on important issues, as long as they stay aware of trends in the party and respect the party whip. Parties generally have a strong whip by each political party on every important issue, which discourages independent initiatives. Hence, reelection for an individual politician depends mainly on his or her ability to adapt to the internal party codes and not on the politician's efforts toward Ghana's development. This creates an incentive problem that contributes to persistent governance failure in mining as in other sectors.

*iii. Patronage and Appointments*

49. Patronage networks build political power in Ghana. The boards of directors of state enterprises, such as the MC, are appointed by the president.<sup>20</sup> MPs and other functionaries from the ruling party are appointed board members through closed noncompetitive processes,<sup>21</sup> which create opportunities for conflict of interests and rent-seeking. Some members of the Parliamentary committee on energy and mines also are members of the board of mining companies. This conflict of interest exemplifies how patronage alters the enforcement of government rules established to secure development.

**f. Risk of Political Corruption**

50. In recent years, important efforts to support institutions for accountability have been undertaken and there is an increasing role of civil society organizations (see Box 2). The Constitution and its statutes have created a number of formal institutions designed to encourage transparency in government decisions, discourage corruption, and above all, promote vertical accountability. These include the CHRAJ, Serious Fraud Office, the Public Procurement Authority, the Auditor General's Office, and the National Procurement Agency. Their very existence is commendable because they have performed their mandates and strengthened state institutions. The institutional structures, however, do not allow these bodies to go far enough to check on democratic mechanisms, executive influence, or political corruption. For instance, the CHRAJ, which is meant to investigate rent-seeking activities and human rights abuses, not only is poorly resourced but also lacks the power of



prosecution. Therefore, it must depend on the attorney general and minister of justice to prosecute, although the attorney general, in most cases, has failed to prosecute upon CHRAJ's requests. A possible explanation could be that the attorney general is also a member of the executive as the minister of justice and might prefer not to prosecute party colleagues who have violated the law. This potential conflict of interest has led to calls for a separation of the two public offices (Ayee 2009a; Gyimah-Boadi 2009; Ninsin 2008; Saffu 2007a).

51. Furthermore, weak horizontal and vertical control on political decisions creates significant risk of political corruption, and the mining sector may be particularly exposed to this problem.<sup>22</sup> Neo-patrimonial features combined with poor checks and balances support suspicions that, mining concessions, which include exploration and exploitation licenses, may have been allocated as a reward for political support and financial kickbacks.<sup>23</sup> Substantial potential for profit places mining companies in a position to influence ministers, MPs, and members of the MC. Given the structure of mining institutions, industry influence crosses the political divide between the parties and between the executive and legislative branches. Barriers against such influence must be stronger. Additionally, strong executive authority has reduced trust in the process of granting mineral rights and concessions.

## **Box 2: Grassroots Movements for Accountability**

In Ghana, the important potential contributions of social accountability toward achieving improved governance, increased development effectiveness, and citizen empowerment have been recognized broadly. The 1992 Constitution, Growth and Poverty Reduction Strategy, Vision 2020 and the decentralization and local government frameworks all underline the importance of ensuring good governance through transparency, accountability, and citizens' participation (Ghana, Republic of 2006a; 2006b). Ghanaian citizens and CSOs increasingly are demanding transparency and accountability from public officials and agencies. Interest is growing on accountability of public officials to citizens, particularly the poor and the voiceless (Ghana, Republic of 2008b).

Specifically, progress toward stronger accountability includes the creation of the Ghana Anti-Corruption Coalition (GACC), including both government and CSOs, and the preparation of a national anticorruption plan to overcome an entrenched culture of political patronage and corruption. Another important achievement is the increased interest of successive governments in consulting citizens and CSOs and considering public opinion in the formulation of policies and plans, for instance, the consultation of institutions like the Centre for Democratic Development (CDD), Institute of Economic Affairs (IEA), and Institute for Democratic Governance (IDEG). Similarly, a participatory approach to the preparation of the Ghana Poverty Reduction Strategy (GPRS) and the introduction of the National Economic Dialogue as a forum for stakeholders to make inputs into policy formulation is a further initiative that may strengthen accountability. Eventually, establishing several independent newspapers, about 50 FM stations, and 10 public and private television stations will strengthen media pluralism and its role as a national watchdog. Media development has raised citizen awareness of rights, given voice to alternative (CSO) viewpoints, and enabled the broadcasting of allegations of corruption by top government functionaries (Ghana, Republic of 2007, 2008b).

Notwithstanding this progress toward stronger accountability pushed forward from the grassroots, serious challenges remain. Despite an impressive and growing number of rights-based and empowerment-oriented development efforts, levels of awareness and understanding of citizens' rights and responsibilities—as well as knowledge about existing mechanisms and procedures for the exercise of these rights—factors such as

poverty, illiteracy, and certain traditional values and norms (such as deference to authority) impede the expression of citizen voice and the exercise of citizens' rights. The traditional system is strongly ingrained with respect for authority, leadership, and elders. Ordinary citizens (and especially women, youth, and poor people) are not accustomed to requesting information or questioning authority.

52. Corruption is a hidden phenomenon and is difficult to assess. Overall, in only a few cases, have politicians actually been prosecuted for corruption in Ghana while in public office, in spite of the numerous anticorruption legislations.<sup>24</sup> Understanding the risk of corruption requires a thorough look at the various challenges associated with mining in light of the many risks of rent-seeking influence along the sector value chain. Some of the practices that seem to benefit few at the expense of the society as a whole would have difficulty continuing without at least some tolerance or weaknesses at the political level, including poor recordkeeping on the part of both state agencies and the mining companies; insufficient cross-checking on production versus revenues across responsible revenue collection agencies; absence of institutionalized collaboration between the Internal Revenue Service (IRS), MC, and other government agencies on matters relating to payments of mining revenues (Ministry of Finance and Economic Planning, GEITI 2007); and interrupted inflow of information on royalty payments.<sup>25</sup>
53. The risk of embezzlement in the collection and estimation of royalties in the mining industry is real, and access to information seems to be a general challenge given the absence of the Right to Information Act. These challenges combined with the enclave character of the mining sector create opportunities for politicians to benefit from their authority in the mining sector, especially when they are members of boards of the mining companies. The pattern of governance weaknesses identified in this study cannot be understood without assumptions of some degree of political corruption.

### **III. Natural Resource Management**

54. Disappointments about the economic benefits realized from mining have led to questions about governance failure. By governance failure, we refer to decisions that clearly deviate from what is perceived to contribute to the country's welfare. Governance failure can be excusable, for example, if it is difficult to choose the best policy combination for the sector. Or, it can be less excusable, for example if motivated by some form of political power hunt, such as populism or patronage, or personal enrichment, such as corruption. Regardless of the explanation behind the cause of failure, continued governance failure eventually comes to expression in how sectors perform. This section addresses how the vulnerabilities at the governance level, discussed in the previous section, comes to expression in governance decisions along the mining sector value chain.

