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

Implemented by the African Center for Economic Transformation (ACET)

in partnership with

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Position Paper on: ‘Governance in the Management of Revenue from Mineral Exploitation’

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About the ‘Public-Private Sector Dialogue on Mining Governance in Ghana’ series

The Australian Government is supporting a series of public forums in Ghana that will bring key players together to discuss the future of mining, and its role in promoting transformative development for the nation. The African Center for Economic Transformation (ACET) is partnering with the Australian Government to facilitate three forums for the Public-Private Sector Dialogue on Mining Governance in Ghana series.

This first working paper, Governance in the Management of Revenue from Mineral Exploitation seeks to discuss key issues relating to management of mineral revenues, such as public involvement in policy formulation and implementation, and standards of accountability and disclosure.

The African Center for Economic Transformation is an economic policy institute supporting Africa’s long-term growth through transformation. ACET’s mission is to promote policy and institutional reforms for sustained and economic growth throughout Africa, so that African countries can drive their own growth and transformation agendas.

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LIST OF ABBREVIATIONS

EITI       Extractive Industries Transparency Initiative
GDP        Gross Domestic Product
GHEITI     Ghana Extractive Industries Transparency Initiative
IMF        International Monetary Fund
MDF        Mineral Development Fund
OCP        Open Contracting Partnership
PIAC       Public Interest and Accountability Committee
PNDC       Provisional National Defence Council
PRMA       Petroleum Revenue Management Act
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INTRODUCTION

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

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

This development has been attributed to lack of a comprehensive mineral revenue management policy. The criticism has led to the plan by Government to pass a Mineral Development Fund Bill to provide a legal mechanism to govern the management of ceded revenues (André, S. and Gavin, H., 2013).

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

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

This paper advances arguments in favour of a mineral revenue management policy for Ghana and the mechanisms for citizens contribution to the policy making process. It also outlines policy measures for the transparent and productive management of mineral revenues.
OVERVIEW OF FISCAL ARRANGEMENT IN GHANA’S MINING SECTOR

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

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

<table>
<thead>
<tr>
<th>Year</th>
<th>Industry Revenue</th>
<th>Government Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>1.79</td>
<td>0.123</td>
</tr>
<tr>
<td>2008</td>
<td>2.3</td>
<td>0.159</td>
</tr>
<tr>
<td>2009</td>
<td>2.93</td>
<td>0.225</td>
</tr>
<tr>
<td>2010</td>
<td>3.73</td>
<td>0.366</td>
</tr>
<tr>
<td>2011</td>
<td>4.77</td>
<td>0.608</td>
</tr>
<tr>
<td>2012</td>
<td>5.45</td>
<td>0.749</td>
</tr>
</tbody>
</table>

*Source: Ghana Revenue Authority, and Bank of Ghana*

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

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

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

One of the major challenges of mineral revenue management is the revenue sharing formula between the Central Government, Local authorities, and communities. The current sharing arrangement allows statutory earmarking of mineral revenues. Total mineral revenues received by Government are shared between the Central Government (80%) and impacted communities and mineral agencies (20%). The total ceded revenue for distribution to communities is transferred to the Mineral Development Fund (MDF); and distributed as follows based on an Administrative Fiat.¹

a. 10% (i.e. 50% of the ceded 20%) is shared to mining agencies such as the mineral commission.

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

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

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

¹ Administrative Fiat of 1991 (letter no. AB.85/156/01)
However, there are a number of factors that challenge the reasonableness of fiscal arrangements between the central government and local communities and the overall management of mineral revenues.

At the community level, one of the factors accounting for these challenges is the inappropriateness of the application of the formula for emerging mining communities in the North. The formula for distributing mineral revenues applies to stool land revenues and can therefore not be applicable to areas where traditional authority is not linked to land ownership.²

² Mahama and Baffour (2009) state that “Constitutionally, stool occupants hold land on behalf of and in trust for the entire subjects of the stool. The stool is regarded as an immortal entity and therefore represents the spiritual and physical embodiment of the people. Stool lands are pre-dominant in areas of the country which have a strong centralized political system as exists in most part of the Akan areas in southern Ghana. In these areas, traditional authority is inexplicably linked to land ownership and the stool holds the allodial title in land. In Ghana, eighty percent (80%) of land is under customary (non state sector) ownership”.

the suitability for applying the Administrative Fiat in some parts of Northern Ghana where land is not owned by the traditional authority will pose a challenge to emerging mining communities in the North. Thus, the formula for distributing mineral revenues is not comprehensive.

