



HUMAN RIGHTS CLINIC

THE UNIVERSITY of TEXAS SCHOOL of LAW

THE COST OF GOLD



COMMUNITIES AFFECTED BY
MINING IN THE TARKWA REGION
OF GHANA

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EXECUTIVE SUMMARY

After Ghana secured its independence in 1957, it nationalized much of its mining industry, but the sector stagnated for the next three decades. In the 1980s, virtually all of Ghana's economy was in shambles. The nation was forced to borrow money from the World Bank and International Monetary Fund, with conditions attached. One of these conditions was the privatization of enterprises such as the extractive industry. Although this produced some positive results, there were also negative effects.

Attempting to benefit the nation economically, the Ghanaian government has rewarded large-scale mining companies, sometimes to the detriment of local communities. Additionally, little work or income for local populations has resulted from this switch to private industry. Foreign owned and internationally run companies dominate large-scale mining in Ghana.

Further complicating the situation is the Ghanaian system of customary land tenure. In fact, Ghana allows for various takings without compensation. Land tenure is heavily regulated by the State in ambiguous ways that create opportunities for manipulation. Before the colonial period, ownership of private property did not exist. During the political upheaval of the 1960's and 1970's, Ghana attempted to bring its land system into line with the Western approach. A registration system, a bevy of new laws, and the creation of various governmental departments dealing with land administration were all utilized.

As Ghana has transformed from a colony to a parliamentary democracy, the role of the community chief has evolved. While the chief still yields local power, some of their national power may have been reduced through colonists and various incarnations of the Constitution. The question of exactly what powers the chief has is a divisive one, and one that profoundly impacts the role they play vis-à-vis mining. To some, the chief is a symbol of corruption in local communities; to others, the chief is a vital political player.

While the Ashanti Region is widely regarded as the mining hub of Ghana, the Western Region is also home to significant mining activity, focusing mainly on gold, bauxite, and manganese. Most of the mining in this region is centered about the capital of Tarkwa and the surrounding communities. As of 2007, the Tarkwa Mine has the distinction of being the largest gold mine in Ghana. This level of production inevitably has a significant impact on members of surrounding communities, such as government-mandated land concessions, environmental degradation, and conflict between community members and the mining companies, amongst other consequences. The current mining legislation, while well written, not only lacks some necessary protections for members of communities affected by mining, but also seems to be poorly enforced.

The Human Rights Clinic at the University of Texas School of Law (HRC) is writing this Report in hopes that increasing awareness of the human rights violations in these communities will be a catalyst for change from the status quo for both the Government and the mining companies working in the region. The Report begins with a relatively brief background of the following in Ghana: the history of mining, customary land tenure, and mining legislation. The body of the Report focuses on human rights violations in communities affected by mining in the Tarkwa region. The HRC decided to focus on six issues: 1) Lack of prior consultation and consent; 2) Corruption; 3) Inadequate compensation; 4) Unsafe living and working conditions; 5) Violence associated with mining activities; and 6) Lack of access to justice. These particular violations were chosen due to either their high frequency or the significance of their impact on members of these communities. The HRC, through information gleaned from the interviews and

scholarly works, has proposed a series of recommendations for both the Government and mining companies, in hopes that these recommendations will be implemented, and thus mitigate the suffering in communities affected by mining in the Tarkwa region.

Lack of Adequate Consultation and Consent

There is a serious lack of prior consultation with and consent from communities affected by mining activities in Tarkwa. Currently, there is only one passing reference in the entirety of Ghana's domestic laws regarding prior consultation (in its Environmental Assessment Regulations), and none on informed consent. This condition does not conform to international legal standards. The Government often makes the decision for mining companies to enter a given community with little or no input from affected communities, unless a large number of people were to be displaced. Even if entitled to such input, communities have complained that mining companies are often unwilling to dialogue, and the few fora that the companies organize often fail to take the views of the community into account. These one-sided fora are disturbing, but what is even more alarming is that the State is shifting the responsibility of coordinating and supervising the protocols for prior consultation and consent onto the mining companies. Although the Environmental Protection Agency (EPA) says it organizes public hearings with regard to prospective mining projects, not a single community member in Tarkwa informed the HRC that such hearings had ever been held in their communities. Furthermore, although the EPA is lawfully equipped to enforce prior consultation, it has declined to exercise such powers. Lastly, there is a lack of full disclosure of all the available information as required by the good faith and informed consent standard.

Corruption

There are allegations of corrupt practices by mining companies, the Government, and local chiefs which negatively affect local communities and their inhabitants. As large-scale mining exploration involves a multi-million dollar operation and requires an expensive investment, there are many opportunities for bribery. Many community members believe chiefs, very powerful leaders of local government, are using their position of import to profit from large-scale mining at the expense of the community they are supposed to protect and represent. The economic structure in place is conducive for the occurrence of kickbacks. There are further allegations of governmental lethargy in terms of stamping out this bribery. Also, according to more than one source, mining companies bribe authorities throughout the chain of mining. Transparency is also a major issue-both in terms of community member access to controlling documents as well as the possibility of looking into mining contracts and land concession agreements. Recent attempts by the Government to be accepted into a multi-national coalition calling for more transparency in the extractive industry have fallen short.

Inadequate Compensation

Many community members who have lost their property in land concessions either have not been compensated, or have been inadequately compensated for their losses. The Minerals and Mining Act (MMA) requires that compensation should be given for the loss of land use in addition to the loss of crops and immovable property, but many community members are only being given compensation for the loss of their crops and not the general loss of land use. Along the same lines, mining companies are only providing compensation for crops and buildings lost on the portions of concession that the mining company utilizes, not the concession as a whole.

Even in the incomplete scheme of compensating only the crops, correctly calculating compensation to ensure that it is adequate and fair is another pressing issue. One complaint is compensation fails to take into account potentially higher future value by focusing on current value. This is especially evident when young plants are compensated for current value and not their potential value at a mature age. Another complaint is that mining companies do not distinguish between higher value and lower value crops, yielding farmers less money than is owed to them. This disagreement over which valuation method to use highlights both the lack of information farmers have on how compensation is calculated and the lack of input they have in the calculation itself, even though the MMA requires the farmers presence during calculation. The root of the problem of inadequate compensation remains the uneven bargaining power between farmers and the mining companies, lack of information, and the inability to seek remedies through the judicial system. The Government is not present to counter-act this uneven bargaining power by disseminating information to farmers, enforcing the Minerals and Mining Act and providing a legal framework that ensures remedies are not only more readily available, but also more effective.

Unsafe Living and Working Conditions

The on-going presence of the mining companies creates a negative impact on the lives of those in affected communities. This impact manifests itself through environmental degradation, illnesses, and dangerous working conditions. Surface mining is an environmentally damaging process, as evidenced by frequent chemical spills that have destroyed, polluted, or dried up many water sources in many communities. The contamination of water in these communities often renders it unsafe and undrinkable, in addition to causing skin rashes and other health problems. These spills often kill thousands of fish, a vital food source for many community members, and also contaminate the crops of surrounding farmland. Constant blasting not only creates air pollution, but also damages buildings, and can present a continual threat of injury to community members. Mining companies quite often make no attempt to fix wrongdoings that continue to cause problems for community members. Many community members are left with few, if any, employment options after losing their farmland. Since inadequate compensation does not cover relocation costs, many community members seek employment in the area. The mining companies, although required by the MMA to give preference to community members for employment opportunities, rarely offer jobs to local residents. In addition to the lack of legislation, there is a lack of accountability by the Government for mining companies when they cause harm to communities near mining sites. Community members whose health, environment, and livelihoods are threatened and harmed by the presence of mining companies, a frequent occurrence, have few available legal remedies and clearly cannot rely on the mining companies to correct their wrongs and compensate community members for harms suffered.

Violence Associated with Mining Activities

There is considerable social, activist, and legal resistance from community members to mining activities in Tarkwa due to the human rights violations mentioned in this Report. In addition to their own private security, all mining companies utilize State security personnel (especially the police and military) to protect their property/concessions. These security forces sometimes use violent and forceful means to terminate demonstrations resulting in loss of life, injuries, and terror. Use of physical violence against community demonstrators, galamsey miners (local artisanal gold miners who operate independent of mining companies), denial of access to

farmland, and destruction of crops by military personnel have been widely reported. Such incidents have involved gunfire, assaults on elderly members using canes and guns, and destruction of communal and personal property. If community members try to protest at the mining sites, military forces appear the following day, allowing the companies to continue working. Concerned farmers informed the HRC these soldiers often harass and beat the farmers for no reason. Most disturbingly, mining companies appear to have used violent measures with impunity. There has been no strong Government response to the numerous reported incidents of violence. There have been insufficient penalties or fines imposed (i.e. there is no deterrence effect) upon mining companies that both brutalize community members for opposing their policies and activities, and harass them into submitting to their practices.