### 3. Extracting Resource Wealth

55. The Minerals and Mining Act addresses all aspects of mining and mining regulations in Ghana. The law is the result of the sector's legal reform and is motivated by the benefits of liberalization and deregulation. Compared with the previous legislation, the 2006 Act is considered to be "more investment friendly ... in line with international best practices in the industry" (World Bank 2008b, 32). The new regulatory framework, however, does not seem to be sufficiently comprehensive in monitoring the industry's performance in health and safety standards and environmental protection. In addition, a Development Policy to accompany the new regulatory framework has not yet been issued, as it should.
56. Despite the many institutions involved in the management of mineral resources, the president of Ghana has wide-ranging authority in all matters of mining sector governance. In trust for the people of Ghana, Article 257 (6) of the 1992 Constitution has vested in the president that "Every mineral in its natural state in, under or upon land in Ghana . . . is the property of the Republic." This is repeated in the Minerals and Mining Act (Act 703) of 2006. The Constitution also vests all public lands in Ghana to the president on behalf of the people. In addition, the Act vests the compulsory acquisition of land to the president when it stipulates that "[w]here land is required to secure the development or utilization of a mineral resource, the President may acquire the land or authorize its occupation and use under an applicable enactment for the time being in force."
- a. Award of Contracts and Licenses**
57. All minerals are owned by the state, which grants reconnaissance, prospecting, and mining leases to operators. License holders have to pay a royalty no less than 3 percent and no more than 6 percent of their gross revenues. Reconnaissance licenses are granted for 12 months and maybe extended once. Prospecting licenses are granted for no more than three years and can be extended for three additional years. Upon expiration, the holders can apply for a mining lease for an initial term of no more than 30 years that can be extended once. The act grants the government a free-carried equity interest of 10 percent of all mineral ventures.
58. The MC has commissioned several studies over the last years to get advice on how to better carry out its regulatory responsibilities. It facilitated the establishment of a Multi-Agency Revenue Task Force to strengthen mining revenue management.<sup>26</sup> In addition, it has drafted a mining policy document to bring synergy between policy and the 2006 Act. In spite of these initiatives, the process of awarding mining rights, licenses, and contracts in Ghana has several weaknesses. No open tendering or bidding process exists to acquire prospecting or exploration rights, individuals or companies are awarded licenses through an administrative process,<sup>27</sup> the deals are kept confidential, and the system provides opportunities for hidden benefits as well as avenues for tax evasion.
59. Unlike the forestry sector, there is no tendering for mining concessions.<sup>28</sup> The 2006 Minerals and Mining Act stipulates that companies apply for a mining lease, which the Minister for Mines, on the recommendation of the MC, may grant (Ghana, Republic of 2006c).

Concessions are designed and awarded on a first-come, first-served basis as a result of negotiations between the government, the mining companies, chiefs, and their communities. This lack of competition and transparency strengthens a perception of too lucrative legal benefits for firms. As long as the expected production is above a certain level, the details in the lease can be negotiated for each mine. In addition, the negotiations for a mining concession and the contract documents of leases are held confidential. The mining concessions and leases have nondisclosure clauses, which have been introduced to protect commercial interests. The nondisclosure clauses are a barrier against accountability and transparency.<sup>29</sup>

60. According to the country's constitution, all mineral leases must be ratified by Parliament before execution. The Parliament has not fully complied with this mandate. In the Parliamentary Debates of October 20, 2008, it came to light that mining leases granted to 21 companies between 1994 and 2007 were operational even though they had not been ratified by Parliament (Ghana, Republic of 2008a). The relevant parliamentary committee expressed great dissatisfaction at the delay in submitting the leases for ratification. It has also expressed concerns about why the executive entered into an agreement with the companies and then, after 10 years, brought them to Parliament to be ratified. In spite of these concerns, Parliament did ratify the leases and cautioned the ministry responsible for mines that any such violation of the laws of the land in the future would be subjected to the full sanctions in accordance with the law (Ghana, Republic of 2008b).
61. The process of awarding mining leases also leads to tax avoidance. The system of the 2006 Mining Act creates opportunities for merger and enlargement of mineral rights. Specifically, it allows a holder of a mineral right to merge all or parts of its mineral rights with the understanding that it will promote efficient and economic management of its operations. This potentially creates new companies under different names. These new companies will not have to pay corporate taxes, because tax holidays are granted to these new firms, a practice that generally induces a flight-by-night effect.

#### **b. Regulation and Monitoring of Operations**

62. The regulatory framework does not address negative social and environmental impacts of mining activities or land expropriation and compensation issues. These shortcomings often are amplified by the weak capacity of the agencies in charge of its enforcement and problems arising from asymmetric information. Perceptions of weak sector regulation have been reinforced by the low number of sanctions applied to lease holders for violations. Moreover, the level of severity of sanctions applied is different for small- and large-scale mining, often favoring the latter.

#### *iv. Exploration of land for mining*

63. The expropriation of land to be used for mining causes significant controversy. The government's management of this issue has been weak partly because the solutions are seen as unfair to the communities that have to lose the land and partly because the rules for

expropriation are nontransparent. In fact, the 2006 Mining Act violates the provisions of the 1992 Constitution on this matter and that alone triggers a deluge of complaints from mining communities. The Mining Act provides the legal basis for compulsory acquisition of land. The Constitution, however, which vests the minerals to the president on behalf of the people, approves expropriation only when payment is fair and adequate and under circumstances in which those with an interest in the land such as the owners, can complain to the High Court, for example, on matters of compensation. Uncertainties about how to interpret the laws have left the determination of compensation to negotiations between the parties involved, resulting sometimes in lengthy litigation. Lack of standard compensation norms and property values of land in the mining areas, results in significant room for controversies. Thus, the legal framework has failed to deal with the issue of expropriation and compensation. This is a serious problem in the mining sector, spanning from exploitation to decommissioning (Ayine and Gyan 2009).

v. *Sanctions on Regulatory Violations*

64. Consequences for breaking the law appear to be mild for large-scale mining companies and harsh for the small-scale ones. The 2006 Mining Act lists the offences in the mining sector that may attract sanctions. For instance, a person who buys or sells minerals without a license is liable on summary conviction to a minimum fine of 3,000 penalty units or to imprisonment for a term not more than five years, or both. In contrast, more serious offences that pertain mainly to large-scale mining attract significantly milder penalties. For example, the lack of notification to the MC and the Geological Survey Department of discovery, reconnaissance, and export of radioactive mineral levies a fine of no more than the cedi equivalent of US\$50,000 or imprisonment of maximum two years that may be combined with a US\$50,000 fine.

vi. *Monitoring the Industry for Environmental and Social Impacts*

65. Although the negative environmental effects of mining have been known for several decades, they have not been addressed by changes in the regulatory framework or the legal reform in 2006. The progress in environmental protection that has been made is due to the introduction of better production techniques by the mining companies and advancements in international best practices.

66. In the early 1990s, environmental action plans and policies improved some. The Environmental Protection Agency's (EPA) efficiency has been reduced by unclear legal details and capacity problems. For example, all new mines are required to prepare Environmental Impact Assessments (EIAs), Annual Environmental Reports (AERs), and Environmental Audit Reports (EARs), yet the impact of these measures has been limited. The required impact assessments are conducted by the mining companies themselves without sufficient oversight. Additionally, the EIAs are confidential, are written in a technical language and thus are difficult for outsiders to evaluate, and lack a thorough social impact assessment and realistic community involvement (Akabzaa 2000; Akabzaa, Seyire, and Afriyie 2007; Salami 2001). Similarly, the Commission on Human Rights and

Administrative Justice (CHRAJ) has reported severe cases of human rights abuses<sup>30</sup> associated with large-scale mining in Ghana (see Table 4 ).<sup>31</sup>

67. Stakeholders have expressed concern about small-scale mining activities on similar grounds. Artisanal miners lack knowledge about the harmful impact of their mining activities on their health and safety and on the community. Harmful impacts on the community are a result of the contamination of local water supplies by the careless use of mercury and other inefficient production methods, as well as the miners' unwillingness to participate in land rehabilitation. To mitigate such potential problems, the government in 1992 approved the establishment of a Minerals Development Fund. The fund is to receive 20 percent of mineral royalties paid to the IRS. Half of the amount paid would be distributed among the DAs, landowner representatives, and people or communities adversely affected by mining (Tsikata 1997). Given severe ineffectiveness in the management of this fund, however, it was recreated in May 2008 and renamed the Mining Common Fund. This new fund will support the development of communities in mining areas. In addition, the government has set up a high-level committee on mining to better secure positive impacts of mining in the communities where these mines are situated (Dalberg/World Bank Group 2007).

**Table 4: Findings of CHRAJ on Investigation into the State of Human Rights in Mining Areas in Ghana**

|   |
|---|
| Evidence of widespread violations of human rights abuses of individual members of the communities and communities' collective rights in some mining areas;<br>Widespread pollution of communities' water sources, deprivation and loss of livelihood;<br>Recklessness by the security agencies and the security contractors of the mining companies with accompanying brutalities;<br>Inadequate compensation for destroyed properties;<br>Denial use/misuse of communities' benefits from royalty taxes;<br>Ill-conceived alternative livelihood projects;<br>Absence of effective channels of communications/consultations between companies and communities;<br>Collusion of some traditional authorities and state institutions with companies against communities;<br>Sustained brutalities against galamsey operators;<br>Health problems;<br>Reckless spillage of cyanide;<br>Unfulfilled promises of employment;<br>Mining companies maintain private security personnel to protect their concessions and property from encroachers/trespassers;<br>Use of state security and guard dogs in the fight against the encroachment of galamsey operators;<br>Child labor in the small-scale mining sector; and<br>Incidents of police and military brutalities in mining communities through their "Operation Flush Out." |
|---|

*Source:* CHRAJ 2008.