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

Further, there is no comprehensive law for guiding the utilisation of ceded mineral revenues. Local authorities have not demonstrated significant absorptive capacity in the utilisation of ceded revenues. Consequently, they have used mineral revenues to finance recurrent budgets, which have no direct development impact on communities. Even though the Minerals Commission has issued guidelines on the utilisation of ceded revenues, the lack of a comprehensive law for this purpose has made the implementation of the guidelines ineffective.

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

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

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

**Question 1: Does Ghana need a mineral revenue management policy?**

Ghana’s economy is faced with fiscal challenges as a result of excessive spending and low revenue generation. Ghana’s mineral resources however offer significant opportunity for transforming the economy if the resources are managed well.
A mineral revenue management policy has become imperative in Ghana because the country’s main challenge for transforming mineral revenues to development is hinged on the ability of the Government to initiate policies that addresses the fundamental effects of resource revenue management. The most compelling reasons that make a mineral revenue management policy inevitable for Ghana are:

- Mineral resources are exhaustible, hence there is need to have a policy that ensures the allocation of benefits between current and future generations. The Ghanaian Constitution grants the right of ownership of mineral resources to current and future generations, yet there is no framework for meeting inter-generational equity objectives. Also as an exhaustible resource, it is important to have a policy that guides the transformation of resources into assets for the medium- to-long term development of the country.

- Commodity prices are volatile, which could introduce cyclicality into the economy. However, there is no instrument for smoothing spending when commodity prices fluctuate; and this has been recognised as one of the causes of Ghana’s twin-deficits over the years. This requires counter-cyclical measures for managing the volatility effects.

- Also, the effect of exchange rate volatility on the economy could be fuelled by the inflow of mineral revenues or its shortage thereof. Real exchange appreciation (often referred to as “Dutch disease”) makes the country’s exports non-competitive (IMF, 2007). This leads to dwindling non-resource “tradable” sector such as agriculture and manufacturing (Boakye et al (2012)). Policies to increase productivity gains in the tradable sector and for facilitating diversification beyond the mineral boom could help address exchange rate pressures.

- There is also the need for a comprehensive revenue sharing policy, which effectively compensates impacted communities without compromising fiscal sustainability of the state.

- Institutional frameworks for managing mineral revenues including for instance the assessment, collection and administration of mineral revenues will introduce discipline and efficiency in the management of mineral revenues.

- Good governance in the management of mineral revenues has become an important requirement for ensuring that revenues deliver development to the people. The nature of resource revenues are such that they can be controlled by an elite class; and its utilisation used to perpetuate vested interest rather than seeking the interest of the public. Policies that insulate government functionaries from undue control over the use of mineral resources could introduce integrity in the management of resources and predictability in the use of revenues for productive development. This also requires that there are strong standards of transparency and accountability governing the management of the resources. Transparency is an important requirement for ensuring public accountability and management of public expectations.

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Question 2: What is the most appropriate way of ensuring that the general public has the opportunity for meaningful contribution towards revenue management policy formulation and implementation in Ghana?

There are both formal and informal platforms for public participation in the policy formulation process. Parliament’s law making process is the most important. Committees in Parliament responsible for the subject matter typically invite public memoranda into the Bill when it is submitted to Parliament. Parliament also holds public hearings when a Bill is presented for its consideration.

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

Public awareness forums on policies could address the information gap between citizens and policy makers, a major constraint to citizens’ contribution to policy. Many citizens are unable to contribute meaningfully to policy development because of their lack of understanding of the issues at stake. Others contribute from uninformed positions. It is imperative therefore that these semi-formal and informal mechanisms reach a wide range of stakeholders, including Traditional Authorities and communities that will be directly affected by mining developments so they gain a better understanding of the policy and the potential impact on their environment and livelihoods. Another important element of this is ensuring that technical jargons relating to policy formulation and implementation are translated into language that is understandable to all stakeholders. The views expressed at such forums are then translated into a resolution and submitted to both Government and Parliament. Both local and international Civil Society Groups can be involved in this process, including local Ghanaian CSOs and coalitions such as the National Coalition on Mining and relevant CSOs such as Oxfam.

