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Project finance mechanisms, human rights and sustainable development in Ghana's mining sector: the Newmont and AngloGold mining projects

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development in Ghana's mining sector

The Newmont and AngloGold mining projects

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Acronyms and abbreviations

CBUD	Centre for Biodiversity Utilisation and Development
CEPIL	Center for Public Interest Law
EIA	Environmental impact assessment
EP	Equator Principles
EPA	Environmental Protection Agency
IFC	International Finance Corporation
LEEP	Livelihood Enhancement and Community Empowerment Programme
NGGL	Newmont Ghana Gold Limited
OICI	Opportunities Industrialisation Centres International
PAP	Project affected people
RAP	Resettlement Action Plan
SME	Small to medium enterprises
TWN	Third World Network
US EPA	United States Environmental Protection Agency
WACAM	Wassa Association of Communities Affected by Mining

1 Introduction

In recent times, firms operating in the extractive industry sectors of developing countries are increasingly resorting to project finance in place of more conventional methods for financing their operations, such as equity and conventional commercial corporate borrowing. The obvious advantage of project finance is that the project itself and its assets are used as security for loans advanced to the project. This means that the risks that lenders assume, as well as the liabilities of the project sponsors, are all tied to the project. Thus, lenders cannot, except in highly limited circumstances, have recourse to the assets of project sponsors or shareholders of the firm floating and executing the project in the event of default.

In tandem with the increased recourse to project finance by business enterprises engaged in natural resource extraction, there is also an emerging trend for financial institutions providing such financing to require that borrowers incorporate the protection of fundamental human rights and principles of sustainable development into their implementation plans. For these financial institutions, project lending serves as a leveraging device that is used to obtain commitment by extractive industry firms to comply with norms and principles of fundamental human rights and sustainable development as contained in the laws of the host country and international legal instruments. The International Finance Corporation (IFC), the private sector arm of the World Bank, and banks that subscribe to the Equator Principles¹ have adopted this practice of requiring borrowing companies to incorporate human rights and sustainable development principles and practices into their operations.

But whilst the linkage between project finance and human rights protection and/or sustainable development may seem straightforward in theory, the empirical evidence may tell an entirely different story. The question is whether, in practice, firms that resort to project financing as a lending mechanism possess better records on human rights and sustainable development than those that do not. What happens after the 'moment of leverage' (e.g. closing of the project finance deal with lenders) has passed? Can regulators, investors and citizens hold the project sponsors (e.g. a multinational mining corporation) accountable for implementing the provisions of the project finance agreement dealing with human rights and sustainable development issues?

¹ The Equator Principles (EP) are a set of environmental and social benchmarks for managing environmental and social issues in development project finance globally. Once adopted by banks and other financial institutions, the Equator Principles commit the adoptees to refrain from financing projects that fail to follow the processes defined by the principles (Source: en.wikipedia.org, accessed 23.01.09)

The International Institute for Environment and Development (IIED) has been engaged in interdisciplinary research into how financial markets and global investment policies influence sustainable development, poverty reduction and human rights.² The basic research questions are:

1. What are the links between project finance/foreign direct investment (FDI) and sustainable development and human rights?
2. To what extent does the use of project finance accentuate the positive and negative impacts of FDI on sustainable development and human rights and through which channels?

This study critically examines the practical dimensions of the linkage between project finance, human rights and sustainable development in Ghana. It uses Newmont Ghana Gold Limited's (NGGL) Ahafo Project and AngloGold Ashanti's Obuasi operations as case studies. Whereas NGGL's Ahafo Project is largely, if not wholly, financed through project lending, AngloGold Ashanti's Obuasi mine is financed mainly through equity contributions and conventional commercial borrowing. Does this make any difference in terms of their respective records on human rights and sustainable development? If not, why not?

² With the support of the UK Economic and Social Research Council (ESRC) and the University of Essex.

2 Overview

2.1 Analytical framework

Sustainable development highlights inter-generational equity, with the present generation acting as trustees of the environment for the future generation. Closely related to the issue of sustainability is the concept of human rights, which is defined to include all entitlements that benefit the human race. It is against this backdrop that proponents of human rights and sustainable development have sought to fight against all acts and/or omissions in the mining sector that undermine the quality of the environment and make human survival unsustainable.

The fight has sometimes brought on board governments, international and civil society organisations to set mining industry standards to ensure that the public interest, human rights and sustainable development are well served.

Sometimes financing mechanisms can influence the standards of compliance adopted by these mining companies. Project finance for the purposes of this study encompasses 'a method of funding in which the lender looks primarily to the revenues generated by a single project, both as the source of repayment and as security for the exposure',³ as opposed to conventional methods of borrowing from banking institutions with other forms of security. It is on the basis of this financing mechanism that standards such as social and environmental assessment standards, land acquisition and involuntary resettlement standards, pollution prevention standards, and effective disclosure of project-related information are prescribed. In this study we explore whether these project financing mechanisms and the related prescribed standards have achieved their expected positive results in the protection of human rights and the promotion of sustainable development for two projects in Ghana.

2.2 NGGL's Ahafo Project

2.2.1 Project background

In December 2003, Newmont Ghana Gold Ltd. (NGGL), a Ghanaian company, entered into an investment agreement with the Government of Ghana to conduct mining operations in the Ahafo area of the Brong Ahafo Region in mid-western Ghana. As part of the agreement, NGGL undertook, among other things, to follow generally accepted world mining industry standards and procedures in its exploration, development, production, financing and reclamation activities.⁴ The Government of Ghana, for its part, undertook not to expropriate, confiscate, destroy, disrupt or wrongly take possession of the company.⁵ Other relevant parts of the agreement include Section 15.5, which is concerned with environmental compliance and reclamation. Here, NGGL undertakes to conduct mining activities which limit the adverse impact on the environment and which

³ *Basel Committee on Banking Supervision, International Convergence of Capital Measurement and Capital Standards* (November, 2005).