## 4. Taxing Resource Wealth

68. When it comes to mining sector revenue management, it must be understood that the Ghanaian government is in a difficult position. On the one hand, it has not benefited from the rising prices of mineral commodities, especially gold, because of the excessively generous tax incentives, insufficient investment in improving the country's monitoring system, and poor revenue administration capacity to enforce the existing fiscal regime. On the other hand, revisiting the mineral fiscal regime creates the risk of hurting Ghana's credibility as a reasonable tax collector and reducing prospects of future foreign investments.

### c. Collection of Taxes and Royalties

69. The fiscal regime for mining undoubtedly benefits the private sector. Prior to 2010, fiscal rules allowed private companies to pay only the minimum rate of three percent of gross revenues as royalty. Regarding the profits tax, the tax rate of 25 percent is on the lower end of the spectrum of tax rates applied to mining in resource-rich countries around the world. The depreciation rule has been excessively generous. It is reasonable to give accelerated depreciation on capitalized value of prospecting, exploration, and development costs, but in Ghana's case, the depreciation laws applied across all assets, including machinery, equipment, and buildings. Exemption of income tax on furnished accommodation to staff on site or concessional tax rates for overtime income seemed more than usually generous. The impact of these special provisions is that only a modest amount of profits taxes has been collected from the mining sector. Even in 2008, when mineral prices reached a peak, including gold, the profits tax contribution of gold mines did not increase proportionally.

70. The fiscal regime for the mining sector was influenced to a great degree by what was being done in other resource-rich developing countries in Africa, which led Ghana into a tax competition. The government may have used generous depreciation laws and other incentives to attract investment in the mining sector—and, in the process, it may have promised too much and failed to consider the implications of higher commodity prices at a later stage. One major obstacle still is the stabilization agreements with all the mining companies. Making any changes in the fiscal regime that might adversely affect the mining companies would be a challenging task.

### vii. *Royalty and Profits Tax*

71. Two instruments are employed for revenue collection from the mining sector: royalty and profits tax. Formally, both instruments appear more beneficial to society than they are in reality. Before 2010 the Minerals and Mining Act (2006), established that “the rate of royalty payment shall not be more than six percent or less than three percent of the total revenues of minerals, applicable to all types of mining lease holders, large or small (Section 25)”.<sup>32</sup> The mineral royalty is meant primarily to compensate the communities affected by the mining operations of a firm.<sup>33</sup> The government amended the Minerals and Mining Act's provision relating to royalties on mineral resources. The effective rate of royalty was based on the profitability of the mining operations determined by computing the operating ratio of a mine

during the year. It was the ratio that the operating margin—total revenues minus operational costs— bore to the total revenues. If the operating ratio was less than 30 percent, then the royalty rate was three percent.<sup>34</sup> To determine the operating margin, the operational cost was deducted from the total value of minerals from such mining operations. Operational cost included not only the current expenditure incurred by the lease holder for mining, transporting, processing, and sale of minerals but also the capital allowances and interest payment for the period. This significantly increased the costs and thereby reduced the operating margin and profitability margin below 30 percent. Companies could carry forward excessive operating costs into future years, thus substantially lowering the overall royalty payments. Such provisions in the fiscal regime made it possible for the companies to stay below the 30 percent threshold, even during years of high commodity prices and windfall gains to the mining sector. In fact, no company in Ghana ever paid more than the three percent royalty. The 2010 Budget Law introduced a flat rate of five percent of the total revenue earned from gold extraction. This change removes the uncertainty from the royalty regime and makes it quite transparent. It also helps the government realize its fair share of the resource rent. At the same time, a moderate rate of five percent, minimizes the inefficiency impacts of a royalty regime, including the possibility of high-grading.<sup>35</sup> However, it has not been made clear how the change would affect companies with the stabilization agreement.

72. In addition to the royalty payment, a profits tax of 25 percent is applied to the income from the mining sector, which is the same rate applied to other sectors. A loss can be carried forward for up to five years for all industries, including mining. Moreover, some special concessions are applied to the mining sector: First, accelerated depreciation is allowed at the rate of 80 percent of the assets in year one followed by 50 percent of the balance of the remaining value in subsequent years. This mode of depreciation is applicable to the capitalized value of prospecting, exploration, and development costs. In addition, an uplift of five percent of the cost base is added to the written-down value of assets in the second year before any depreciation allowance is granted in that year. Thus, the investor effectively recuperates 105 percent of the investment costs. Second, staff members are exempted from paying income tax on furnished accommodation at the mine site. Third, remittances sent home by expatriate personnel are free from taxation that normally is imposed on money transferred out of the country. Fourth, overtime payment to labor in the mining sector is taxed at concessionary rates. Fifth, exemption from payment of customs duty in respect of plant, machinery, equipment, and accessories specifically and exclusively imported for the mineral operations is permitted.

*viii. Stabilization Agreements*

73. In addition to a generous tax regime, the lease contracts include a 15-year stabilization clause. This clause protects the company from an increase in royalty and profits tax payments from subsequent changes in the law. This type of protection may be justified when the mining sector is subject to special fiscal regimes with higher tax rates compared with other sectors. In Ghana, the mining sector is subject to the same income tax rate as other sectors and receives special incentives from the government.



74. Companies argue for stabilization agreements stating that they need insurance that they will be able to operate long enough to realize even a normal rate of return. The added argument is made that the gold mines in Ghana are becoming vein mines as pit mining is exhausted. Vein mines require higher investment and operating costs and hence the need for stabilization clauses. Initially, the stabilization clause was applied to NGGL and then it was extended to all the gold mining companies. As a result of these agreements, it is now difficult to apply changes in the royalty or profits tax regime on the existing mines.

*ix. Equity Participation by the Government and Politicians in Company Boards*

75. A provision in the Minerals and Mining Act makes it mandatory for the government to acquire 10 percent of “free equity in each mine.” This gives the government free carried interest in the rights and obligations of the mineral operations without making any financial contribution. The government therefore has a 10 percent share in most gold companies.<sup>36</sup> The Ministry of Finance’s nontax unit collects the dividends payment to the government.

76. The benefit to the government of this equity participation is not quite evident, however. The government collects some dividends from mining companies (if they are declared). For instance, to get a sense of company dividends versus royalty payments to the government, from July to December 2004 dividend payments to the government were just under 23 percent of the royalty payments. In 2005, the number was about 29 percent. The Mining Act also gives the government the right to appoint its representatives to sit on the company’s board of directors. The person in this position usually is an official from the MC, an MP, or a citizen.

77. It is not clear whether the government is better off as a result of this arrangement. In theory, if a government representative sits on the board, that person’s role likely is limited in management matters in general and financial issues in particular. In reality, this kind of representation on a board provides an avenue for the company to influence the government’s thinking if not its decision-making related to that mine. The arrangement may create uncertainty regarding the MC’s commercial and regulatory roles and even hamper the integrity of the sector governance. In fact, a large number of members of Parliament are sitting in the boards of the mining companies. This arrangement, combined with confidential lease agreements and the perception of a generous fiscal regime for the private sector, creates a clear risk of political corruption and conflict of interest. Regardless of the motivations behind the arrangement, it would be easier for the government to build trust in mining policies if political appointees and elected officials were not part of mining companies’ boards.