Civil Society Groups at the national level who have the capacity to analyse complex policies can develop analytical papers and submit them to Government and Parliament. Some civil society groups have lobbied parliament by organising workshops for relevant committees where such analytical works are discussed. Although such workshops have often been clothed as capacity building workshops for members of Parliament, they inherently have policy lobbying objectives. The advantage associated with this way of contributing to the development of policy and legal frameworks is that it combines technical analysis with advocacy. CSOs therefore must be supported to organise such forums as they present significant opportunities to directly influence Parliament.
Question 3: What standard of accountability and disclosure should exist in relation to the management of mineral revenues by Ghana’s public institutions?

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

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

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

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

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

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4 Section 35(3) of the 2010 Constitution of Kenya
In most resource rich countries, requirements for disclosure are expressed in industry legislation (Sierra Leone, South Sudan). In Liberia, the EITI law requires contract and payment disclosures. Nigeria’s EITI law also sanctions payment disclosure.

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


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

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

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

- *Establish stabilization mechanisms for insulating the economy from the effects of commodity price volatility* – Create a Fund with stabilisation objectives. In the Petroleum Revenue Management Act, there are separate funds for addressing stabilisation and inter-generational equity objectives. However, as in Norway, the alternative is to set up one consolidated Fund addressing the two objectives. This requires clear rules to ensure that the intergenerational equity objective is not compromised in favour of stabilisation.
- *Establish mechanism for insulating the economy from the effects of exchange rate pressures* – This can be done by sterilizing mineral revenues or increasing productivity.
Since international interest rates are lower; and given that mineral revenues are modest, productivity enhancement is preferable. This can be achieved by efficiently investing mineral revenues in social and economic infrastructure, agriculture, and education. As done in Chile, public investment funded with mineral revenues must pass a cost-benefit test.

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

- **Develop principles for the transparent and accountable governance of mineral revenues** - The management of mineral revenues must be guided by the highest standards of transparency and accountability. There should be mandatory requirements for disclosing production volumes, commodity prices, sales revenues, mineral taxes, cost of production, deposits into and withdrawal from the Sovereign Mineral Fund and the Community Development Fund. The Ghana EITI should be expanded to cover mandatory contract disclosure, a public register for the disclosure of beneficial ownership information in all Mineral Agreement, the disclosure of expenditure from mineral revenues; and detailed list of projects funded with mineral revenues. The Public Interest and Accountability Committee (PIAC) should be given an extended mandate in any mineral revenue management legislation to provide forum for public scrutiny of the management of mineral revenues.

- **Build national consensus on broad policies for managing mineral revenues** - Government must subject proposals for developing a Mineral Revenue Management Law to public discussions similar to the process followed in the formulation of the PRMA; by consulting key stakeholders including civil society organizations, communities affected by mining, private sector operators, academia, traditional authorities and political parties.
### Box 1: Copper Revenue Management – examples taken from Chile

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

<table>
<thead>
<tr>
<th><strong>1. Copper Price Estimation</strong></th>
<th>The reference price is a long-term forecast adjusted annually and conducted by a Committee of External Experts.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2. Transfers to the Armed forces</strong></td>
<td>The law requires that 10% of export sales by Codelco, the state mining company, is transferred to the armed forces. The expected minimum contribution is US$180 million annually adjusted to variations in US Producer Price Index (PPI). Where transfers fall short of the minimum amount, the treasury is required to supply the difference.</td>
</tr>
<tr>
<td><strong>3. The Copper Stabilization Fund</strong></td>
<td>There is also a Stabilization Fund established in 1987 as part of the structural adjustments programme of the World Bank, meant to stabilize budget spending.</td>
</tr>
</tbody>
</table>

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

| **4. The Economic and Social Stabilization Fund (ESSF)** | This replaced the Copper Stabilization Fund. It was established as part of the mechanism for implementing the structural balance rule formulated in the Chilean Fiscal Responsibility Law. |

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

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

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

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