Lack of Access to Justice

A lack of access to justice, a common thread running throughout the problems discussed above, further compounds the issues. Although the Ghanaian Constitution provides all people with the right to information-this is a right that is not being met. Community members are unaware of their rights and how to effectively use these rights as a defense to the effects of large-scale mining. The Government is also failing to implement their own laws-partly because of a lack of awareness as to the situation. This lack of enforcement ensures a lack of justice for community members. Community members also have a difficult time accessing various documents. Another hurdle a community member faces in the fight against mining companies' infractions is in the area of procedural remedies, specifically in terms of final adjudication.

RECOMMENDATIONS

Lack of Prior Consultation and Consent

Parliament

1. The Parliament should amend current law so that it ensures the participation of communities in final decisions regarding development of minerals within their lands.
2. The Parliament should define “public interest” in the MMA and all other relevant law as expressly covering the rights of communities.
3. The Parliament should streamline the agencies’ mandates and processes so that there is greater cooperation and efficiency amongst them in the process leading to granting mining concessions.

Government

1. The Government and mining companies should consult with community members prior to activities that will affect their interests, lives, or environment and give them fair opportunities to participate in the decision-making process and express their informed consent.
2. The Government should provide the public with adequate prior notice of a prospective mining license or any other mining activity that will significantly affect the community in a manner that the community understands.
3. The Government should adopt a legal framework and provide the needed support, including education, to community members so they can negotiate with the mining companies on fairer terms.
4. The Government should ensure that mining companies address community concerns and complaints immediately, and maintain transparency regarding all relevant aspects of mining activities. This includes the dissemination of information to affected communities in a manner that is culturally sensitive and understandable to community members.

Environmental Protection Agency (EPA)

1. The EPA should conduct public hearings regarding mining projects regardless of whether there is community opposition or not. These hearings should be conducted in good faith, and entail the free and informed participation of all affected parties. Hearings should be conducted at times and places that facilitate community participation. Summaries of these hearings should be published for public review.
2. The EPA should revise its policies on reviewing Environmental Impact Assessments (EIAs) submitted by mining companies. It should ensure that staff members adequately understand its contents. It should also prepare summaries of the EIAs that the communities can understand so it can give informed consent to mining activities.

Corruption

Parliament

1. The Parliament should reform the royalty system for mining activities so that a larger share of the gross sales goes to the local community affected by that particular project.

Government

1. The Government needs to improve transparency regarding companies, concessions, royalty payments, and effects. The Government should meet the Extractive Industries Transparency Initiative’s guidelines, standards, and deadlines.

2. The Government should take clear, targeted, and measurable steps to enforce Constitution Section 35(8) and attempt to eradicate corrupt practices and the abuse of power.
3. The Government should set up local trusts for the royalty money to go. These trusts should be used to combat unwanted effects of large-scale mining, train local workers to work for the mining companies or in other productive activities, and improve community infrastructure.
4. The Government should establish an independent mechanism to allow confidential or anonymous allegations of corruption, and it should properly and effectively investigate these allegations.
5. The Government should use its share of royalty money to train workers so that they can work for the mining companies; particularly farmers who have lost their land due to the mining activity.
6. The Government should actively monitor and fine mining companies for bribery and/or revoke their concessions in grave instances of corrupt practices.

Inadequate Compensation

Parliament

1. The Parliament should amend the MMA in order to require
 - a. special consideration for fallow land since it is such a valuable investment.
 - b. that the MMA and the Minerals and Mining Commission, in conjunction with the Land Valuation Board enforce, transparency and written guidelines for how compensation is calculated.
 - c. that mining companies have different rates for different crops and for varying stages of plant life.
 - d. that mining companies provide crop compensation based on the individual counting method, and not by the acreage calculation method.
 - e. compensation for relocation costs. Mining companies should be held responsible and punished appropriately if they do not abide by this requirement.
2. The Parliament should streamline the agencies' mandates and processes so that there is greater cooperation and efficiency amongst them to secure proper, just, and fair compensation.

Government

1. The Government should enforce the requirement for fair and adequate compensation for lost use of land and not only for crops present at the moment of the valuation. This includes compensation for parts of the lands that are granted in concession even if they will not be utilized by the mining company. Mining companies should be held responsible and punished appropriately if they do not abide by this requirement.
2. The Government should assess compensation for crops present on the day of notice given by the mining companies to combat the alleged speculative farming that discourages mining companies from providing prior consultation with affected communities.
3. The Government needs to enforce the MMA requirement for compensation calculation to be done in the presence of the farmer, a mining company representative, and a government official.

4. The Government should ensure that mining companies provide farmers who have lost their land with seed money so that they can start new small businesses. The Government should sponsor programs that aim to educate farmers about the compensation process.
5. The Government could consider implementing a Fair Trade gold initiative, similar to the Kimberley Process, which would encourage consumers to choose gold from mining companies that provide adequate compensation and safe living conditions for local communities.

Land Valuation Board

1. The LVB should review their crop rates more frequently. The Government needs to provide the financial resources to make this possible.

Unsafe Living and Working Conditions

Parliament

1. The MMA needs to require more preventative measures to avoid chemical spills and require quicker and effective action after chemical spills have occurred. Remediation plans should be paid by the mining companies, and communities should be properly compensated.
2. The Parliament should streamline the agencies' mandates and processes so that there is greater cooperation and efficiency amongst them in securing proper, safe, and dignified living and working conditions.

Government

1. The Government should establish an independent and effective oversight mechanism to monitor that mining companies fully comply with national and international health, labor, and security standards.
2. The Government should require mining companies to cover all health care costs incurred as a result of their presence in the community.
3. The Government needs to enforce the MMA requirement that mining companies provide employment opportunities to community members who have lost their land in via land concessions. Continuing licenses to operate should be contingent on this requirement being met.
4. The Government should require that mining companies ensure that there are proper and safe roads in mining communities, and easy access to these roads. Continuing licenses to operate should be contingent on this requirement being met.
5. The Government should more actively monitor the environmental impact produced by mining activities. Protecting a healthy environment should be a priority.
6. The Government should require that mining companies provide alternative drinking water due to pollution in local streams. Mining companies need to ensure their alternative drinking water is clean and regularly maintained. Continuing licenses to operate should be contingent on this requirement being met.

Violence Associated with Mining Activities

Government

1. The Government should not allow the Ghana Armed Forces to serve in domestic security forces when it comes to mining activities. It should not allow the military to harass community members into submission to mining company policies or heighten their insecurities with their ongoing presence.
2. The Government should investigate the hiring of military personnel securing mining company property, and halt the use of any military in such operations.
3. The Government should ensure local police act independently of the mining companies. The government should adopt protocols that prevent mining companies from interfering with police duties.
4. The Government should train the Ghana Police Service on its constitutional responsibilities and how to uphold the rights of citizens.
5. The Government should ensure all laws applicable to the use of private security and their relationship to the public need are enforced and maintain proper oversight of their activities.
6. The Government should uphold the constitutional right to freedom of assembly, by ensuring that community members who lawfully and peacefully demonstrate are afforded protection.
7. The Government should prosecute perpetrators of violence in mining-related conflicts to the fullest extent of the law. If the perpetrators are repeated offenders and work for a mining company, the Government should immediately revoke the company's mining license.

Lack of Access to Justice

Government

1. The Government must diligently, effectively, and independently oversee mining companies to monitor compliance with legislation designed to protect communities.
2. The Government should properly punish mining companies for instances of non-compliance.
3. The Government should ensure all laws are easily accessible and understandable to all Ghanaian citizens. This includes putting copies of laws in local libraries, post offices, and other public places. Further, translate the laws into local dialects and into plain, everyday language.
4. The Government should ensure that the community affairs officer of the mining company is a member of the affected community, as opposed to an outside Ghanaian with no interest in the local situation.
5. The Government should ensure that mining companies strengthen the community affairs officer(s) so that he can hear and address complaints by community members in a respectful and efficient way.

Judicial System

1. The courts should act in independent, impartial, and transparent ways.
2. The courts must ensure that procedural tactics do not delay cases against mining companies. This can be accomplished by setting and adhering to firm deadlines for trial motions as well as setting limits on the number of appeals a losing party can make.

I. INTRODUCTION

After Ghana secured its independence in 1957, it nationalized much of its industry. The mining industry stagnated for the next three decades. In the 1980's, virtually all of Ghana's economy was in shambles. The nation was forced to borrow money from the World Bank and International Monetary Fund, with conditions attached. One of these conditions was the privatization of enterprises such as the extractive industry. Although this produced some positive results, there were also negative effects.