*x. Revenue Administration*

78. The three main revenue collection agencies are the Internal Revenue Service, Value Added Tax Service (VATS), and Customs, Excise and Preventive Service (CEPS). A large taxpayer unit (LTU) is specifically responsible for tax collection from the mining sector. The Revenue Agencies Governing Board (RAGB) supervises these collection agencies. As a result, the

performance of the revenue collection agencies has not been monitored effectively and their supervision is weak and lacks coherence. The institutional set-up has not created incentives to enhance performance, and thus, revenue collection agencies have not been able to develop adequate capacity for core administrative functions. Interviews with the revenue agencies indicated a lack of coordination among themselves and with other related institutions, such as the MC and the central bank, which adversely affects compliance by the mining sector.<sup>37</sup> In November 2009, the government announced the establishment of a Revenue Authority that will merge the different revenue agencies (Revenue Authority Act, 2009 [Act 791]). The goal is to streamline domestic tax administration and unify the system based on administration by tax type. Instead, revenue administration will be organized on a functional basis with merged IRS and VATS administering domestic taxes including income tax, VAT and excise duties. The CEPS will be responsible for international taxes and administering ECOWAS levies, the Export Development Investment Fund (EDIF) and collecting processing fees. The unification process is expected to take two to three years to be implemented.

79. Unlike the government, mining companies have the benefit of the best accounting and legal resources. This imbalance may have influenced negotiations between the government and the mining companies. Indeed, the government plans to restructure the RAGB and improve the function of revenue collection. This may be important to enhance efficiency of compliance and enforcement. Several parts of the administration, however, still suffer from a variety of shortcomings, in particular when it comes to the monitoring of production figures, profits assessment and tax auditing, and transfer pricing.

#### *Controlling Production Figures*

80. The Customs, Excise, and Preventive Service is responsible for verifying the production figures and amounts of gold exported. Nevertheless, this unit does not have adequate capacity to value and control export containers. What we learned during interviews for this study is that the CEPS personnel attached to the gold mining companies are not necessarily present in the bullion room to authenticate the shipment documents; they are called to validate the records only at the time of sealing the boxes for exports. More important, the mining companies get the value of gold from refineries outside Ghana for the purposes of royalty determination. CEPS does not have the facility or capacity to verify the weight and quality (fineness) of gold independently. This creates a serious handicap for the LTU in monitoring the production figures and assessing the profits tax liability and royalty payments.

#### *Profits Assessment and Tax Auditing*

81. The LTU does not have the means or the capacity to verify market prices, costs of mining company operations, and cash flows, which are the cornerstone of profits tax assessment. Operating costs are not verified correctly because LTU personnel do not have a good sense of the various cost components, including the capital costs involved in mining operations. Thus, the LTU does not have adequate capacity and necessary skills to assess the tax liability of a mining company or make projections for the future revenues. As a result, the LTU has to accept the companies' returns without any critical examination. The LTU has been

conducting only desk audits of mining firms. Each of the 10 major gold mining companies should be subjected to field audit every year. Although there are plans of conducting field audit work, the LTU does not have a single auditor with the expertise and experience to audit mining operations and it is not clear how this audit plan will be implemented.

### *Transfer Pricing*

82. Transfer pricing might negatively affect revenue collections. Most mining companies operate internationally and have extended dealings with affiliated companies, which increases opportunities for transfer pricing and potentially lowers the tax liability. This further complicates the task of tax administration and creates a challenge that requires specific skills. The tax law in Ghana has legal provisions to address the issue, but these provisions are insufficient. The tax administration needs better training on how to recognize the transfer pricing opportunities in mining operations and stronger capacity to detect and respond to this problem. The issue of transfer pricing is sophisticated and complex in nature and it has the potential of seriously eroding the tax base.<sup>38</sup>

## **5. Spending Resource Wealth**

### **d. Revenue Management and Allocation**

83. In Ghana, as in many other resource-rich countries, budget procedures need strengthening at all stages. The government should be commended for its improvements when it comes to the overall budget procedures. Ghana's 2010 score of 54 on the Open Budget Index (OBI) is, according to the International Budget Partnership, higher than the score of any other country surveyed in West Africa and also higher than the worldwide average of 42.<sup>39</sup> Nevertheless, poverty reduction strategies developed by the government have limited impact on actual spending, and the National Development Planning Commission still is not functioning effectively. This section considers the budget procedures, including preparation, presentation, and implementation with a view to studying their implications for the mining sector.

### *xi. Budgeting for Development?*

84. The government's focus on poverty reduction is not reflected adequately in the budget process. The GPRS prepared by the National Development Planning Commission formally frames the government's policy to secure the country's welfare by allocating state revenues— from mining as well as other sources. A set of clear norms to guide the budget process has not been developed, however. The allocation of responsibilities is unclear and the institutional set-up has changed. The authority of a Planning Commission, which should be functioning under the president on matters related to the budget, has been merged with the Ministry of Finance. This step has diluted the role of planning and watered down the guidance given to MDAs for capital budgeting. The Ministry of Planning or a Planning

Commission is better equipped to appraise new projects and programs from the economy's viewpoint. In addition, the planning process for a long-term development strategy is disturbed by the practice that every new government prepares its own development plan. This tradition of reformulating the development plan with every change of government has made it difficult to prepare long-term strategies and has impeded the completion of ongoing projects and programs.

85. Despite recent efforts to improve procedures for spending decisions, some serious challenges in the budget preparations remain. For instance, the budget usually is not based on the actual revenue envelope. Ideally, the budget cycle should start with a macroeconomic forecast of the resource envelope, but the revenue-forecasting capacity in the country is weak.<sup>40</sup> This task has been rendered more difficult as the GDP figures have changed. Therefore, budget preparations are not linked sufficiently to the revenues available. Given limited information during budget planning, it cannot be expected that the actual expenditures are in accordance with the budget appropriations, and as a result, the control on spending weakens.
86. These budget preparation challenges weaken the link between budget planning and actual spending, and thus the government's planning for development objectives is far from reliable. In the budget-making process, the ministries, departments and agencies are expected to pick up their schemes from the GPRS and remain within the allocated budget limits. In practice, however, expenditure proposals from the MDAs tend to be inflated in anticipation of cuts by the Ministry of Finance. Generally, salary is underestimated, which means that a larger share than planned in the budget is spent on salaries. At present, almost 70 percent of the budget is spent on wages and salaries, which amount to nearly half of the total tax revenues and about 10.5 percent of GDP. The balance goes to statutory payments on transfers and debt repayment. As a result, few funds are left for capital budgeting. Thus, the link between budget and development objectives remains weak, and planning becomes a paper exercise.
87. The Ministry of Finance's budget analysis unit should evaluate proposals from the line ministries, yet this unit lacks analytical capacity. A recent example of the absence of analysis is the floating of bonds by the government in 2008. Bonds worth US\$750 million were issued, but no plan was prepared to spend it efficiently. Most of the funds were spent countering the impact of inflation on government spending. Because assets were not created through these funds, no resources are available to pay those loans back. Lack of technical capacity in the budget department is a major constraint. As a result, the MDAs that wield the most influence have their demands included in the budget with or without any rationale.<sup>41</sup>
88. The budget-making process generally is open and budget information is presented on the Ministry of Finance's website. During the last few years, the government has started a consultation process with CSOs and the private sector through its umbrella organization, the Private Enterprises Foundation (PEF) for their inputs into the budget-making process. The suggestions that emerge from the consultative process, however, often fail to be incorporated into the budget. This failure has created the impression that the consultations are not genuine and done merely for public relations.<sup>42</sup> Also, the Ghanaian civil society

seems reluctant to challenge the government even when presented with facts. For instance, when the International Monetary Fund presented an estimate of about eight percent of fiscal deficit for Ghana for 2007, the government maintained its earlier figure of 5.7 percent deficit. Despite the evidence of the unreliability of this macroeconomic information, it generated no public debate.