⁴ See article 1.20 of the investment agreement between Newmont and the Government of Ghana.

⁵ *Ibid.* article 9.7

comply with Ghana's existing laws. The agreement also states that NGGL must pay compensation to owners of private lands or anyone who lawfully occupies land affected by the granting of the mineral right. Private land is defined in the agreement to include creeks, streams, rivers or bodies of waters located on the land owned by a person other than the government. However, despite this provision, NGGL's policy is that compensation is not paid to owners of land that has not been cultivated and this has become a constant source of conflict between the villagers and the mining company (see Section 3.1 of this report). Another difficulty is that any subsequent legislation passed by the Parliament of Ghana imposing an additional compliance burden on the company can be challenged since it may violate the terms of the investment agreement.

The financing of NGGL's Ahafo Project substantially originates from the IFC, a private arm of the World Bank. In January 2006 the IFC approved US \$75 million to NGGL's Ahafo Project and thus sought to commit the latter to various IFC evaluation processes and international standards of mining practices in order to address the social and environmental concerns of the project.⁶ However, it is worth noting that an interview with Daniel Owusu-Koranteng, the Executive Director of WACAM,⁷ revealed that the US government abstained from voting to approve the funding granted to NGGL on the basis of the US government's dissatisfaction with NGGL's environmental impact assessment (see Section 3.2.3).

The Ahafo Project currently involves 774 square kilometres of land covered by mining and prospecting licenses and 834 square kilometres of land covered by reconnaissance licenses, together with an approximate 48km strike length.⁸

2.3 AngloGold Ashanti

AngloGold Ashanti operates three main mines in Ghana, located at Obuasi, Iduapriem and Bibiani. The Obuasi mine is the subject of this study. Located in south-central Ghana, it comprises both surface and underground mining and covers an area of more than 1,070 square kilometres. Some of the communities affected by the mining activities include Ayanfuri, Gyaman, Sansu, Fobinso, Abnabna, Dadieso, Ntwintina and Nkonya. The project is wholly owned by AngloGold Ashanti and is financed through loans from banking institutions. As of December 31 2005, AngloGold Ashanti had loans totalling US \$1,894 million.⁹ The Ashanti Project is also financed through floating and selling shares to the public, and the company is estimated to have paid US \$5million in royalties in 2005 to the Government of Ghana; a total corporate social investment expenditure of US \$266,206 was spent in Obuasi.¹⁰

Unlike NGGL, which operates under an investment agreement with the Ghanaian Government, AngloGold Ashanti operates under a stability agreement (see Section 2.4.2), which was ratified by parliament on February 18, 2004. The stability agreement is the legal instrument for the mining lease entered into between AngloGold Ashanti and

⁶ www.ifc.org

⁷ The Wassa Association of Communities Affected by Mining, a non-governmental advocacy organisation that champions the cause of deprived communities.

⁸ See NGGL's official website <http://www.newmont.com/en/operations/projectpipeline/ahafo>

⁹ See AngloGold Ashanti: Risk Management Report at <http://www.ashantigold.com/subwebs/InformationForInvestors/AnnualReport05/report/>

¹⁰ See www.anglogoldashanti.com

the Government of Ghana on March 5 1994, and permits the former to engage in the exploration, development and production of minerals until March 4 2054. Among other things, the agreement requires AngloGold Ashanti to submit detailed reports of its investment activities and more generally confirm whether AngloGold Ashanti has materially complied with its obligations to the government by January 2009 and January 2024. Although the stability agreement does not insulate the mining project from existing laws on human rights and sustainable development/environmental protection, it could prevent the government from freely exercising its authority to impose additional standards to protect human rights.

For its part AngloGold Ashanti undertook to establish and maintain a community trust fund to assist the affected mining communities in Ghana. The agreement commits AngloGold Ashanti to contribute 1 per cent of profits annually into the fund to assist community work. In addition, it undertook to implement programmes in training, fighting malaria and improving health, safety and working conditions (see Section 4).

2.4 Legal and regulatory contexts of the projects

2.4.1 The 1992 Constitution

Ghana's Constitution contains a chapter on natural resources generally, with specific provisions dealing with minerals. According to Article 257, all minerals in their natural state found in Ghana are property of the state. Such minerals are vested in the president in trust for the people of Ghana.¹¹ The nature of the president's trusteeship was the subject-matter of a suit before the High Court in *Adjaye & Ors v. Attorney General*.¹²

The plaintiffs in this case were contesting government's sale of part of its 55 per cent shares in the then Ashanti Goldfields Company Limited (now AngloGold Ashanti). Their case was that given the constitutional provision vesting minerals in their natural state in the president in trust for the people of Ghana, it was improper for the government to sell the shares without the consent of the beneficiaries (i.e. the people of Ghana). Related cases have ruled that the trust referred to in Article 257 of the constitution was a trust in the sense of a governmental obligation, and not in the sense of a fiduciary relationship enforceable in court.

The president's trusteeship of minerals in their natural state does not necessarily give the executive branch of government exclusive control over the management of mineral resources in the country. This is because Article 268 of the constitution gives parliament the power to ratify all transactions or contracts granting rights for the exploitation of natural resources in the country. Thus any agreements entered into by the president, acting through the Minister for Mines or the Minerals Commission cannot become operational until they have received the requisite legislative approval. Parliament may however exempt any such agreement from the requirement of ratification. Further, such agreements may be scrutinised by the courts for their conformity with the constitution.