Attempting to benefit the nation economically, the Ghanaian government has rewarded large-scale mining companies, sometimes to the detriment of local communities. Additionally, little work or income for local populations has resulted from this switch to private industry. Foreign owned and internationally run companies dominate large-scale mining in Ghana.

Further complicating the situation is the Ghanaian system of customary land tenure. In fact, Ghana allows for various takings without compensation. Land tenure is heavily regulated by the State in ambiguous ways that create opportunities for manipulation. Before the colonial period, ownership of private property did not exist. During the political upheaval of the 1960's and 1970's, Ghana attempted to bring its land system into line with the Western approach. A registration system, a bevy of new laws, and the creation of various governmental departments dealing with land administration were all utilized.

As Ghana has transformed from a colony to a parliamentary democracy, the role of the community chief has evolved. While the chief still yields local power, some of their national power may have been reduced through colonists and various incarnations of the Constitution. The question of exactly what powers the chief has is a divisive one, and one that profoundly impacts the role they play vis-à-vis mining. To some, the chief is a symbol of corruption in local communities; to others, the chief is a vital political player.

While the Ashanti Region is widely regarded as the mining hub of Ghana, the Western Region is also home to significant mining activity, focusing mainly on gold, bauxite, and manganese. Most of the mining in this region is centered about the capital of Tarkwa and the surrounding communities. As of 2007, the Tarkwa Mine has the distinction of being the largest gold mine in Ghana. This level of production inevitably has a significant impact on members of surrounding communities, such as government mandated land concessions, environmental degradation, and conflict between community members and the mining companies, amongst other consequences. The current mining legislation, while well written, not only lacks some necessary protections for members of communities affected by mining, but also seems to be poorly enforced.

To conduct the research for this report, two students from the HRC, Nita Garg and Melvin Huang, traveled to Ghana from October 22 to November 1 to conduct interviews with Government representatives from the EPA and the Land Valuation Board (LVB), and also with NGOs, legal advocates, journalists, community members and community leaders, in Accra and various communities in the Tarkwa area. The HRC worked with two partner organizations, Center for Public Interest Law (CEPIL) and the Wassa Association of Communities Affected by Mining (WACAM), both during their time in Ghana and through the researching and writing of this report. WACAM, an NGO based in Tarkwa, aims to ensure that community rights are being respected by both mining companies and the Government. They raise public awareness of the effects of mining on surrounding communities, conduct informational workshops for community members, and work with CEPIL, an NGO based in Accra which provides legal representation to

community members seeking justice via the judicial system. The information from those interviews, coupled with secondary research, formed the basis for this report.

This report, written by Nita Garg, Melvin Huang, and Ryan Cicero, was only made possible only through the invaluable help from partners of the HRC, located both in Texas and in Ghana. The HRC would like to give thanks to CEPIL for coordinating a partnership between the HRC and WACAM, and for providing valuable legal insight into the situation. The HRC would also like to extend thanks to WACAM for coordinating the interviews and providing additional research during the course of writing this report. The HRC would like to thank Professor Catherine Boone for being integral in the formation of the HRC relationship with both CEPIL and WACAM, providing the HRC with background research, and for facilitating the logistics of the fieldwork in Ghana. Finally, the HRC would like to extend greatest thanks to the Government representatives, advocates, and community members, whose interviews provided the heart, and motivation, of this report.

The Human Rights Clinic at the University of Texas School of Law (HRC) is writing this Report in hopes that increasing awareness of the human rights violations in these communities will be a catalyst for change from the status quo for both the Government and the mining companies working in the region. The Report begins with a relatively brief background of the following in Ghana: the history of mining, customary land tenure, and mining legislation. The body of the Report focuses on human rights violations in communities affected by mining in the Tarkwa region. The HRC decided to focus on six issues: 1) Lack of prior consultation and consent; 2) Corruption; 3) Inadequate compensation; 4) Unsafe living and working conditions; 5) Violence associated with mining activities; and 6) Lack of access to justice. These particular violations were chosen due to either their high frequency or the significance of their impact on members of these communities. The HRC, through the information culled from the interviews and scholarly works, has proposed a series of recommendations for both the Government and mining companies, in hopes that these recommendations will be implemented, and thus mitigate the suffering in communities affected by mining in the Tarkwa region.

Figure 1: Political Map of Ghana (Provinces)



Source: www.ezilon.com

II. BACKGROUND

A. Economic Development in Ghana through the Lens of Mining

The West African nation of Ghana has endured a long and turbulent history of mining. For over a thousand years, the Gold Coast, as it was once known, has been immersed in gold mining in particular.¹ Of all the minerals extracted, gold plays the most important economic role.² Like much industry in developing nations, however, the negative impact on local communities and indigenous peoples are often subservient to the economic benefits to the nation as a whole.

As early as the tenth century, West Africa and Europe traded gold; this practice has continued to present day.³ Pierre Bonnat modernized mining in the Tarkwa region, the focus of this report, in the late 19th century.⁴ Twentieth century gold mining in Ghana saw ups and downs—for instance, in 1938 there were some eighty mines in operation in the country, and by 1987, that number had been reduced to four.⁵

After Ghana secured its independence in 1957 through a United Nations sponsored plebiscite a year earlier, it nationalized much of its industry; mines became state-owned.⁶ As a result, over the course of much of the next three decades, the Ghanaian mining sector was hampered financially and failed to make strides.⁷ Indeed, in the eighties, most of the country's economy was in a crisis. Ghana turned to the World Bank and International

Figure 2: Gold Mining Map of Ghana



Source: www.redbackmining.com

¹ Garvin, et al, *Community-company relations in gold mining in Ghana*, 90 J. ENVIRON.MANAGEMENT 571, 571-72 (2009).

² *Id.* (Noting “Gold is the largest contributor to the economy, accounting for about 38% of total merchandise and 95% of total mineral exports as well as about 80% of all mineral revenue.”) In addition, according to *The Story Underneath*, Inter Press Services News Agency, 2/26/10, Ghana ranked 10th worldwide in gold production in 2006.

³ See <http://www.ghana-mining.org/ghweb/en/geologymining/minhistory> (last accessed May 18, 2010).

⁴ *Id.* (Bonnat is considered the “father of modern gold mining” in the Gold Coast.)

⁵ Ghana: A Country Study (LaVerle Berry ed., Library of Congress, Federal Research Division) 1994.

⁶ Garvin, et al., *supra* note 1, at 572.

⁷ *Id.*

Monetary Fund, a not uncommon solution for African nations in need.⁸ Also not uncommon were the stipulations placed on the loan-most relevant to this report, the obligation to “remov[e] trade barriers, privatiz[e] public enterprises, and promot[e] economic growth through export.”⁹ These changes, among others, come under the rubric of structural adjustment policies (SAPs). SAPs in Ghana led to a positive economic growth rate, a reduction in inflation, and an improvement in investor (specifically internationally) confidence.¹⁰ Not all results were positive: Ghana also saw local industry and agriculture suffer. Perhaps most damaging, however, was the introduction of a new legal system put into place in 1986 that encouraged foreign investment and reduced the protection of local communities.

In an attempt to procure the greatest profit possible for the nation, the Ghanaian government put into place a structure that rewarded large-scale mining companies with tax exemptions, less onerous ownership restrictions, and easy access to local land.¹¹ Through a convoluted royalty system, the Government receives a percentage of sales; after much dilution, the local communities see a meager amount of these proceeds.¹² This system has also caused the mining sector to splinter into two groups: large-scale and small-scale.

Large-scale mining is made up of approximately forty officially recognized companies.¹³

Figure 3: Gold Production in Ghana, 1980-2000



Source: G.M. Hilson, *Structural Adjustment in Ghana: Assessing the Impacts of Mining Sector Reform*, 51 AFRICA TODAY 2, 6 (2004).

All but one of these are foreign owned and internationally run.¹⁴ Small-scale mining, on the other hand, comprises some 60% of Ghana's mining labor force.¹⁵ Small-scale mining is comprised mainly of unlicensed operators known as *galamseyers*; this is an illegal operation because they mine without concessions or authorization from the Government.¹⁶ Compounding the reduction of local opportunities for work and sustenance, the expansion of large-scale mining interests has failed to create job opportunities for local workers. Most companies choose to bring in outside, trained laborers rather than train uneducated and unskilled local

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Petra Tschakert, *Digging Deep for Justice: A Radical Re-imagination of the Artisanal Gold Mining Sector in Ghana*, 41 ANTIPODE 706, 710 (2009).

¹⁴ Garvin, et al., *supra* note 1, at 572 (Ashanti Goldfields-Obuasi is the lone exception).

¹⁵ Tschakert, *supra* note 13, at 712.