*xii. Budget Presentation and Implementation*

89. Ghana operates on a medium-term expenditure framework (MTEF). In practice, however, it does not relate to the three-year budget framework because of the disjointed nature of the annual budget. The budget remains incremental in nature and the links between poverty reduction priorities and medium-term budgetary allocations through the MTEF process is weak. In addition, the connection is poor between the detailed MTEF activities and the ability of the MDAs to allocate resources to those activities. The MDAs request additional funds from the Ministry of Finance instead of managing their portfolios within the available resources. The inability of the tax policy unit and the revenue board to forecast the resource envelope realistically before the budget cycle begins further dilutes the MTEF framework. Consequently, the government should deepen the MTEF process from its present form in which the commitment of MDAs is mechanical and obligatory in nature. The government plans to introduce program budgeting that will require use of performance budgeting and thereby strengthen MTEF as the budgeting framework. Following Parliament's approval of the budget, a series of supplementary appropriations is introduced every year, often altering the original budget. The budget document incorporates only the approved budgets of the previous years. Revised budgets and actual expenditures are not published, which hides the actual budget deficits from public view.
90. Effectively, the link between the budget approved and the budget executed is weak. For release of funds, the MDAs are required to present expenditure details and indicators that show the money is spent appropriately. In practice, however, this does not happen. The expenditure deviations between the budgeted amount and actual outturns for major budget heads during 2004–06 varied between six and 12 percent (World Bank 2008a).
91. Budget implementation should ensure that resources are available to MDAs in a predictable and timely manner and in accordance with the appropriations. In practice, however, resources are not provided on a regular basis throughout the year and are not authorized in the budget. The expenditures usually are limited in the first half of the year; most expenditure is made in the second half of the year, particularly the last quarter. This irregularity may have an adverse impact on the quality of implementation of projects and programs.

**e. Sustainable Development Policies and Projects**

92. To understand the government's long-term development perspectives for the mining sector, we consider how revenues are reinvested in the society. As mentioned above, every new government prepares a new development plan. Strategies to reduce poverty and improve the

country's welfare thus may change every fourth year and the long-term perspective for sustainable development is easily lost.

93. Nevertheless, the failure of a Development Policy to accompany the 2006 regulatory framework for mining could indicate that development from mining is not a top priority. When a new law on industry regulation is passed, it should be followed by a policy on interpretations and guidance for day-to-day work. Such a policy exists in other sectors in Ghana, including land, forestry, and wildlife, but not in mining. Three years after the new Mining Act was passed, such a policy has been drafted but not approved. Detailed regulations and subsidiary legislation are absent and this gives room for discretion. It is unclear how well the 2006 Act is practiced in accordance with the idea of sustainable development.
94. Mining has not been integrated with the rest of economy. Multinational mining companies typically have their own supply and manufacturing contracts and rely on markets abroad. Because of mining's exclusive character, few efforts have been made to support the intensification of local contents. For example, regulations fail to provide incentives for multinationals to build a local processing base in Ghana. Ghana is struggling to establish an effective medium- and long-term strategic plan for the use and integrated development of mineral resources. The country is filling gaps in its legal and regulatory framework in an ad hoc manner, and it lacks a coherent industrial program to integrate the sector with existing and emerging local businesses (Aryeetey, Osei, and Twerefou 2004; ECA 2004). To address this issue in a decisive manner, a new draft legislation makes it mandatory for the mining companies to increase the local procurement to 60%, although the subtle point whether "local" means locally produced or only locally distributed is still under discussion<sup>43</sup>.
95. Mining has had adverse environmental impacts, and these challenges have not been resolved by the 2006 Mining Act (see Akabzaa 2000; Akabzaa, Seyire, and Afriyie 2007; Minerals Commission 1996). Initial efforts to reduce the environmental consequences of mining have been made. In collaboration with the donor community and the World Bank, the government has embarked on a comprehensive program to strengthen the governance of natural resource management and to address environmental challenges through the Natural Resources and Environmental Governance (NREG) program. Among the program's objectives are: (i) ensuring more predictable financing for the regulation and monitoring of natural resource production; (ii) improving mining sector revenue collection, management, and transparency; and (iii) addressing adverse consequences in host communities. Although it takes years for results to materialize and for new strategies to be part of a governance culture, the program may turn out to be an important step toward sustainable development in the mining sector.

## IV. Conclusion

96. Some experts argue that mining exerts an overall positive impact on Ghana's economic development, but public discontent has intensified with the sector's perceived low net

economic and social returns. Successive governments have shown a commitment to addressing some of these issues, but action has been slow, piecemeal, and lacking a holistic approach. The political commitment to decisively reform the sector has been intermittent at best. Over the years, many reforms have not been implemented because they have attracted resistance from those who profit the most from the status quo. The multiplicity of players, each set with its own agenda, has made reform difficult. A combination of factors, including the weak system of checks and balances, poor institutional recordkeeping and access to information, power imbalance between the government, mining companies, and communities, and a particularly investor-friendly regime for mining, have created a situation in which vested interests influence sector governance and increase the risk of corruption. Any effort to strengthen the development impact from the sector has to build on an understanding of the political environment behind sector governance. Despite the democratic progress in Ghana, strategies for sector regulation cannot be developed on the assumption that such regulation can occur without political interference, but rather these strategies should build support at the political level.

97. Where weak institutional capacity and political incentive problems exist, new reforms easily become meaningless because they cannot be executed. This may be the main reason the Ministry of Finance is not pushing for more reforms, particularly in the field of mining.
98. Bolstering political power through undemocratic mechanisms weakens the political focus on bureaucratic efficiency. At present, regulatory institutions that do not perform face few, if any, consequences. As in other bureaucratic structures, the motivation for reform in Ghana may be low. Over time, vested interests prove too strong to challenge from within the political system. If not from political levels, demand for reform and stronger regulation could come from the mining industry or civil society. However, the mining industry in Ghana receives the best of terms and concessions from the government. Even if the industry wishes to keep up with international corporate social responsibility standards, it is not in its interest to push for reform. The mining companies have been in the country for a long time through different administrations, and their motive for and sole focus on profit have remained steadfast. They gradually have come to know the system well, and their sheer understanding of how things work creates a competitive advantage.
99. Ghana's civil society is strong and vibrant and is pushing for reform. Working against both the mining companies and the government prevents civil society organizations from having much effect, however. Reforming control mechanisms and capacity building, improving the function of the democratic system, and uprooting patronage depends undeniably on strong political will. Technical solutions for sector governance may fail if they threaten power structures. Efforts to strengthen democratic mechanisms and political accountability through transparency and effective checks and balances should be given priority.

## **1. Reform Initiatives in Light of the Political Economy**

100. Prior reform initiatives were not designed with the deep-rooted challenges in the political environment in mind. During the mid-1980s liberalization, reform efforts were expected to (i) establish a legal and institutional framework for mining; (ii) ensure the security of tenure for grantees of concessions; (iii) manage problems between mining companies and local communities; and (iv) obtain state revenues. The 1986 Mining Law was meant to be investor friendly, yet reforms did not ensure that Ghanaians profited. The mining sector has maintained its exclusivity and it remains focused on revenue without a policy for long term reinvestment.
101. Two aspects are important in dealing with the former reform initiatives in relation to the political economy vulnerabilities. The first relates to national sovereignty. The presence of highly professional foreign companies and their ability to negotiate with weak government institutions and get better and more generous contracts have echoed concerns over national sovereignty. The second relates to the promotion of a social contract, which imposes an obligation on the part of the government to effectively manage natural resources like mining for the benefit of present and future generations.
102. Efforts to strengthening the institutional framework for mining, tax administration, auditing at district levels, and budget preparations are ongoing. One example is the NREG program, and another is the collaboration between the government and donor agencies, including the German Technical Cooperation (GTZ) and the Swedish Aid Agency, to build capacity. These programs support the tax policy unit in the Ministry of Finance to develop capacity so that it may fulfill its mandate and role regarding the revenue agencies.
103. Considering previous and current reform initiatives, however, the government has made only marginal improvements in dealing with issues of national sovereignty, social contract, mining's enclave character, the relationship between the mining companies and the communities, and revenue maximization.

## **2. Developments and Opportunities**

104. Some of the larger mining companies appear willing to review their investment agreements. If this willingness is extended to more companies, mining activities will be healthier and more constructive. This effort combined with initiatives from the NCOM and CHRAJ create opportunities for communication and development-friendly solutions.
105. Because of the recent oil discovery, stakeholders became interested in reviewing sector challenges and drawing policy implications for oil sector institutional set-up and management. This comes at a time of increasing awareness of the resource curse challenges internationally. Over the last two decades, academic literature on natural resource management has presented important insights and possible solutions to resource challenges.



Strict public fiscal discipline traditionally has been the core measure to mitigate detrimental effects of the resource curse (Auty 1993; Auty and Mikesell 1998; Hausmann and Rigobon 2003; Mahon 1992). More recently, however, international institutions have been advancing a set of ideas that collectively embodies a “new natural resource policy agenda” (Vatansever and Gillies 2009; World Bank 2006). The point is not only to improve governance along the value chain, but also to address political incentive problems and monitor politicians so that private agendas do not influence their decisions at the cost of society’s welfare.