¹¹ See *The Constitution of the Republic of Ghana*, Article 257 Clause 6. http://www.parliament.gh/constitution_republic_ghana.html

¹² High Court, Accra (1994) (Unreported)

2.4.2 The Minerals and Mining Act

The substantive legislation on mining is the *Minerals and Mining Act, 2006* (Act 703). It re-enacts the ownership regime relating to minerals contained in the constitution. Under the act, the power to grant mineral rights is vested in the Minister for Mines, acting on behalf of the president and on the recommendations of the Minerals Commission. The minister can negotiate, grant, revoke and suspend mineral rights accorded to any person under any agreement for the exploitation and use of minerals in the country. Mineral rights are granted subject to the fulfilment of a number of conditions, including:

- The appointment by the mining company of a qualified and experienced manager to take charge of the mineral operations.
- Possession of the necessary permits and approvals from the Forestry Commission and the Environmental Protection Agency (EPA) for the protection of natural resources, public health and the environment.
- Agreement to pay the prescribed royalties upon commencement of mining.
- Respect for the surface rights of occupants of the land covered by the mining lease.

The mining lease is the principal legal instrument for granting the rights to develop a mine or mines. It is an agreement between the mining company and the government for an initial period of about 30 years. The lease entitles its holder to conduct mineral operations within the area or areas covered by it; exploit and market minerals obtained from the exploitation; dump mining and or other waste products in accordance with its environmental impact statement; and carry out activities incidental to its mining operations.

Where the investment relating to a mining lease exceeds US \$500 million, the Minister for Mines has discretionary power to enter into a development agreement with the grantee company. The development agreement should incorporate terms and conditions for the effective development of the grantee company's operations including stability arrangements, environmental protection and settlement of disputes in accordance with the dispute settlement mechanisms provided for under the act. For stability arrangements, the minister can enter into a stability agreement with any mining company, irrespective of the level of its investment. The essence of the stability agreement is to ensure that, within a period of 15 years from the execution of the agreement, the company does not suffer from adverse legislative changes or subsequent modifications to the levels of customs duties, royalties and other taxes or from changes to the laws relating to exchange control, capital transfer and remittance of dividends. Any stability agreement signed with a mining company is subject to ratification by parliament. Our study established that whereas NGGL has entered into an agreement with the Government of Ghana in accordance with the act, AngloGold continues to operate under a stability agreement for unexplained reasons and/or for corporate comfort.

2.4.3 The EPA Act

Under *The EPA Act, 1994* (Act 490), the Environmental Protection Agency (EPA) is responsible for ensuring control and prevention of discharge of waste into the environment. It also empowers the EPA to:

- protect and improve the quality of the environment;
- issue permits and pollution abatement notices as well as directives, procedures or warnings in relation to pollution prevention and control;
- prescribe standards and guidelines for pollution of air, water and land; and
- conduct investigations into environmental issues.

If any of these statutory obligations is not performed satisfactorily, the EPA can be sued and compelled to carry them out properly (see Box 2.1).

Box 2.1. Taking the EPA to task

A law suit is currently pending between the Centre for Public Interest Law (CEPIL)¹³ on the one hand and Bonte Gold Mines (now liquidated), the EPA and the Minerals Commission on the other hand. CEPIL has sued, among other reasons, to compel the Ghana EPA to perform its statutory obligations to demand a US\$2 million reclamation bond from Bonte Ltd. before the latter commenced its mining operations. CEPIL is also seeking an order to compel the EPA to ensure that Bonte Ltd. takes remedial steps to 'reverse' the destruction to the environment and water bodies in Bonteso in Ashanti Region.

2.4.4 The Minerals Commission Act

The Minerals Commission was established to regulate and manage mineral resource use in Ghana and to co-ordinate relevant policies. The Minerals Commission Act, 1993 (450) mandates the commission to make national policy recommendations for exploration and exploitation of mineral resources. Besides its crucial role in granting all mineral rights in Ghana, the commission is also responsible for monitoring the implementation of all bodies with responsibility for minerals. The commission collaborates with the EPA in developing general guidelines for carrying out mining activities in an environmentally responsible manner. In the pending *CEPIL v. Bonte* suit (Box 2.1) the Minerals Commission is a third defendant and the plaintiff is claiming similar damages to that being claimed against the EPA because of its statutory obligations under Act 450.

¹³ An NGO dedicated to the protection of the environment.

3 NGGL's Ahafo Project: approaches to human rights and sustainable development

3.1 Human rights

Since November 2005, NGGL has worked with outside experts to investigate and benchmark human rights issues and management challenges using a variety of tools. For example, at a Mineral Resources Workshop in Princeton University NGGL's Ahafo project served as a case study for a draft 'Human Rights Protocol for Mining Companies'. Generally such instruments developed by mining companies are geared towards tackling issues of compensation for landowners, environmental pollution, and resettlement of displaced communities and the execution of other sustainable projects.

3.1.1 Compensation

The size of the Ahafo Project grew significantly (125 per cent) between 2003 and 2004 alone. Mining activities and related projects in 2004 have affected some communities and have the potential to affect more communities in the future. The affected communities include villages and towns such as Kenyasi, Ntotoroso, Gyedu, Tawiakrom, Kodiwohiakrom, Kwakyekrom, Dongokrom, Yamfo, Dokyikrom, Wamahinso and Atuahenekrom, all in Ghana's Brong Ahafo Region.