¹⁶ *Id.* (Interestingly, Tschakert cites 300,000 to 500,000 people working in artisanal small-scale mining and 85% of those (or, 255,000 to 425,000) operating without a license. Garvin, however, puts the figure substantially lower, claiming “an estimated 60,000 people [are] involved in *galamsey*.”)

laborers.¹⁷ Naturally, this leads to more workers taking up posts as galamseymen.¹⁸ Both large-scale and small-scale mining are big business today.¹⁹

There is the charge that “mining companies . . . are concerned first and foremost with global strategy and not local interests.”²⁰ It is at this intersection of local communities’ needs, Ghana’s national economy, and large-scale international mining companies’ profit margin that this report begins.

B. Brief Overview of Customary Land Tenure in Ghana

Further complicating the situation is the Ghanaian system of customary land tenure. Land ownership is a controversial and contested issue in Ghana. Part of the process of trying to reform land law in Ghana is trying to figure out what it all means. The idea that those in charge of the land must act for the good of the community can be found in the 1992 Constitution.²¹ There are various competing land tenure and management systems, none of which is well organized.²² While a detailed analysis of land tenure and its roots is beyond the scope of this report, two facts are important. First, although the land tenure system is referred to in the Constitution and other legal documents as “customary”, there is nothing traditional about it. It is a practice heavily governed by law and was not introduced until recent times. Second, public land is divided into two groups: compulsorily acquired land and land vested in the President.²³ This is significant because land that has been compulsorily acquired, for a public purpose or interest under the State Lands Act of 1962, must be compensated for.²⁴ Vested land is not compensated for; rather, the community holds the interest and reaps the income brought in from it and the Government holds legal title.²⁵ Land tenure is heavily regulated by the State in ambiguous ways that create opportunities for manipulation.

Before the colonial period, private property in the Western sense was non-existent as a legal matter. During colonization, “a land management and allocation system was introduced to adapt land management to the needs of the colonial state and capitalist mode of production.”²⁶ Colonists saw to it that any unclaimed land was claimed by the State.²⁷ Later, when Ghana won

¹⁷ Garvin, et al., *supra* note 1, at 572.

¹⁸ Ray Bush, ‘Soon There Will Be No-One Left to Take the Corpses to the Morgue’: Accumulation and Abjection in Ghana’s Mining Communities, 34 RESOURCES POL’Y 57, 57 (2009) (“galamsey operations also offer far more benefits to local residents than does the Government of Ghana’s disbursement of mining royalties or employment opportunities offered by the large-scale mines”).

¹⁹ See *The Story Underneath*, Inter Press Services News Agency, 2/26/10 (the Ghana Chamber of Mines estimates that the sale of gold, diamond, bauxite, and manganese during the second quarter of 2009 netted over \$420 million dollars.)

²⁰ Bush, *supra* note 18, at 62.

²¹ KASIM KASANGA & NII ASHIE KOTÉY, LAND MANAGEMENT IN GHANA: BUILDING ON TRADITION AND MODERNITY (2001) (quoting Article 36(8) of the 1992 Constitution).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* The government has the legal authority to do this under another 1962 piece of legislation called the Administration of Lands Act.

²⁶ Theodora Mantebea Mends & Johan de Meijere, *A Study of the Institution of the Customary Land Tenure System in the Supply of Property Rights for Urban Development – An Example of Accra, Ghana*, 4 Promoting Land Administration and Good Governance 5th FIG Regional Conference Accra, Ghana, March 8-11, 2006.

²⁷ *Id.*

its independence, these lands were transferred to the sovereignty and helped facilitate and set the stage for concessions by the Government to the international large-scale mining companies.²⁸

During the 1960's and 70's, Ghana, realizing it needed to modernize its agrarian system, began to move towards a more Western approach; this also served to influence the so-called customary land tenure system. Ghana sensed that in order to incentivize farmers, "secure and fungible rights in land" would have to be provided.²⁹ Without this legal concept of ownership, farmers had no long-term security and more importantly, could not use the land as collateral to improve their methods and gain access to new technology.³⁰ The first step was to have all farmers register their land with the State—a step that most small farmers found far too cumbersome and costly to complete.³¹ In fact, since inception, the entire registration system has been plagued by both design and implementation defects.³² In the 1980's, Ghana began privatizing industry, namely mining.³³ As industry was privatized and more foreign investment occurred, a "regulatory framework for transactions in land" was needed.³⁴ The World Bank, among other donors, promoted land tenure reform in an effort to ensure foreign investors would see a return on their investment.³⁵

During the same time frame, Ghana was undergoing relative upheaval in land administration. Article 163(5) of the 1969 Constitution created the Lands Commission.³⁶ The 1979 Constitution put the Lands Commission under the President's authority³⁷; two years later, the military dictatorship in power changed their role again.³⁸ In 1986, the Land Commission was divided; one result was the creation of the Land Valuation Board (LVB).³⁹ The Land Valuation has no enabling legislation, it was, and remains, a practical application of Section 43 of the Provisional National Defense Council Law of 1982.⁴⁰ There has been legal innovation—in the form of stool lands, skins, and allodial interests, for example. The fact is, however, that users of land do not have any control of their land. Land as a Western style commodity has not been realized.

Practically speaking the system of the so-called customary land tenure has a far reaching impact on mining and its effects in Ghana. The system places a large amount of power in the hands of a few-hitherto chiefs and now, with the authority to grant concessions, the Government. Chiefs have power under the so-called customary land tenure system through a modified form of ownership. Through this modern approach to land ownership the chiefs have jurisdiction and as such, speak for the community when making decisions regarding the land.⁴¹ The customary land

²⁸ Kasanga & Kotey, *supra* note 21, at 2 (explaining this transfer was done legally under the auspices of Sections 1 and 2 of the State Property and Contracts Act of 1960).

²⁹ JANINE UBINK AND KOJO S. AMANOR, *CONTESTING LAND AND CUSTOM IN GHANA* 9 (2009).

³⁰ *Id.*

³¹ *Id.*

³² Kasanga & Kotey, *supra* note 21, at 5-6 (reviewing the myriad defects of the registration system).

³³ Ubink & Amanor, *supra* note 29, at 10.

³⁴ *Id.* (Explaining that this framework "would enable policies promoting free markets to translate into functioning and transparent property and land markets.")

³⁵ *Id.*

³⁶ Kasanga & Kotey, *supra* note 21, at 2.

³⁷ *Id.* at 3.

³⁸ *Id.*

³⁹ *Id.* at 4.

⁴⁰ *Id.* 5.

⁴¹ F. Nii Botchway, *Land Ownership and Responsibility for the Mining Environment in Ghana*, 38 NAT. RESOURCES J. 515 (1998).

tenure system, and its subsequent metamorphosis, has helped usher in a period of community upheaval by both large-scale mining companies and the Ghanaian government.

As Ghana has transformed from a colony to a parliamentary democracy, the role of the chief has evolved.⁴² Today, the question of what chieftaincy is has become a very political and partisan debate. Their standing has been somewhat weakened by two factors, but overall they remain very involved in local politics.⁴³ Before Western colonization of Ghana, the chief was responsible for all branches of government.⁴⁴ This included leading the military, as chiefs were at the forefront of disruptions against colonial rule.⁴⁵ This led to the first factor that undermined their role, that of marginalization of their powers by the colonial rulers.⁴⁶ The other agent of distillation was the subsequent independence and politicalization of Ghana.⁴⁷ While the 1957 Constitution reserved a one-third membership of local governments for chiefs, future incarnations of the Constitution (such as the 1988 and presently in force 1992 Constitutions) did not.⁴⁸ Nonetheless, as these factors eroded a chief's national power, the chief remains a very powerful force locally. The National Commission for Democracy stated, "any future constitution should define a role for Chiefs because they represent the interest of their people."⁴⁹ It is this sentiment, and whether the majority of chiefs are properly fulfilling this duty, that plays a large role in the clinic's report. This diminishing power in terms of the ambiguity surrounding the chief's role should not, however, be confused with a lack of laws in place giving the chief power to make many decisions on behalf of his community. This extends to land ownership issues, where the Ghanaian government is attempting to ensure land does not become a commodity in a Western sense. One way to do this is to empower the chiefs to decide what's best for their communities.

C. Mining Legislation in Ghana

The first thirty years after Ghana gained its independence in 1957 was marked by state control of the mining industry, though there was still heavy reliance on the capital resources, technology, and expertise of foreigners.⁵⁰ By 1986, according to a former Senior Legal Officer at the Ghanaian Minerals Commission, Ghana's mining laws attracted substantial foreign mining investment.⁵¹ In the 1990s however, there was strong belief that private enterprises in a competitive market were more adept and efficient at mineral resource development.⁵² This led to an increase in private investment in the minerals and mining sector. With the World Bank's Mining Sector Development and Environmental Project in Ghana fortifying the legal and fiscal regime for foreign private investors and also strengthening mining sector institutions, Ghana

⁴² Kwame Boafo-Arthur, *Chieftaincy and Politics in Ghana Since 1982*, West Africa Review (2001) available at <http://www.westafricareview.com/vol3.1/boafo.html> (last accessed June 13, 2010).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Martin Kwaku Ayisi, *Ghana's New Mining Law: Enhancing the Security of Mineral Tenure*, 27 J. ENERGY & NAT. RESOURCES L. 66, 69 (2009).