### **3. Implications for the Emerging Oil Industry**

106. How can the oil sector learn from the mining sector to avoid pitfalls and ensure that oil resources benefit the country’s welfare? Ghanaians are aware of the experiences of other African countries, which suggest that the oil industry is engulfed with fraud and corruption by public and private sector operators. The public sees a need to be alert and to detect and avoid potential fraud and corruption that takes advantage of the discovery of oil and engages in rent-seeking activities.<sup>44</sup>
107. The public has raised a strong concern: If the mining sector, which has been in existence for more than 100 years, has not improved the country’s welfare, what will ensure that the emerging oil sector will make a difference? This concern has been fueled by the uncertainties regarding the size of commercially viable reserves, and the future price levels, with estimates suggesting that oil revenues will be modest and short lived. In other words, to what extent can oil production contribute to the country’s development and fundamentally alter the nature of the political economy of Ghana?
108. Successful oil regulation requires the recognition that the problems of the resource curse are political in nature and needed to be tackled at the political level. State elites might have incentive to weaken the very institutions that they have created, and therefore will emphasize the importance of creating institutions supported and overseen by a dense network of diverse stakeholders (Dunning 2008). A political approach recognizes that policy failures, which result in the resource curse, the “Dutch disease,” and other such pathologies associated with natural resource wealth, are not always the result of naivety or lack of capacity on the part of policy makers. State elites might benefit in the short term from such situations. A framework for political analysis does not assume that all matters will be resolved if policy makers and politicians simply know what to do and have sufficient capacity to implement technically sound policies. Instead, it delves into underlying interests and incentives of state actors and puts them at the forefront when constructing policies and strategies.
109. Competent institutions with clear mandates are needed to make decisions that benefit the country’s welfare and to enforce transparency and accountability. To do so, regulatory and commercial roles of the Ghana National Petroleum Corporation (GNPC) should be separated. Credible and well-resourced institutions should prevent oil wealth from heightening the power of the executive over the other branches of government.

Strengthening public institutions could generate a political environment less prone to conflict and more efficient in managing public spending. The mining sector's enclave character has created public interest in the government establishing legal and institutional structures for oil regulation that promote accountability and industrial development.<sup>45</sup> The public has demanded greater transparency in licensing and contracting in the oil sector than seen in the mining sector.

110. Plans and policies targeted at effective collection and distribution of oil wealth must be accompanied by activities that buttress Ghana's relatively nascent democratic institutions. To avoid the potentially destabilizing effects of rapid oil wealth accumulation, the government should answer several questions. How will oil revenue affect the behavior of political parties and the pervasiveness of patronage? How will the influx of oil revenue to the central government alter the fundamentals underpinning fiscal decentralization? What steps can be taken to ensure that the promise of access to oil wealth does not further radicalize political discourse in the country? In short, Ghana's national discussion about oil policy and institutions must involve honest reflection about the country's democracy and an assessment of those areas in which an influx of oil wealth might exacerbate existing challenges. The government has a strong awareness of the importance of institutions, yet it has little understanding of the existing political incentive problems.

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## VI. Appendixes

### 4. Appendix A. Earnings and Revenue

**Table 5: Merchandise Export Earnings by Sector, 2004-2008**

|                                       | 2004    | 2005    | 2006    | 2007    | 2008    |
|---------------------------------------|---------|---------|---------|---------|---------|
| <b>Gross Exports (US\$) of which:</b> | 2,704.5 | 2,802.2 | 3,726.7 | 4,194.7 | 5,275.3 |
| <b>COCOA</b>                          | 1,025.7 | 908.4   | 1,187.4 | 1,103.2 | 1,501.7 |
| <b>percent contribution</b>           | 37.9    | 32.4    | 31.9    | 26.3    | 28.5    |
| <b>MINERALS</b>                       | 904.5   | 1,034.8 | 1,371.8 | 1,815.3 | 2,341.9 |
| <b>percent contribution</b>           | 33.4    | 36.9    | 36.8    | 43.3    | 42.6    |
| <b>TIMBER</b>                         | 211.7   | 226.5   | 206.7   | 249.0   | 309.0   |
| <b>percent contribution</b>           | 7.8     | 8.1     | 5.4     | 6.0     | 5.9     |
| <b>OTHER EXPORTS</b>                  | 661.6   | 632.5   | 968.0   | 1,026.1 | 1,218.4 |
| <b>percent contribution</b>           | 24.5    | 22.6    | 25.8    | 24.4    | 23.1    |

*Source:* Bank of Ghana 2009.

**Table 6: Revenues from Mining Sector (million Ghana cedis)**

| Year  | 2003   | 2004   | 2005   | 2006   | 2007   | 2008   |
|---|--------|--------|--------|--------|--------|--------|
| <b>Corporate Tax</b>                                  | 166.2  | 251.2  | 317.6  | 315.4  | 423.4  | 555    |
| <b>Royalty</b>  | 20.1   | 21.6   | 23.6   | 31.6   | 40.9   | 59     |
| <b>Total Revenue from Mining Sector</b>               | 186.3  | 272.8  | 351.2  | 347    | 464.3  | 614    |
| <b>Total Tax Revenues</b>                             | 1276.2 | 1740.3 | 2014.5 | 2326.3 | 3195.8 | 4418.6 |
| <b>Mining Revenue as Percent of total Tax Revenue</b> | 14.6   | 15.7   | 17.4   | 14.9   | 14.5   | 13.9   |

*Source:* RAGB, Ghana, 2009.

## 5. Appendix B. Interviews

**Table 7: List of Interviews**

| <b>May 2008 Interviews</b>       |   |   |
|----------------------------------|---|---|
| <b>Name</b>                      | <b>Title</b>  | <b>Organization</b>   |
| Dr. Chris Anderson               | Director, External Affairs, Africa and Europe   | Newmont Ghana Gold Limited  |
| Daniel Owusu Koranteng           | Executive Director  | Wassa Association of Communities Affected by Mining (WACAM)                                 |
| Dr. Dominic Ayine                | Lecturer, Faculty of Law  | University of Ghana   |
| Steven Manteaw                   | Director  | Integrated Social Development Centre (ISODEC)   |
| Fredua Agyeman                   | Technical Director (Forestry)   | Ministry of Lands, Forestry, and Mines  |
| Ben Aryee                        | Chief Executive   | Minerals Commission   |
| Abdulai Dramani                  |   | Third World Network-Ghana   |
| Sam Bosompem                     |   | Public Affairs Directorate of Commission on Human Rights and Administrative Justice (CHRAJ) |
| Joyce Aryee                      | Chief Executive Officer   | Ghana Chamber of Mines (GCM)  |
| Ofosu Ahenkorah                  | Chief Executive Officer   | Energy Commission of Ghana  |
| George Asante                    | Deputy Managing Director and Ghana representative on the International Board of the KPC | PMMC and the signatories of the KPC   |
| Kwasi Osei-Prempeh               | Deputy Attorney General and Minister of Justice   |   |
| <b>February 2009 Interviews</b>  |   |   |
| <b>Name</b>                      | <b>Title</b>  | <b>Organization</b>   |
| Kathy Bain and colleagues        |   | CMU/the NREG  |
| Dr. Dominic Ayine                | Lecturer, Faculty of Law  | University of Ghana   |
| Ben Aryee                        | Chief Executive   | Minerals Commission   |
| J. Y. Aboagye                    | Director, Policy Planning, Monitoring and Evaluation Division                           | Minerals Commission   |
| Professor E.K. Quashigah         | Dean, Faculty of Law  | University of Ghana, Legon  |
| Kwame Gyan                       | Faculty of Law  | University of Ghana, Legon  |
| Dr. S.K. Akoena                  | Head, Department of Economics   | University of Ghana, Legon  |
| Dr. D.K. Twerefou                | Department of Economics   | University of Ghana, Legon  |
| Dr. A.F. Gockel                  | Department of Economics   | University of Ghana, Legon  |
| Jannik Vaa                       |   | European Commission, Accra  |
| Tina Lunn and Jan Pirouz Poulsen | Head of Finance and Governance  | DANIDA, Accra   |
| Alhaji Amadu Sorogho             | Chairman  | Parliamentary Select Committee on Mines and Energy  |
| J. A. Saka                       | Member  | Parliamentary Select Committee on Mines and Energy  |
| Alhaji Ibrahim Dey               | Member  | Parliamentary Select Committee on Mines and Energy  |
| Thomas Kwesi Nasa                | Member  | Parliamentary Select Committee on Mines and Energy  |
| Joseph Bukani                    | Member  | Parliamentary Select Committee on Mines and Energy  |
| Dr. Dale Rachmeler               | Fund Manager  | Business Sector Advocacy Challenge (BUSAC)  |
| David Nguyen-Thanh               |   | German Technical Cooperation (GTZ)  |
| Ruby Bentsi                      |   | Department for International Development (DfID)   |
| J. A. Allotey                    | Director-General  | Environmental Protection Agency   |
| Anthony Doku                     |   | Revenue Agencies Governing Board  |
| Wilma Van Esch                   |   | The Royal Netherlands Embassy   |
| Elijah Danso                     |   | The Royal Netherlands Embassy   |