Most of the villages affected by the NGGL's mining activities are reputed to lie within Ghana's major cocoa and food growing areas. NGGL has sought, among other things, to adopt measures to reduce the impact of their operations on local inhabitants via compensation payments, resettlement schemes and the provision of basic infrastructure in mining communities. According to NGGL's Compliance Monitoring Report,¹⁴ all affected buildings have been compensated for. Also, 93 per cent of resettlement houses have been built and 87 per cent of owners have taken possession of their new houses.

However, because of the negative impact of mining on these activities, compensation has become a constant source of conflict between the company and the local farmers. According to the NGGL's Resettlement Action Plan (RAP; NGGL 2005b), compensation has been paid to project-affected people guided by parameters set by the elected Resettlement Negotiation & Compensation Committee and on the basis of non-coerced, prior and informed consent.¹⁵ According to the company, compensation included full replacement cost of structures, assistance with moving personal belongings, efforts to improve former living standards and compensation for crops. Land, housing, infrastructure and other compensation were provided to the adversely affected population at a total cost of over \$13 million (NGGL 2005a).

In May 2006, an independent review team comprising Tasneem Salam and Frederic Giovannetti stated that in total 1,701 households and 1,568 structures had been affected by the mining project (Salam and Giovannetti, 2006). Their report further indicated that 9,575 individuals had been affected by mining-related activities. However, WACAM

¹⁴See <http://newmontghana.com/>

¹⁵ See report prepared by Newmont for IFC on *Social and Community Development of the Ahafo Region: Collaboration to Promote Project Benefits, Vision and Commitments*, p.2. NGGL 2005.

contradicts this figure, claiming instead that the total number of displaced inhabitants was 28,000.

WACAM has also criticised NGGL for paying a meager US\$7 for destroying a cocoa tree. They argue that each tree could yield cocoa beans to the value of about \$20 per year for over 30 years (Box 2.2). It also noted that there were many people who worked as farm labourers who did not benefit from any compensation package because they were not owners of the farms destroyed.

Box 3.1 The true value of a tree

Professor Kasim Kasanga, a former Minister of Ghana and a renowned land economist aptly captured the concerns of most traditional farming communities (now mining communities) in Ashanti, Western and Brong Ahafo Regions as follows:

“Surface mining now poses the greatest threat to both commercial and subsistence farming in Ghana. Cocoa is as important as gold, if not more important. Cocoa is a long yielding investment between 40 and 50 years. Cocoa farms are inter-planted with food crops, to feed farmers. Even though there is some slash and burning involved in the initial land clearing, the environmental damage is negligible in comparison with surface mining. Some cocoa farmers who are victims of surface mining operations in the Dunkwa-On-Offin area are being offered 9,000 Cedis [\$1] per tree. A mature cocoa tree is capable of yielding half a bag of cocoa beans and farmers are currently being paid 112,500 Cedis per bag of cocoa (i.e. 62.5 kg). In effect a farmer, who is offered 9000 Cedis for a lost cocoa tree, could obtain 55,250 Cedis [\$6] from that tree for just one season and the returns to this cocoa tree could last for between 40 and 50 years. The gross injustice to these helpless village farmers is clear. If a free society cannot help the majority who are poor, it cannot save the few who are rich.”

Kasim Kasanga- 38th Anniversary Lectures of Ghana Academy of Arts and Sciences, 1997

Another contestable issue relates to the position taken by NGGL that there is no mechanism currently in Ghanaian law to allow the loss of unused land to be compensated.¹⁶ We have established that no payments have been made by NGGL to the owners of fallow land affected by the mining project. This is because in the view of the company, land, unlike crops and structures, is not an asset held at household level (Box 2.3). This position is clearly undesirable and indeed not supported by law since the obvious negative impact of the loss of unused land is not consistent with accrued rights of landowners in the communities. It also contradicts the belief in the importance of access to land for sustainable farming practices and ensuring food security for individuals in the mining community. It is for this reason that NGGL, in collaboration with Opportunities Industrialisation Centres International (OICI), is adopting measures aimed at facilitating the acquisition of land, through established channels, by farmers who need replacement land (NGGL 2005a).

¹⁶ Section 74(1) of Act 703 on compensation principles states that ‘[T]he compensation to which an owner or lawful occupier may be entitled may include compensation for (a) deprivation of the use or particular use of the natural surface of the land or part of the land; (b) loss of or damage to immovable properties; (c) in the case of land under cultivation, loss of earnings or sustenance suffered by the owner or lawful occupier, having due regard to the nature of their interest in the land; and (d) loss of expected income, depending on the nature of crops on the land and their life expectancy.’

Box 3.2 Land issues

Giving affected landowners alternative land is seen as a critical aspect of livelihood restoration, as the vast majority of affected people predominantly rely on farming. The mine area covers 2,426 hectares of farmland, of which 1,965 hectares had been actively cropped. According to the company the loss of this cropped land has been adequately compensated for (NGGL 2005a). This means that uncultivated lands were not compensated for when they were taken by the company. An independent assessor's report submitted to IFC posits that 'it is not possible for the project to compensate fallow land, and this approach is consistent with legislation' (Giovannetti, 2005).

However, this interpretation of the law is not correct and violates Article 20 of Ghana's 1992 Constitution and Section 74 of Act 703, both of which deal primarily with compensation principles. A related issue in the independent assessor's report was that no compensation was paid to people involved in alcohol preparation, since it was difficult to distinguish well established *akpeteshie* tappers from fake ones.¹⁷

Our research further established that little progress has been made to ensure and facilitate access by affected people to alternative land. A survey of land access by OICI indicates that as many as 53 per cent of interviewed settlers in Kenyasi and 37 per cent in Ntoroso state that they have no land to cultivate.¹⁸ This becomes more crucial since affected persons can only access NGGL's financial assistance if they are able to secure at least 0.8 ha of land for themselves.