⁵¹ *Id.* at 66, 72.

⁵² *Id.* at 66, 70.

revised some 78 acts, ordinances, decrees, codes and laws regulating mining in 2006.⁵³ The amended laws protect mining companies with the introduction of stability clauses⁵⁴ and development agreements,⁵⁵ but also looked after affected communities with robust compensation principles⁵⁶ and a modest measure of prior notice.⁵⁷ All previous licenses, leases, permits and agreements made under the old law are still valid under the 2006 Mining and Minerals Act.⁵⁸

Ghana's comprehensive Constitution (1992) regulates the extraction and marketing of various minerals in Ghana. As the supreme law of the land, the Constitution allows for compulsory acquisition of land if done "in such manner as to promote the public benefit" and there is "reasonable justification for causing any hardship that may result to any person who has an interest in or right over the property."⁵⁹ Such acquisition must be accompanied by fair and adequate compensation and access to the judicial system.⁶⁰ The Constitution also creates regulatory bodies that assist or monitor the extractive sector in Ghana. Two notable bodies are the Lands Commission,⁶¹ which helps advise the Ghanaian authorities on land development policies, and the Commission on Human Rights and Administrative Justice (CHRAJ),⁶² which investigates human rights complaints and violations, and educates the public on fundamental rights and freedoms.⁶³

Though the Constitution provides a general framework for mineral development in Ghana, the primary source for mining law in Ghana is the Minerals and Mining Act of (2006) (MMA). Within this legal scaffold, the State is the owner of all minerals in their natural state

⁵³ Gavin Hilson & Sadia M. Banchirigah, *Are Alternative Livelihood Projects Alleviating Poverty in Mining Communities? Experiences from Ghana*, 45 J. DEV. STUDIES 172, 177 (2009); See *World Bank Report No. 26197: Project Performance Assessment Report of Ghana Mining Sector Rehabilitation Project and Mining Sector Development and Environmental Project*, (World Bank, Washington D.C.), July 2003, at 14, available at [http://lnweb90.worldbank.org/OED/oeddoclib.nsf/DocUNIDViewForJavaSearch/A89AEDB05623FD6085256E37005CD815/\\$file/PPAR_26197.pdf](http://lnweb90.worldbank.org/OED/oeddoclib.nsf/DocUNIDViewForJavaSearch/A89AEDB05623FD6085256E37005CD815/$file/PPAR_26197.pdf) (last accessed May 19, 2010).

⁵⁴ Mining and Minerals Act, 2006, § 48 (Ghana). These clauses protect a mining agreement or contract against future government action or change in the law, either legislative or regulatory, for up to fifteen years.

⁵⁵ *Id.*, § 49. These agreements are only granted to holders of mineral rights, and require a level of investment of at least US \$500 million. They may contain provisions relating to the conduct of mining operations, settlement of disputes and environmental issues. As of May 2009, only one development agreement had been granted. See also Ayisi, *supra* 50, at 66, 72.

⁵⁶ Mining and Minerals Act, § 74. This provision covers the loss of expected income, as well as the general loss of use of the entire territory of the concession. It also stipulates that such compensation should be prompt, fair and adequate.

⁵⁷ *Id.*, § 13(2). The Minister of Mines must notify the chief or allodial owner, no less than 45 days prior to its decision whether to grant a mineral right, of the prospective application for such rights. This notification must also be published in a "manner customarily acceptable to the areas concerned." *Id.*, § 13(3)(b)(i).

⁵⁸ *Id.*, § 112(2).

⁵⁹ Ghana Constitution, art. 20(1).

⁶⁰ *Id.*, art. 20(2).

⁶¹ *Id.*, art. 258. A new Lands Commission Act was passed by the Ghanaian Parliament in October 2008. With this Act the Commission is now responsible for all the issues involved in land administration, surveying and mapping, compensation and valuation, land registration and land management. The Survey Department, Land Valuation Board, Land Title Registry and the Lands Commission Secretariat have been brought under a new Lands Commission with four functional divisions, Survey and Mapping Division, Land Registration, Land Valuation and Vested Lands Management Divisions. Baba Kofi Yaro, *Make Land Registration Stress Free - Minister Tells Commission*, PUBLIC AGENDA (ACCRA), Aug. 21, 2009, available at <http://allafrica.com/stories/200908210784.html> (last accessed May 19, 2010). As of this writing, the HRC has tried, but been unable to procure an electronic version of the Act.

⁶² Ghana Constitution, arts. 216-230.

⁶³ *Id.*, art. 218.

within Ghana's land and sea territories.⁶⁴ All minerals are vested in the President on behalf of, and in trust for, the people of Ghana.⁶⁵ Under Section 2, of the MMA, the President may acquire any land, or authorize the use of any land, for mineral resource development purposes under any applicable law. The main sources of such applicable law are the Administration of Lands Act (1962) and State Lands Act (1962). Both give the President broad powers to declare a parcel of land as proper for mining purposes, and issue Executive Instruments that recognize stool lands⁶⁶ as vested in him in trust, if he deems it to be in the "public interest."⁶⁷ So great is this power that it appears the President "can therefore grant any land covered by the instrument to any mining company for mining purposes."⁶⁸ The MMA specifies the forms of mineral rights that the Minister of Mines, on behalf of the President, is empowered to grant, size of the concessions, as well as procedural rules for license application. It also lays out the rights and obligations of a holder of mineral rights,⁶⁹ and the terms and conditions of a grant of a mineral right.

In general, a mining company may not embark on mining activities until it has first been granted a mineral right.⁷⁰ In its application for such a right, the company must demonstrate how it will employ and train Ghanaians in the mining industry.⁷¹ After obtaining a reconnaissance or prospecting license, the company may apply for a mining lease, with an initial term of up to thirty years, and which is subsequently renewable for up to an additional thirty years.⁷² The lease authorizes the company to enter upon the community's land and perform a wide variety of actions related to mining, such as extraction of minerals, erection of equipment, and dumping of mineral or waste product.⁷³

The Act empowers the Minister of Mines to investigate the ownership or control of a mining company whenever desirable in the "public interest."⁷⁴ If a holder "fails to make payment on the due date, whether due to the Republic or another person" as required by the Act, the Minister may suspend or revoke the mineral right.⁷⁵ Prior to the suspension or revocation, the Minister must give prior notice to and also "require the holder to remedy a breach of the condition of the mineral right within a reasonable period."⁷⁶ The Minister also has the authority to suspend or revoke a mining lease or restricted mining lease if it finds "good cause" that the

⁶⁴ Mining and Minerals Act, § 1; *see also* Ghana Constitution, art. 257(6).

⁶⁵ Mining and Minerals Act, § 1.

⁶⁶ These are lands that belong to the royal or chiefly families of Ghana. Stool lands are communal property since chiefs are customarily and constitutionally obliged to administer and develop stool lands for the benefit of the whole community.

⁶⁷ *See* Administration of Lands Act, 1962, § 10 (Ghana); State Lands Act, 1962, §§ 1, 2 (Ghana). "Public interest" is defined in the Constitution as "includes any right or advantage which ensures or is intended to ensure to the benefit generally of the whole of the people of Ghana." Ghana Constitution, art. 295.

⁶⁸ Botchway, *supra* note 41, at 509, 527.

⁶⁹ A "mineral right" means "a reconnaissance license, a prospecting license, a mining lease, a restricted reconnaissance license, a restricted prospecting license or a restricted mining lease." Mining and Minerals Act, § 111.

⁷⁰ Mining and Minerals Act, § 9(1).

⁷¹ *Id.*, § 11(d); *see also* Section 50 detailing the recruitment and training of Ghanaians and Section 105 on preference for local products and employment of Ghanaians.

⁷² *Id.*, §§ 41, 44.

⁷³ *Id.*, § 46.

⁷⁴ *Id.*, § 58(1); *see also* Section 53(1) concerning objection to new or increased control of the mining company in the public interest.

⁷⁵ *Id.*, § 68(1)(a).