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<sup>1</sup> PNDC Law 153. The mining law was again reformed in 2006.

<sup>2</sup> These were Bogosu Resources (Canada), Goldenrae Mining (a joint venture between IMT International of Luxembourg, Sikaman Gold Resources of Canada, and the Ghanaian government), and Teberebie Goldfields Limited (Hutchful 2002).

<sup>3</sup> Concerns raised by some mining communities, NGOs, and CSOs about the beneficial effects of mining led to a conference on the theme “Corporate Social Responsibility in Ghana: Extending the Frontiers of Sustainable Development,” which was jointly held by the Minerals Commission and the Chamber of Mines on September 4, 2004.

<sup>4</sup> The Chamber of Mines, an association of mining companies and a lobby body, was established in 1928.

<sup>5</sup> Apart from Newmont Ghana, other mining companies such as Gold Fields Ghana, Ghana Manganese Company, and Chirano Gold Mines have set up social development funds to promote social responsibility in their catchment areas (see Eijgendaal 2007).

<sup>6</sup> The incentives include (i) the establishment in 2005 of Newmont Ahafo Development Foundation (NADeF) through the \$1 per ounce of gold sold and 1 percent of annual net profit from the Ahafo Mine to finance the Foundation; and (ii) the setting up of the Ahafo Social Responsibility Forum (ASRF), an important innovation in corporate social responsibility in Ghana, which is an interactive community based council for dialogue and transparency. The forum was set up in 2006 and consists of chiefs; community-nominated representatives from the youth, women’s, and farmers’ associations; local NGOs; district chief executives; district assemblymen; and Newmont Ghana representatives. Its aim is to provide avenue and multistakeholder context for discussion, making decisions and setting priorities for community development in the Asutifi and Tano Districts. The forum also developed three formal agreements between Newmont and its 12 mining area communities on employment (see Anaman 2008).

<sup>7</sup> The enclave character of the sector has been rebutted by the Chamber of Mines. In a letter Ref. 344/U.4/09 dated December 3, 2009 to Joseph Ayee, the CEO, Joyce Ayree, noted that “although the Minerals and Mining Law requires mining companies to procure local inputs as much as possible, the companies have been left to develop the local backward linkages to the industry. As a result, the mining companies have developed local companies such as Tema Steel Co., Western Castings and Carmeuse, among others, to supply good to the industry” (Ghana Chamber of Mines 2009; see also the Ghana Chamber of Mines 2008, 60).

<sup>8</sup> The enclave character of mining also has been noted by Agbosu et al. (2007, 101). They point out that “[t]he enclave character of the industry, which is manifested in its lack of strong linkages with other parts of the economy, was reinforced by the mining regime.” In addition, the 2008 National Democratic Congress (NDC) Manifesto indicates that an NDC government will take measures to “abolish investment agreements that make mining operations enclaves exempt from legislative reforms/national emergencies” (NDC 2008, 59).

<sup>9</sup> This situation is changing. Despite the remote locations of most mines, significant value now comes from increasing the local availability of goods and services. For example in 2008, 63 percent of mineral revenue was returned directly to the country through the Bank of Ghana as well as the commercial banks. In addition, the mining industry deployed 22 percent of its revenue to procure inputs locally besides the 13 percent and 8 percent used to procure diesel and electric power locally. In total, the companies procured 47 percent of all their inputs and 71 percent of their consumables locally in 2008 (see Eijgendaal 2009).

<sup>10</sup> See Akabzaa (2000) and Akabzaa, Seyire, and Afriyie (2007) for more information about negative consequences of mining.

<sup>11</sup> Environmental consequences are not necessarily caused by current production techniques, but rather by acids used years ago, yet they continue to burden the communities and cause serious challenges to those affected.

<sup>12</sup> The National Coalition on Mining includes the Third World Network-Africa (TWN-Af), Civic Response, ABANTU for Development, Centre for Public Interest Law (CEPIL), Wassa Association of Communities Affected by Mining (WACAM), Centre for Environmental Law and Development (CELD), Friends of the Earth-Ghana (FoE-Ghana), Green Earth Organization (GEO), Grassroots Africa, Friends of the Nation, Integrated Social Development Centre (ISODEC), Challenge Africa, and Richard Adjei-Poku Kenyasi Community.

<sup>13</sup> Mines developed after 1990 have substantially lower environmental hazards. Several initiatives have been made by the chamber and the mining companies to address environmental issues, including the pursuit of an environmental and social agenda in 2007, the organization of a conference on Environmental Impact of Mining in Local Communities in

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2006, cooperation with the Environmental Protection Agency (EPA) and the Minerals Commission (MC) in adhering to the environmental and mining laws of the country and a Chamber Code of Conduct signed in 2006 by all members. In addition, four mining companies, namely, Newmont, AngloGold Ashanti, Golden Star, and Gold Fields, are either fully certified or more than 90 percent certified under the International Cyanide Management Code, an assessment of safe management of cyanide that is produced, transported, and used for the production of gold and cyanidation of mill tailings and leach solutions. Furthermore, the annual general meetings of the chamber in 2007, 2008, and 2009 have concentrated on what the mining sector can do to better contribute to sustainable development.

<sup>14</sup> It may resemble what is called the “complexity of joint action” —that is, the likelihood of successful implementation of policies is sharply reduced by the number of institutions involved (see Pressman and Wildavsky 1984).

<sup>15</sup> In 2000, the NDC lost presidential and parliamentary elections to the New Patriotic Party (NPP). Similarly, the NPP decisively lost elections to the NDC in 2008.

<sup>16</sup> As declared by the constitution and rooted in the Office of the Chief of Staff.

<sup>17</sup> The Local Government Act (Act 462) stipulates, for example, that the district chief executive (DCE) must address the DAs on a regular basis (at least three times a year) to account for funds received from government, donors, and other sources. DA members are legally required to meet their constituents before these addresses and to report back to them from time to time. In addition, MMDAs must establish a Public Relations and Complaints Committee, charged with receiving complaints made against the conduct of members and staff of the DAs, transmitting citizen views and undertaking public education programs; and the presiding member is required to receive the audit report of the DAs, present it to the DAs, and thereafter make known to the public the deliberations on the audit report.

<sup>18</sup> The *stool* in Ghanaian tradition is the key paraphernalia and symbol of authority of traditional authorities. They literally sit on it to perform most of their rites. Without a stool, there is no traditional authority. One is enstooled to become a chief or destooled when one is removed as a chief.

<sup>19</sup> A huge body literature is available on political incentive problems. For an overview and introduction to theories, see Besley (2006), Drazen (2000), Persson and Tabellini (2000).

<sup>20</sup> In accordance with the Minerals Commission Act; Act 450, 1993, “The President has the authority to appoint members of the Minerals Commission and can do so without advice or approval from other institutions. Advice from the Council of State is not required, nor is the approval by Parliament, as is required in the appointment of certain categories of other public officers such as member of the Electoral Commission and CHRAJ.”