3.1.2 Resettlement

In its August 2005 RAP, NGGL indicated that it has built some 399 houses in two resettlement villages to improve the lot of inhabitants. In addition, the company has sought to develop programmes to assist vulnerable people in the affected communities over the life of the project (NGGL 2005b). However, in the course of our study, most of the residents in the resettled communities complained about the size of the rooms constructed for them by the company. We also established that some of the landlords in Kwakrekrom, for instance, have refused to move to the new settlement at Ntoroso because of the NGGL's unilateral decision to reduce the number of rooms built as replacements. Other major concerns also included the lack of involvement of affected people in the planning and design of the resettlement policies.

3.1.3 Employment

NGGL has estimated that the expected workforce for operations is approximately 570, comprising 40 expatriates, 180 skilled Ghanaians and 350 unskilled Ghanaians. In addition to these direct employees, the company has also promised to hire around 350 contract service providers on a regular basis. In addition, in its training programmes the company has implemented a wholly local hiring policy for its unskilled workforce – achieving a rate of 98 per cent for the construction phase – which it intends to continue into operation. In its view, the local workforce has deliberately been selected according to a geographically representative, community-based residence assessment, and comes

¹⁷ *Akpeteshie* is a home-made alcoholic spirit produced by distilling palm wine or sugar cane juice.

¹⁸ Monitoring of Resettlement Report p.5.

from the breadth and length of the mine lease area (NGGL 2005a). To minimise the potentially negative social impacts of having a large group of workers residing near a community not their own, NGGL uses a fleet of more than 30 buses to take the workers to and from their homes every day. One difficulty is that there are some displaced farmers who cannot take part in the employment initiative due to its manual nature.

3.1.4 Education and capacity building

NGGL has indicated its commitment to increase the level of education in the project-affected area via both infrastructure and capacity building. The company has therefore promised to establish a Newmont Community Scholarship to support selected students through further education. The company also intends to construct or rehabilitate schools to increase access to quality education, skills training and recreation. A new school has been completed at the Kenyase 2 resettlement village. Additional classrooms and staff facilities have also been added to the new school built at Ntoroso resettlement site. In addition, NGGL has sought to enhance the technical and vocational skills of 600 young people for direct employment in the construction phase of the project. This will be done through a partnership with the Ghana National Vocational & Training Institute and at the Newmont training centre at Yamfo. However, WACAM is concerned that the timeline for executing the training project (three weeks) is inadequate for giving people sufficient knowledge in metal works, masonry and administration (as required under the EIA). According to the company, financial management seminars for locals are also being held and partnerships with local universities and technical facilities are being set up (NGGL 2005a).

3.1.5 Community health

In the course of our community interviews we learnt about mine-related diseases. The commonest diseases include skin rashes, malaria and acute headaches. NGGL is collaborating with the Kintampo Health Research Centre in the Brong Ahafo region to undertake a detailed baseline health survey to assess the well-being and health status of the people of the Asutifi and Tano Districts. It is likely that the recommendations of these studies will lead the company to look at strengthening the Community-Based Health Planning and Services (CHPS) programme, upgrading some local health facilities, expanding malaria interventions and continuing its programmes to improve accessibility to clean water and adequate sanitation infrastructure (NGGL 2005a).

Another serious health risk in the area is HIV/AIDS. NGGL has a comprehensive HIV/AIDS programme for employees including awareness raising, prevention and treatment. The company has employed a full-time AIDS specialist and an HIV/AIDS steering committee has been formed. Employees have been surveyed for baseline medical information and the company will train peer counselors and community educators. However, a major criticism of the company's disease control policies is that they are mainly targeted at its own workers.

3.1.6 Grievance process and disclosure

NGGL has sought to provide avenues for hearing the concerns of the villagers and to provide answers to those concerns. However, most of the villagers we interviewed expressed a lack of trust in OICI, the intermediary organisation contracted by NGGL to liaise with the communities. It is therefore not surprising that the grievances response system was judged to be ineffective by an independent assessor because of the difficulties in channeling community grievances to the management or having access to management in order to air their concerns.

3.2 Sustainable development and environmental protection

3.2.1 Water and sanitation

Following media reports of the disposal of faeces into River Asuopre by NGGL, water samples from the Asoupre River, River Tano and water supplied to the residents of Kenyasi, Ntotroso and Kwakyekrom were collected for scientific analysis by an expert of the Ghana Centre for Environmental Impact Analysis (CEIA). The results of the testing showed that levels of dissolved oxygen, biological oxygen demand (BOD), turbidity and conductivity were within acceptable limits prescribed by the World Health Organisation and Ghana EPA. However, the report concluded that colonies of total viable bacteria, *E. coli*, *salmonella* and *shigella* were above the acceptable limits and hence posed significant health hazards to residents who drink from all water bodies sampled in the study (Obiri, date unknown). This study also revealed that NGGL has constructed a dam on Subiri River, which hitherto served as the source of drinking water for villages such as Dokyikrom, Yawusukrom, Dongokrom, Tawiakrom, Subiriegya and Kodiwohia. The water schemes to supply water to the affected villages were identified to not be working. This finding is corroborated by the report of the independent assessor – settlers were being supplied with water by tankers.¹⁹ Besides the health hazards associated with the drinking water, the construction of the dam has also blocked the access road to Dokyikrom community, and has isolated other communities such as Yawusukrom and Oseitutukrom.