⁷⁶ No less than 120 days, in the case of a mining lease or restricted mining lease, or 60 days in the case of another mineral right. *Id.*, § 68(2).

holder failed “to carry out any or a material part of the holder’s programme or mineral operations.”⁷⁷ As with a mineral right, the holder is also required to remedy the breach within a “reasonable period,” being no less than 120 days.⁷⁸ Should a person remove a building, fixed machinery or other movable property, or remove or dispose of a mineral in violation of the Act, that person is fined up to US \$5,000 on the first conviction, and then US \$500 per day for the continued offense thereafter.⁷⁹ Directors of mining companies are held jointly liable for offenses committed by its employees.⁸⁰

Aside from the MMA and Constitution, Ghana’s Environmental Assessment Regulations (EAR) also play a large role in how mining companies carry out their operations. The EAR governs the registration and issuance of environmental permits, which are required when the Government grants large-scale mining concessions.⁸¹ The Environmental Protection Agency (EPA) initially screens the application, which must contain a “clear commitment to address unavoidable environmental and health impacts and steps where necessary for their reduction,”⁸² taking particular note of the “concerns of immediate residents if any.”⁸³ The Agency may also request a preliminary environmental report and then require an environmental impact statement if it is “satisfied that a significant adverse environmental impact is likely to result from the activities of the undertaking.”⁸⁴ These environmental impact statements must cover issues such as the “potential impact on the health of the people,”⁸⁵ impact on the environment,⁸⁶ prior consultation,⁸⁷ and compensation.⁸⁸ Section 14 outlines even more detailed criteria covering employment generation, provision of infrastructure such as roads, schools and health facilities, cultural changes in the affected communities, vehicle traffic generation, and resulting demographic changes due to the proposed mining activity.⁸⁹ Water tapped for domestic purposes or areas that have been “traditionally occupied by cultural communities” are deemed environmentally sensitive areas, and require both registration and an environmental permit before such activity can commence.⁹⁰ Community members can file complaints with the EPA, which will then assemble a panel consisting of representatives from the Ministry of the Environment, Attorney-General’s Department, “Ministry with responsibility for the undertaking,” and two persons with “specialization in the relevant field of the undertaking,” which can either alter the EPA’s decisions or “give any other directives as it considers just.”⁹¹

Finally, aside from domestic legislation, Ghana has ratified a number of important international treaties and declarations: (1) the International Covenant on Civil and Political

⁷⁷ *Id.*, § 69(1).

⁷⁸ *Id.*, § 69(2).

⁷⁹ *Id.*, §§ 106(d), (e).

⁸⁰ *Id.*, § 107(1)(a). A director however may show that he did not have knowledge of the offense and “exercised due care and diligence” in preventing the commission of the offense. *Id.*, § 107(2).

⁸¹ Environmental Assessment Regulations, 1999, Regulation 3, § 11 (Ghana).

⁸² *Id.*, § 5(2)(c).

⁸³ *Id.*, § 5(1)(c).

⁸⁴ *Id.*, § 9(4).

⁸⁵ *Id.*, §§ 12(g), 14.

⁸⁶ *Id.*, § 12(h).

⁸⁷ *Id.*, § 12(k).

⁸⁸ *Id.*, § 12(n).

⁸⁹ *Id.*, § 14.

⁹⁰ *Id.*, Schedule 5(11)(a). A list of these special areas has not been publicly released, so the HRC has been unable to determine whether Tarkwa has been designated as one of the protected regions.

⁹¹ *Id.*, § 27.

Rights; (2) the International Covenant on Economic, Social, and Cultural Rights; (3) the African Charter on Human and People's Rights; (4) the UN Convention Against Torture; and (5) the Covenant on the Elimination of Racial Discrimination. Ghana has fallen short of recognizing and protecting these enshrined rights with respect to mining activities. Large-scale mining companies, with the tacit acquiescence of the Government, have routinely committed human rights violations as they have encroached upon, polluted, and destroyed local Ghanaian communities. The Government has also participated in direct human rights violations by failing to "give effect" to the human rights afforded to community members that are discussed in the following section of this Report.

III. HUMAN RIGHTS VIOLATIONS IN COMMUNITIES AFFECTED BY MINING IN THE TARKWA REGION

In this section the report will explore six human rights violations due to large-scale mining that are occurring in Ghana. While these are not necessarily the only violations, they are the six violations that were most prevalent in the HRC's research. They include: lack of prior consultation, corruption, inadequate compensation, unsafe living and working conditions, violent conflict, and lack of access to justice. Each sub-section will identify the problem, provide specific examples of the violation, and introduce controlling law, both domestic and international, where appropriate. Each violation taken on its own can be understood to be a unique, isolated problem. This, however, undervalues the situation taken as a whole. Each violation is connected; a smaller part of a larger issue.

A. Lack of Prior Consultation and Consent

Compliance procedures in Ghana do not conform to international standards of free, prior and informed consent that are intended to protect the rights of communities and their members. Consent processes can also alleviate both community opposition and corporate operational, financial, and legal risks by allowing communities to negotiate with companies to reach mutually acceptable agreements. However, in Ghana they are not being implemented, which emboldens resistance to mining activities. A comprehensive report on the impact of mining in Ghana written by CHRAJ in 2008 concluded, "[B]oth mining companies and communities recognize the importance of effective channels of communication between them as an effective means of resolving differences and preventing the escalation of conflicts. However, in many cases, these communications or conduits of consultations are lacking or weak."⁹²

Consent is required when mining projects affect communities that are classified as indigenous or tribal peoples. The HRC was informed that up to half of the communities affected by mining in Tarkwa would fall into this category.⁹³ In 2003, Rodolfo Stavenhagen, former UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, observed that large-scale development projects severely impacts indigenous people in ways

not well understood, much less foreseen, by the authorities in charge of promoting them. [. . .] The principal human rights effects of these projects for indigenous peoples relate to loss of traditional territories and land, eviction, migration and eventual resettlement, depletion of resources necessary for physical and cultural survival, destruction and pollution of the traditional environment, social and community disorganization, long-term negative health and nutritional impacts as well as, in some cases, harassment and violence.⁹⁴

⁹² Commission on Human Rights and Administrative Justice, *State of Human Rights in Mining Communities in Ghana* 172 (2008).

⁹³ Telephone interview with Jerry Mensah-Pah, Staffworker, Wassa Association of Communities Affected by Mining, (April 5, 2010).

⁹⁴ *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, (Executive Summary) 2, U.N. DOC. E/CN.4/2003/90 (Jan. 2003) (prepared by Rodolfo Stavenhagen); also quoted in *Endorois Welfare Council v. Kenya*, African Comm'n on Human and Peoples' Rights, Comm. no. 276/2003 (2003), para. 293.

Consequently, he determined that “[f]ree, prior and informed consent is essential for the [protection of] human rights of indigenous peoples in relation to major development projects.”⁹⁵ The HRC has observed in Tarkwa all of the effects Stavenhagen listed.⁹⁶ The UN Declaration on the Rights of Indigenous Peoples specifically calls for the free and informed consent of indigenous people “prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of their mineral, water or other resources.”⁹⁷ The Declaration also requires such consent in matters affecting relocation and property rights.⁹⁸

A failure to consult with affected communities precludes the opportunity for them to provide informed consent. The African Commission on Human and Peoples’ Rights realized this principle in its recent landmark ruling for the Endorois people in Kenya.⁹⁹ In that case, it emphasized the “innovative and unique” nature of the African Charter, since it placed “special emphasis on the rights of ‘peoples,’”¹⁰⁰ and explicitly recognized collective property rights and land as “property” under Article 14 of the Charter.¹⁰¹ Relying heavily on the Inter-American Court of Human Rights’ seminal *Saramaka v. Suriname* case,¹⁰² the African Commission found the lack of effective consultation with and participation by the community, in conformity with their customs and traditions, regarding development, investment, exploration or extraction activities within their territory was a violation of Article 14.¹⁰³ Even though Ghana’s laws stipulates that the grant of mineral rights to a company must be made known to the affected communities in a manner “customarily acceptable” to them, consent in Ghana concerning mining projects is neither free, prior, nor informed.¹⁰⁴ Indeed, the MMA does not mention prior consultation or informed consent, which means the Act does not comply with international legal standards.

The African Commission also ruled that the Kenyan Government failed to “impress upon the Endorois any understanding that they would be denied all rights of return to their land.”¹⁰⁵

⁹⁵ *Id.* at para. 66.

⁹⁶ Please see Appendix 4 for details.