<sup>21</sup> In the first week of June 2009, the Centre for Democratic Development (CDD), a renowned think tank in Accra issued a press statement to condemn the appointment of MPs from the ruling NDC as members of boards of state enterprises and declared that such appointments promote conflict of interests.

<sup>22</sup> The mining sector has been described as particularly vulnerable to rent-seeking activities, possibly due to the large initial capital expenditures, the easy money image, and the lack of government regulation (Marshall 2001).

<sup>23</sup> Lack of a competitive process and predominance of an administrative process give rise to this suspicion.

<sup>24</sup> Including the Audit Service Act, 2000 (Act 584) Sections 11-14; Banking Act, 2004 (Act 673) Sections 38-39; Criminal Code, 1960 (Act 29) Sections 239-261; Criminal Code (Amendment) Act, 1993 (Act 458) Section 179 C and D; Commission on Human Rights and Administrative Justice Act, 1993 (Act 456); Customs, Excise and Preventive Service (CEPS) (Management) Law, 1993 (PNDCL 330) Sections 270–271; Financial Administrative Act, 2003 (Act 654) Sections 60–70; Internal Audit Agency Act, 2003 (Act 658); Internal Revenue Act, 2000 (Act 592) Section 152; Payment System Act, 2003 (Act 662) Sections 1, 2, 6–8; Political Parties Act, 2000 (Act 574) Sections 13–14; Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) Sections 1–12; Public Procurement Act, 2003 (Act 663); Representation of the People Law, 1992 (PNDCL 284) Sections 33–41; Serious Fraud Office Act, 1993 (Act 466) Sections 3–4, 11–17; Securities Industry Law, 1993 (PNDCL 333), amended by Securities Industry (Amendment Act 590) Part 10; Value Added Tax Act, 1998 (Act 546) Section 63; Whistleblowers Act, 2006 (Act 720); and the Credit Reporting Act, 2007 (Act 726).

<sup>25</sup> Although the Head Office of the Office of Administrator of Stool Land (OASL) in Accra provides adequate information on royalty payments to the regional offices, the regional offices do not necessarily provide the same information to the beneficiaries in the communities.

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<sup>26</sup> Interview with Ben Aryee, CEO, and J. Y. Aboagye, director, Policy Planning, Monitoring and Evaluation of the Minerals Commission on February 17, 2009. The task force was made up of the Commission, Internal Revenue Service, VAT, CEPS, Revenue Agencies Governing Board (RAGB), Ministry of Finance, and the Ghana Office of the Extractive Industries Transparency Initiative (EITI).

<sup>27</sup> Admittedly, anyone has the right to stake an exploration claim if he or she pays the requisite fees. The right to exploit a deposit goes to whoever finds it, which generally is a risky venture because the exploration may lead to nothing. If this right did not exist, it would be difficult for companies to engage in exploration.

<sup>28</sup> The argument is made that trees are visible while mine deposits rarely are, but the counterargument is that although minerals cannot be seen like trees, a fairly good estimate of the deposits is feasible through prospecting.

<sup>29</sup> The nondisclosure clauses of mining leases have attracted two contrasting views. Although the Parliamentary Committee on Lands and Mines indicated that leases were laid before Parliament, Kwame Gyan, a natural resource law lecturer at the University of Ghana, Legon, questioned the transparency of the leases and pointed out that Parliament did not evaluate the information about the concession because it lacks the competence to do so. This was corroborated by Dominic Ayine, a law lecturer at the University of Ghana. In any case, no lease was laid before Parliament between 1994 and 2007, which means that the companies operated without approval by Parliament and therefore confidentiality of the deals was upheld.

<sup>30</sup> The Chamber of Mines responded to the CHRAJ's report on the "State of Human Rights in Mining Communities" dated February 2009. Although the chamber supported the objectives of the CHRAJ's study, it was disappointed because the report contained "merely restated stories of people who alleged that they have suffered human rights abuses and presented an unbalanced view which does not promote the finding of solutions."

<sup>31</sup> Through the Ministry of Environment, Science and Technology, the current NDC government set up a six-member committee in May 2009 to study the 200-page CHRAJ report and make recommendations for its implementation.

<sup>32</sup> Before the new Minerals and Mining Act of 2006 was implemented, royalty payments ranged from a minimum 3 percent and a maximum 12 percent of the total revenues from the mining operations. The introduction of a provision that royalty rates above 3 percent become applicable only if the operating ratio exceeds 30 percent would make the 3–12 percent range in fructuous, however.

<sup>33</sup> The mineral royalties are distributed as follows. Eighty percent of funds go the Consolidated Funds, 10 percent to the MDF, 1 percent goes to the administrator of OASL, and the remaining 9 percent goes to the local districts that provide the minerals.

<sup>34</sup> This is explained in Article 2 Minerals Royalties Regulation, 1987. If the operating ratio is greater than 30 percent but less than 70 percent, the royalty rate will be 3 percent plus 0.075 of every 1 percent by which the operating ratio exceeds 30 percent, and if the operating ratio is 70 percent or more, the royalty rate will be 6 percent.

<sup>35</sup> The term high grading in forestry, fishing and mining relates to selectively harvesting goods, to "cut the best and leave the rest".

<sup>36</sup> The government's share in the Anglo Gold Ashanti (International) is 3.41 percent, in Ghana Bauxite is 20 percent, and in Ghana Manganese is 10 percent.

<sup>37</sup> A bill to merge the three revenue agencies into one revenue authority had been considered by the cabinet (see Ghana, Republic of 2009a).

<sup>38</sup> For more information, see OECD guidelines on how to deal with transfer pricing (OECD 2001).

<sup>39</sup> Ghana's score increased from 42 to 54 from 2006 to 2010 largely because the government now publishes a Mid-Year Review, a Year-End Report, and an Audit Report. See [www.internationalbudget.org/](http://www.internationalbudget.org/) for more information.

<sup>40</sup> The RAGB is responsible for the forecasting of revenues but does not have sufficient capacity to do a satisfactory job. The Ministry of Finance has a tax polity unit (TPU) that is supposed to do both tax analysis and revenue forecasting, but its capacity in forecasting is limited.

<sup>41</sup> The procedures for preparation and appraisal of projects differ depending on the source of funding. Projects and programs that are funded externally are subjected to relatively detailed preparation and appraisal. For domestically funded projects and programs, no guidelines for screening and conducting appraisal exist. As a result, no rigorous

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analysis is done, instead only a pro forma checklist with some general information, such as population affected, any adverse impact on environment, availability of institutional finance, and so on, is completed by the MDA proposing a new project or program. It also is evident that a proper appraisal of new projects or programs is not done because the executive or the Parliament does not demand this kind of analysis. Only those domestically financed projects that are proposed by MDAs or suggested by members of Parliament or DAs are prepared and appraised in a perfunctory manner and then included in the budget. The MDAs and the Ministry of Finance do not have the capacity or the trained personnel to conduct a proper appraisal of the proposed projects or programs.

<sup>42</sup> For instance, the Poultry and Rice Association asked for 25 percent increase in tariffs on imports of these items. The revenue generated was meant to go back to these industries. This proposed increase was WTO compliant and was agreed to by the government, but the proposal did not figure in the annual budget.

<sup>43</sup> A draft Bill called the Minerals and Mining Act, 2006 (Act 703) Amendment Bill is being discussed by stakeholders. A Memorandum to the Bill shows that the amendments being proposed are to reduce some of the tax concessions to the mining companies, remove the enclave character of mining and thereby make it more welfare-enhancing.

<sup>44</sup> See Shaxson (2007) for a review of how various interests have prevented welfare from petroleum resources in African countries.

<sup>45</sup> A prelude of what might come in the future in undermining transparency and accountability in the oil sector is shown in the recent appointment of Nana Aboagye Asafu-Adjaye by the NDC government as acting chief executive of the Ghana National Petroleum Corporation (GNPC). The minority in Parliament was opposed because his appointment as a former country director of Vanco Energy Company presented a potential case of conflict of interest and what they called “revolving door politics,” as Vanco negotiated an agreement with the GNPC (the major regulator in the sector) and the government of Ghana for oil exploratory activities. The government appointed him because Ghana does not have clear provisions on conflict of interest (see Parliamentary Debates, Friday, June 26, 2009).