3.2.2 Sustainable livelihoods

NGGL has committed to work with local communities to support specific capacity-building and infrastructure development projects via its Sustainable Development Foundation. It is envisioned that starting in 2006, NGGL Ahafo South project will commit 1 per cent of gross operational profit, plus US\$ 1 for every ounce of gold produced, to fund the foundation and related development initiatives. This level of funding is likely to contribute approximately US\$ 650,000 per year based on current projected cash flows (NGGL 2005a). The company's commitment to full and regular public consultation includes continuous assessment of stakeholders, easy access to relevant information, regular release of information, appropriate and consistent messages. In the view of NGGL's management, communication with stakeholders will provide information on the progress of work and ensure awareness of special programmes throughout the life of the mine. However, problems have already been identified with the communications and grievance response systems (see above), which continue to hamper some of these

¹⁹ IARI p.5

initiatives. We found that the grievance logging system was not working well. Streamlining it could help to maintain good relationships with the community.

One of NGGL's commitments is to enhance the livelihood capacity of an estimated 2,000 households through income generating activities and creating alternative livelihoods (NGGL 2005a). According to the company, it intends to create and strengthen local small-to-medium enterprises (SMEs) to benefit around 1,500 people. NGGL is developing and implementing a micro-credit scheme for affected people and will provide an initial \$200,000 for SME development for 2006. Also, the company has defined a number of livelihood enhancement initiatives to help PAP re-establish their livelihoods or create new ones.

An extensive livelihood survey, independently undertaken by OICI in September 2003, examined existing socio-economic levels, including literacy and gender statistics, and characteristics of communities in the Ahafo concession area. Based on the data from the livelihood survey and from intensive consultation and engagement with local stakeholders, a comprehensive and sustainable community development programme – the Livelihood Enhancement and Community Empowerment Programme (LEEP) – was developed by OICI on behalf of NGGL. The programme is intended to enhance the livelihoods of people in the mine take area. It targets households that have been economically displaced by the project, as well as those that are physically displaced, resettled or relocated by the project. However, communities have rejected claims that the LEEP project will restore their livelihoods. In their view, the company only directs them to contact OICI, an NGO that the former had contracted under the pretext of assisting them to acquire alternative land. It is our view therefore that a major drawback of this otherwise laudable initiative is a lack of trust in the intermediary being used by the company to execute the LEEP.

NGGL's External Social Compliance Report (Salam & Giovannetti 2006) also recommended, among other things, that gender considerations be factored into the development of the project to address the needs of women and young people.

3.2.3 *Environmental management and closure planning*

According to NGGL, post-closure land use and management provide potential opportunities for enhancing land productivity and sustainability, resource management, and livelihoods (NGGL 2005a). These measures are set out in the NGGL's EIA. However, the testing standards used in NGGL's EIA have been criticised by the US government for neither meeting international standards nor the standards prescribed by the US EPA. The US EPA review states, among other things, that '...Newmont did not use any of the conventional Acid Base Accounting (ABA) testing procedures accepted by [USEPA, US Bureau of Land Management, British Columbia etc.] but instead used an in house acid base accounting method' (Hillenbrand, date unknown). This, according to the USEPA, meant that the NGGL EIA was deceptive and that it also failed to address and prevent the generation of acid resulting from the production of acid mine drainage. The US EPA review also pointed out the lack of requirements in the EIA for NGGL to conduct proper monitoring at the locations where mining wastes are discharged (Hillenbrand, date unknown). Similar dissatisfaction by NGOs such as WACAM and CEPIL (Centre for Public Interest Law) with the company's EIA is articulated by Michael Warner: '...NGOs have questioned whether the provisions [of NGGL EIA] assure that

local communities will be adequately consulted, and whether environmental impact assessment reports will be open to full public scrutiny.’ (Warner, 2006).

3.2.4 Agriculture and food security

NGGL has promised to work with partners to improve food and cash crop production for 750 households and reduce post-harvest and storage losses by 5 per cent for 750 households. They plan to do this through a variety of means, including agricultural development and training projects. The focus will be on improving the agricultural potential of farmers in the Ahafo area, both on NGGL-managed land and on the adjacent farmland near and around the mine site. Such policies run counter to the position taken by NGGL’s management that lost fallow land should not be subject to compensation (see above). We emphasise that the success of the initiative depends on programmes to provide the displaced farmers, most of whom have lost virtually everything as a result of the mining activities, with viable alternative land, and in some cases with seedlings, seeds etc. so they can start cultivating new farms.

3.3 Objective assessment and performance evaluation

Reports published by NGGL indicate that assessments and evaluations have been undertaken with the aim of meeting the IFC standards. For instance, NGGL’s Ghana project was assessed in early September 2005 under the corporation’s internal Five Star Management System. There is also a programme which requires sites to be assessed by external assessors against sets of standards in the three areas of environment, health and safety, and social responsibility. The results of these assessments are used as the basis of continuous improvement for the sites and for NGGL’s public reports. While NGGL does have a relatively better disclosure system than AngloGold, according to the US EPA there are still some important public interest data that have been excluded from their EIA. This includes the lack of information on acid produced by NGGL in their acid rock drainage mining (see above).