⁹⁷ Declaration on the Rights of Indigenous Peoples, art. 32(2), G.A. RES. 61/295, U.N. DOC A/RES/61/295 (Sept. 13, 2007). The UN Human Rights Committee has also “stress[ed] the obligation of the State party to seek the informed consent of indigenous peoples before adopting decisions affecting them.” HUM. RTS. COMM., *Concluding Observations of the Human Rights Committee: Canada*, 22, U.N. DOC. CCPR/C/CAN/CO/5 (Apr. 20, 2006), available at

[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/\\$FILE/G0641362.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/$FILE/G0641362.pdf) (last accessed May 19, 2010). The Committee on the Elimination of Racial Discrimination similarly calls upon states to “ensure that no decisions directly relating to their [indigenous peoples] rights and interests are taken without their informed consent.” Comm. on Elimination of Racial Discrimination, *General Recommendations XXIII (51) Concerning Indigenous Peoples*, 6 A.I.L.R. para. 4(d) (Mar. 1998), available at <http://www.austlii.edu.au/au/journals/AILR/1998/6.html> (last accessed May 19, 2010).

⁹⁸ Declaration on the Rights of Indigenous Peoples, *supra* note 97, arts. 10, 11.

⁹⁹ Although the case had been filed in 2003, the Commission made its decision on February 4, 2010.

¹⁰⁰ Endorois Welfare Council v. Kenya, *supra* note 94, para. 149.

¹⁰¹ *Id.*, para. 187; see also *Malawi African Association and Others v. Mauritania*, African Comm’n on Human and Peoples’ Rights, Comm. nos. 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98 (2000), para. 128 (considering land as property for purposes of Article 14).

¹⁰² *Case of the Saramaka People v. Suriname*, Inter-Am. Ct. H.R. (ser. C) No. 172 (28 November 2007).

¹⁰³ Endorois Welfare Council v. Kenya, *supra* note 94, paras. 227-28, 291.

¹⁰⁴ Mining and Minerals Act, § 13(3)(b)(i).

¹⁰⁵ Endorois Welfare Council v. Kenya, *supra* note 94, para. 290.

Lack of prior consultation with and informed consent from the community may also cause them to be forcibly removed and deprive them of access to vital resources contained within their land. This would violate Article 21 of the African Charter, which in part commands member states “to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.”¹⁰⁶

The Endorois’ plight¹⁰⁷ has been mirrored in communities that the HRC visited. As in



James Sarpong, a farmer in Teberebie, with Human Rights Clinic Students Nita Garg and Melvin Huang.

Kenya, the Government in Ghana has granted mining concessions without consultation and consent from the communities. Mr. Augustine Niber, Deputy Director of CEPIL, mentioned how the decision for mining companies to enter a given community is made by the Central Government with no input from the affected communities, unless a large number of people were to be displaced.¹⁰⁸ Kumi Larbi of CEPIL also noted that the

Government issued mining licenses without consultation with communities and their chiefs.¹⁰⁹ This means, according to one scholar, that although mining companies and the Government may be responding to public pressure and recommitting themselves to community development,¹¹⁰ such endeavors, if “conducted strictly on company and government terms,” are really non-participatory in nature.¹¹¹ The apathy of the Government is matched by the indifference of mining companies in refusing to dialogue with community members during their operations. As

¹⁰⁶ African Charter on Human and Peoples’ Rights, art. 21(5), OAU DOC. CAB/LEG/67/3 rev. 5 (Oct. 21, 1986).

¹⁰⁷ That is, the displacement of the Endorois community from their ancestral lands due to ruby mining, and the State’s failure to provide adequate compensation for loss of property, disruption of the community’s pastoral activities, and violations of the right to overall process of development. *Endorois Welfare Council v. Kenya*, *supra* note 94, para. 1.

¹⁰⁸ Interview with Augustine Niber, Deputy Director, Center for Public Interest Law, in Accra, Ghana (Oct. 23, 2009).

¹⁰⁹ Interview with Kumi Larbi, Junior Attorney, Center for Public Interest Law, in Accra, Ghana, (Oct. 31, 2009).

¹¹⁰ Gavin Hilson et. al, ‘To Move or Not to Move’: *Reflections on the Resettlement of Artisanal Miners in the Western Region of Ghana*, 106 AFRICAN AFFAIRS, 413, 426 (2007).

¹¹¹ *Id.*

noted in the 2008 CHRAJ report, the Prestea Urban Council¹¹² complained that the mining company was not willing to sit and talk with the community, and the few fora that it organized often failed to take the views of the community into account.¹¹³ The fact that these fora are so one-sided is disturbing, but what is even more alarming is that it is really the State that should be the one coordinating and supervising the protocols for prior consultation and consent, not the mining companies.

During its visit to Tarkwa, the HRC documented the lack of free and prior consultation and consent. James Sarpong is a farmer in Teberebie whose farmland was destroyed and personal property seized by South African mining company AngloGold Ashanti working in conjunction with security agencies. He is now supported by WACAM and has sued the company on behalf of the Teberebie Concerned Farmers Association, claiming that the initial seizure of his farmland by the company in 2003 was executed without prior consultation.¹¹⁴ His experience was similar to that of Abena Koale, a 40 year-old farmer who had been in the Abekoase community for almost her entire life. Goldfields Ghana Limited, also a South African company, only met her the day it possessed her land in 2000 merely to inform her that she had to leave.¹¹⁵ There was no prior notice or consultation prior to the taking. Ms. Koale also blamed the community affairs officer of Goldfields for her predicament, stating that as a Ghanaian outside of the community, he did not really look after the community's best interest.¹¹⁶ Mr. Sarpong and Ms. Koale's stories unfortunately have been repeated in other places the HRC visited, such as Dumasi, where farmers like Odei and Joanna believe that mining companies arrive without prior consultation to destroy without negotiating.¹¹⁷

Chief Molobah Nyamikeh, who leads the Abekoase community of about 500 people, informed the HRC that while mining companies have started consulting and cooperating with the community, they still hold the upper hand in negotiations, which means if they fail to consult with the communities, community members are powerless to act.¹¹⁸ Indeed, Chief Nyamikeh felt that farmers needed to be given more notice about meetings with the company concerning matters tied to mining activity. This suggests that there is not only a failure to consult, but also a general lack of information and remedies for the deficient consultation and consent process. He did mention though that after the community took Goldfields to high court in March 2002,¹¹⁹ the company began to react more quickly to the people's complaints, since it was clear the members knew their rights.¹²⁰

¹¹² The Urban Council is a community-based organization that is comprised of the Chairman, Secretary, Chairman of Stool Land, Finance and Administration Deputy, Unit Committee Members, and Assemblymen.

¹¹³ Commission on Human Rights and Administrative Justice, *supra* note 92, at 88.

¹¹⁴ Interview with James Sarpong, Community Member, in Tarkwa, Ghana (Oct. 26 2009).

¹¹⁵ Interview with Abena Koale, Community Member, in Abekoase, Ghana (Oct. 26, 2009).

¹¹⁶ *Id.*

¹¹⁷ Interview with Odei Nkrumah and Joanna, Community Members, in Dumasi, Ghana (Oct. 28, 2009).

¹¹⁸ Interview with Molobah Nyamikeh, Community Chief, in Abekoase, Ghana (Oct. 28, 2009).

¹¹⁹ Due to a cyanide spill on October 16, 2001 in which members developed skin diseases and all river fish died. By the end of 2003, Goldfields reached a settlement with Abekoase that included a community center building and development fund of roughly US \$27,000 that was being used to build a new school and teachers' quarter. Chris Hufstader, *Caught on the Wrong Side of a Gold Boom*, Oxfam America, Jan. 28, 2008, *available at* <http://www.oxfamamerica.org/articles/caught-on-the-wrong-side-of-a-gold-boom> (last accessed May 19, 2010).

¹²⁰ *Id.*

In a meeting with the EPA, the HRC learned that one alleged reason mining companies did not inform communities of their arrival was fear of speculative farming.¹²¹ Since compensation is calculated based on type and number of crops rather than the land itself, farmers would plant as many crops as possible onto their lands before the companies came in an effort to maximize possible compensation.¹²² This potential speculation discouraged companies from pursuing prior consultation. The lack of a general legal requirement for prior consultation gave them even less incentive to pursue such action. When the company applies for a large-scale mining concession from the Government, it must submit a mandatory environmental impact statement (or assessment, EIA).¹²³ However, there is only a meager requirement to give prior notice of the scoping report¹²⁴ when a mining company



*An abandoned Goldfields community development project near Abekoase.
(Above and top right)*

writes its EIA.¹²⁵ This is not prior consultation. Furthermore, the EIA is not a substitute for prior consultation that is done in good faith and performed in a culturally sensitive fashion, and free, prior, informed consent. Finally, there does not seem to be any requirement of preparing such EIAs based on independent studies or clear standards. These absences, along with the overall conception of the Government issuing licenses based on minimum information, and not consultation or consent, fail to adhere to international standards.

The only form of mandatory consultation applies to situations where there is “great adverse public reaction” to the proposed mining, resettlement of the affected community, or extensive negative impact on the environment.¹²⁶

In such cases, a public hearing, organized by the EPA (which also provides technical assistance), and mediated by a neutral third party, is held.¹²⁷ Such hearings give the company an opportunity

¹²¹ Interview with Michael Sandow Ali, Deputy Director, Environmental Protection Agency, in Tarkwa, Ghana (Oct. 27, 2009).