3.4 Leveraging knowledge, expertise and collaborative association

The company seeks broad collaboration between the private sector, civil society and the government to leverage knowledge, opportunity, resources and expertise to extend benefits beyond those directly associated with the company. Existing major partnerships for the Ahafo Project include collaborations with OICI; Conservation International (biodiversity and forests); University of Colorado Medical School (health baseline assessments); Planning Alliance (resettlement programme); Ghana Wildlife Society (endangered species and conservation education), USAID Ghana and the International Finance Corporation (environmental & social responsibility in general for the project) (NGGL 2005a). It is, however, interesting to note that NGGL has not established a healthy partnership with local NGOs such as WACAM, CEPIL and the Third World Network (TWN), which have been very critical of NGGL’s activities. Our view is that isolating these community and public interest-oriented organisations makes nonsense of NGGL’s purported collaborative initiative.

4 AngloGold Ashanti: approaches to human rights and sustainable development

According to AngloGold Ashanti, efforts to maintain good community relations and to contribute towards long-term sustainable development of the communities hinge on the following business principles:

- Strong partnerships between the company and its stakeholders, including employees, their families and dependants, the communities and society in general.
- Regular consultation and engagement with the communities, governmental agencies and civil society in general to achieve a peaceful and harmonious co-existence.
- Social investment initiatives in the communities and other areas where the company can make short- and long-term meaningful contributions in the socio-economic sphere.
- Capacity building and alternative livelihood programmes.
- Assistance in the areas of education, agriculture, health and sanitation.²⁰

However, our research into AngloGold Ashanti's performance in these areas has been hindered by a lack of sufficient data on its official website. Even though the company has set out in detail the processes that must be followed to obtain records, it has failed to differentiate between public interest records and private confidential records. Thus almost all significant data are subject to an equally stringent requirement for disclosure.

4.1 Human rights

Quite recently, unlawful artisanal mining in the AngloGold Ashanti concession area has become a major cause of conflict between the company and some of the people displaced by the mining. Thus, while the company is making attempts to engage with the artisanal miners or *galamsey* operators to encourage them to stay out of the lease area, clashes have occurred between the artisanal miners and the company, resulting in injuries to both groups.

For example, on June 21 2005 Awudu Mohammed, a *galamsey* suspect, was allegedly shot by AngloGold Ashanti security staff. A comprehensive internal investigation was undertaken and the company has maintained its original contention that Awudu Mohammed was injured by falling on the spikes of a security gate when he tried to avoid arrest. The position of the company was however contradicted by the Medical Officer who examined the victim. In another incident (21 May 2005), a group of 21 military personnel and police assisted Obuasi management to destroy 15 to 20 illegal pits constructed by *galamseyers* around the Ellis and West shafts. These incidents, among others, have led to the company being on the receiving end of allegations of human rights abuses by two NGOs, the Third World Network (TWN) and WACAM. Even though AngloGold Ashanti recognises that these NGOs have a significant role to play in the communities, in our experience they have often been sidelined.

²⁰ See www.anglogoldashanti.com

4.1.1 Managing health threats

One of AngloGold Ashanti's objectives is to implement an integrated health campaign at the mine; its target is a 50 per cent decrease in disease incidence and absenteeism within two years. An integrated malaria control campaign is planned to start in Obuasi and all outlying villages within the Obuasi municipal assembly area. In addition, a Malaria Control Centre has been established at Sansu to co-ordinate the programme. According to AngloGold Ashanti, the programme aims to develop, implement and sustain a campaign that:

- reduces the severe burden of malaria at Obuasi;
- promotes community development and all means of preventative measures; and
- assists health practitioners in the early detection and treatment of malaria, in partnership with relevant stakeholders and in line with the government's malaria policy.

HIV response programmes are also in place at all the operation centres to deal with the impact on both employees and their communities. According to the company, the HIV prevention programmes were developed under the auspices of the Ghana Employers' Association and the Ghana AIDS Commission. The communities we interviewed, however, criticised the company for failing to tackle health problems caused by its mining activities, including increased cases of malaria. According to the villagers, the company's health policies focus primarily on its staff in an attempt to maintain higher productivity.

4.2 Sustainable development and the environment

A fundamental philosophy of AngloGold Ashanti is that its operations and activities should contribute towards long-term sustainable development and that communities should be better off for its having been there.

4.2.1 Sustainable livelihoods

AngloGold Ashanti, in collaboration with the Centre for Biodiversity Utilisation and Development (CBUD), has sought to develop a range of sustainable livelihood projects. Funded by the Royal Netherlands Embassy in Accra, the CBUD aims to stimulate and promote sustainable development through the use of natural resources, paying equal attention to conservation. Some of the projects it has proposed for future development include duck, rabbit and pig farming; honey production; aquaculture; and seedling nurseries. In accordance with AngloGold Ashanti's request, however, the initial ventures have been limited to training in snail and indigenous leafy vegetable farming and grasscutter rearing.²¹ The total CBUD budget for capacity building and start-up costs in these ventures was estimated at US\$84,660.

Our study established that out of about 5,000 people who applied to take part in the projects, 1,000 were selected to participate in training in snail and vegetable farming, and 100 for grasscutter rearing, which has high start-up costs. Criteria for acceptance were that participants originated from the Ayanfuri enclave and, to ensure the security of ventures, that they owned a piece of land next to their home. This additional requirement unfortunately disqualified most of the displaced villagers from inclusion, even though

²¹ The meat of grasscutters or cane rats (*Thryonomys* spp.) is very popular in West Africa.

some landless participants asked the community chief to make land available for individual projects. Although neighbouring Obuasi mine has a projected life of over 30 years, AngloGold Ashanti has given assurances that a programme of skills transfer will be extended to the eight communities in and around the mine, to ensure that sustainable livelihood programmes are firmly in place long before mine closure.

While the programme has been fairly successful to date, the company admits it has not been without challenges, including:

- Meeting the 2010 closure plan deadline, which the EPA has indicated is too ambitious.
- Aligning community support with the mine's objectives.
- Creating organised markets for products (currently produce reverts to the CBUD when markets cannot be found).
- Preparing for business expansion well ahead of the CBUD's scope of one year.

As part of its contribution to sustainable development, AngloGold Ashanti tries to procure goods and services locally. At Obuasi it is estimated that about 12 per cent of the company's material requirements are sourced from local businessmen. The transport of employees and of materials to and from the mine is handled by local private companies. Foodstuff and drinks for the employees' club houses and the canteen are sourced from businesses in the area. However, the Director of WACAM downplayed this initiative and stated that most of the displaced inhabitants could not even dream of owning viable businesses in order to benefit from AngloGold's so-called procurement benefits.

4.2.2 Environmental management and closure planning

AngloGold Ashanti's environmental philosophy and practice are guided by the company's business principles and environmental policy.²² The company's operations are subject to the environmental laws, rules and regulations of the countries in which they are situated. The company formally adopted ISO 14001 as its standard for environmental management during 2005 and has successfully achieved certification of all its operating mines, including Obuasi. However, a stain on AngloGoldAshanti's good environmental record appeared in 2005 when large amounts of tailings leaked into the environment. The downstream communities of Kokoteasua, Abompekrom and Nkamprom were affected by the spillage. The company devoted staff and resources to clean up the spillage and assess damage, with the intention of paying compensation to affected communities. However, we found that most of the affected communities never received any compensation.

The use of cyanide in the recovery of gold is seen by the company as critical to the viability of its operations. AngloGold Ashanti used nearly 6 million kilogrammes of cyanide in 2005. However, the use of cyanide and its accidental spillage has in the past polluted the water bodies of the communities in and around AngloGold Ashanti's mining areas. Recent media reports claimed that oranges produced from Obuasi and its surrounding villages had become 'poisonous' due to their high acidic content, and the cause, according to the reports, was the use of the cyanide in the mining in the area. It is however worth noting that those claims have not yet been validated via scientific analysis.

²² Source: <http://test.anglogold.co.za/Values/Environment.htm>

Ayanfuri, part of the greater Obuasi mine in Ghana, is the subject of the country's first decommissioning plan following the pit's closure in September 2001. AngloGold maintains that prior to this there was no national legislation in Ghana governing mine closure, which in certain instances resulted in foreign-owned miners leaving the country and neglecting their environmental and social responsibilities. However, our research reveals that the Minerals Commission Act, the EPA Act and its enabling Environmental Assessment Regulations, which have been in force since 1993, 1994 and 1999 respectively. And this is further proven by the request by Ghana's EPA for AngloGold Ashanti to submit a formal decommissioning plan. While much preparatory work was done to address issues like public safety, site stability, revegetation, provision of social infrastructure and sustainable livelihood support, it was not until AngloGold Ashanti was formed that the decommissioning plan finally got under way in July 2004. This, in the view of the company, was an important exercise in rebuilding community trust since much of the mine's rehabilitated land was found to be suitable for sustainable livelihood support projects, such as mined-out pits containing water which could be used for aquaculture.

4.3 Communication and consultation

From the company's perspective, interactions with communities within the Obuasi Mine Concession are managed through monthly consultative meetings with the chief and some opinion leaders. According to the company, it maintains contact with the chiefs and traditional authorities, including paying homage to the Asantehene –the King of the Ashanti – at significant events.

However, our research established that the survival of this consultative process in most of the communities is doubtful since the supposedly consultative committee members have never been summoned for a meeting. Some of the villagers also blamed their chief for having compromised their independence in order to get contracts from the company.

5 Key conclusions and recommendations

This study has analysed two mining concessions in Ghana in terms of their human rights and sustainable development credentials. We now explore how these differ in the light of their different funding bases. While NGGL primarily receives its project funding from the IFC, a private sector arm of the World Bank, AngloGold receives its funding via loans from banking institutions and the sale of shares.

One important point to note is that AngloGold has been very reluctant to disclose most independent assessment reports on their operations, even if any such assessments have been done. On the other hand, documents related to NGGL are easily available on the IFC website. In this respect, the IFC can make important checks on their activities. In addition, the prescriptions imposed as conditions for receiving an IFC loan appear to have thrust the activities of NGGL more into the international limelight, as well as under the scrutiny of the international financier. The US EPA's negative review of the NGGL's EIA illustrates this point.

A common thread that runs through the NGGL and AngloGold Ashanti projects is that both companies have made some attempts to adopt policies to alleviate the negative impact of mining on local communities. Nevertheless, our study shows that those policies have not been entirely successful in protecting the fundamental human rights of the inhabitants or ensuring sustainable livelihoods for the affected communities. Thus, the reality of the situation in most of the mining communities contradicts the somewhat glamorous ideals being propagated by the mining companies on their websites.

Our study has also established that AngloGold Ashanti's long years of operation in Ghana appear to have shielded the company from most of the contentious issues such as compensation for land, farms and resettlements affecting NGGL. The communities seem to accept AngloGold Ashanti as having come to stay, and therefore most of the earlier agitations against the company are a thing of the past. NGGL, on the other hand, is still attempting to establish itself and has not yet been embraced by the communities. Moreover, most of the inhabitants displaced by NGGL's operations are still alive and the 'pain' is still fresh in their minds.

Overall, our assessments suggest that NGGL's operations are subject to higher, and probably preferable, standards of compliance than those of AngloGold Ashanti. This implies that the use of a project financing mechanism like IFC, which has clear human rights protection and sustainable development, is preferable to the conventional form of financing such as equity being used by AngloGold Ashanti.

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