¹²² For more information on the problem of compensation based on current crops rather than on future produce and land, please see section II(C) on inadequate compensation.

¹²³ Mining and Minerals Act, § 18.

¹²⁴ A report setting out the scope or extent of the environmental impact statement to be carried out by the company. Environmental Assessment Regulations, § 11.

¹²⁵ *Id.*, § 15.

¹²⁶ However, the law is unclear as to who defines “great adverse public reaction.” The HRC heard stories of mass protests that garnered the attention of local officials.

¹²⁷ Environmental Assessment Regulations, §§ 17(2)(a)-(c). “Environmental impact” includes any “direct or indirect, positive or negative change in environment caused by man-made works or activity when such change

to explain the positive and negative consequences of their proposed activity. Citizens, social groups/community organizations (e.g. affected farmers), chiefs, and representatives from the mining companies comprise the target audience for the hearings.

An EPA staff worker told the HRC that the agency widely advertises the hearings via radio and newspapers, and that previous hearings had lasted longer than four hours.¹²⁸ Yet there



was not a single community member in Tarkwa who informed the HRC that such hearings had ever been held in their communities. Even if they were, it is unlikely the community members would be able to critique the EIA or speak out due to internal community power dynamics (i.e. the customary practice of only allowing the chief to speak on behalf of everyone, if the chief favors the activity)¹²⁹ and ignorance of or inability to debate contested issues due to lack of education and awareness of their rights.¹³⁰ Peter Yeboah of the Land Valuation Board (LVB) remarked that companies would only speak in non-hostile communities, suggesting that the companies had leverage over determining the location of the hearings, even though the EPA organized such meetings. Mr. Niber mentioned how at these hearings there was discussion of job creation and benefits stemming from the mining activity, but no mention of its negative impact.¹³¹



In fact, as far as the HRC understands the hearing process, there is no full disclosure of all the available information as required by the good faith and informed consent standard.

The Deputy Director of the Tarkwa EPA Regional Office, Michael Sandow Ali, said the EPA travels to communities to verify that mining companies are dialoguing with members in these hearings.¹³² Mr. Ali said the EPA would hold group discussions and public hearings where he would ask community members and local chiefs, “Were you consulted?” and “What were some of the agreements made?” Based on such answers, the EPA

Environmental Impact Assessment (Side and Front views).

would see variances or discrepancies between what the mining companies said they would do

affects . . . well being, health, personal safety, habits and customs, the cultural heritage or legitimate means of livelihood.” *Id.* at § 30.

¹²⁸ Interview with Moses Musah Kpebu, Assistant Program Officer, Environmental Protection Agency, in Tarkwa, Ghana (Oct. 27, 2009).

¹²⁹ Interview with Augustine Niber, *supra* note 108; Interview with Matthias, Community Farmer, in Abekoase (Oct. 26, 2009).

¹³⁰ Interview with Peter Yeboah, Staffworker, Land Valuation Board, in Tarkwa, Ghana (Oct. 28, 2009).

¹³¹ Interview with Augustine Niber, *supra* note 108.

¹³² Interview with Michael Sandow Ali, *supra* note 121.

and what they actually did. Minutes from such meetings were recorded and signed (or thumb printed for those who were illiterate). However, he did not provide the HRC with any concrete examples of such public hearings, any key responses, or said whether or not the EPA issues public reports of such visits.

Consequently, these lopsided public hearings, which are at best controlled dialogues, and the personal narratives mentioned above, all translates to a lack of prior and effective consultation, as well as absence of informed community consent in mining projects in Ghana. Under international law, the State is required to carry out good faith prior consultations and obtain free consent from affected communities. In Ghana, however, it seems that the Government has transferred this responsibility to the private mining companies without taking into account the imbalance of power or providing effective remedies to the communities. While its powers to control and prevent the discharge of wastes into the environment are broad,¹³³ the EPA has not fully exercised its lawful powers in protecting affected mining communities, and has not ensured adequate consultation between both the Government and mining companies and the communities is being held.

B. Corruption

A driving force behind much of the community members' struggles against large-scale mining and its effects is corruption. This pervasive plight is perpetuated by three major players and adversely impacts the fourth-the community and its residents. The chiefs of the local communities, the mining companies, and the Government all appear to play a role in corrupt dealings and practices. As large-scale mining exploration involves a multi-million dollar operation and requires an expensive investment, there are many opportunities for bribery.

"The Chiefs are in bed with the mining companies"
-Matthias, Ghanaian Farmer¹³⁴

Amongst the community members spoken to for this report, the idea that the chief was of paramount import was nearly universal, as well as the presumption that some chiefs were involved in corrupt practices. Matthias was a farmer of plantains, pineapples, and palm trees. Two years ago, he alleges a mining company operating in his village destroyed his farm.¹³⁵ He blames chiefs in general for his, and others like him, tribulations. Specifically, he and many other farmers and community members worry that the chief did not do enough to protect their rights. Tellingly, Matthias also said that if a community member speaks poorly of a chief the community member is liable to be kicked out of the community.¹³⁶ Mr. Larbi concurred, saying if a chief approved of a mining project, no village in its right mind would oppose it.¹³⁷

¹³³ See Environmental Protection Agency Act, §§ 2(d), (h) (empowering EPA to "prescribe standards and guidelines relating to the pollution of air, water, land and other forms of environmental pollution including the discharge of wastes and the control of toxic substances."). This is reflected in the Minister of Environment & Science being able to make regulations that provide for "standards and code of practice relating to the protection, development and rehabilitation of the environment." *Id.*, § (28)(2)(a).

¹³⁴ Interview with Matthias, *supra* note 129.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Interview with Kumi Larbi, *supra* note 109.

The economic structure in place is conducive for the occurrence of kickbacks. Mining companies pay 3% of their gross sales to the Government; ninety percent of which goes to the Government (eighty to a consolidated fund and ten percent to mining administrative agencies).¹³⁸ The remaining ten percent, after the Office of the Administration of Stool Lands takes its share, is shared among the district administration, traditional councils, and the chiefs.¹³⁹ After all is said and done, chiefs are fortunate if they get 2% to 3% of gross sales.¹⁴⁰ More importantly, communities and their inhabitants are virtually never helped through this revenue sharing. Recently, the Minister for Lands and Natural Resources, Alhaji Collins Duada said, “[i]n order to mobilise (sic) adequate resources to enable [the] government [to] deliver on its vision of a “Better Ghana” however, the Lands and Natural Resources Minister revealed that Parliament is currently considering a bill to review upwards royalties paid by mining companies from the prevailing three per cent to six per cent.”¹⁴¹ It remains to be seen whether this bill will pass, and further, if it does, where the newly acquired (and doubled) proceeds will be allocated.



Jerry Mensah-Pah of the Wassa Association of Communities Affected by Mining (WACAM).

Before a mining project begins, as stated earlier, there should be consultation with the community (which in most cases means chieftain) support for the project. While a large-scale mining company may have a concession from the Government to excavate a certain tract of land, community support is at least desirable and at times necessary and legally required. The clinic heard allegations that many chiefs receive financial support from mining companies to get the community agreement with their presence. Mr. Larbi gave the example of a chief’s son’s study abroad experience being expedited and paid for by a mining company as one of these special benefits.¹⁴²

Further along in the project, there are allegations of hush money. Mavis Meiza, a reporter for Space FM Radio, claims that chiefs and elders are paid to hide things regarding the mining projects.¹⁴³ Environmental degradation, unjust compensation, conflict among the companies and community members are all liable to be hidden from an outsider’s view; after all, a chiefs’ livelihood can oftentimes be reduced to their dealings with the large international companies, according to WACAM’s Jerry Mensah-Pah.¹⁴⁴

¹³⁸ Garvin, et al, *supra* note 1, at 571, 573.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Ghana Extractive Industry Transparency Initiative, *available at* <http://www.geiti.gov.gh/news/newsarticle.asp?id=84&title=Mining%20Companies%20Are%20Partners%20in%20Development> (last accessed April 21, 2010).

¹⁴² Interview with Kumi Larbi, *supra* note 109.

¹⁴³ Interview with Mavis Meiza, Reporter, at Space FM Radio Station in Tarkwa (Oct. 27, 2009).

¹⁴⁴ Interview with Jerry Mensah-Pah, *supra* note 93.

“Unless the Good Lord touches their hearts, I don’t have faith in government officials.”
-Akroma, Ghanaian Farmer¹⁴⁵

Although the Ghanaian Constitution states that “[t]he state shall take steps to eradicate corrupt practices and the abuse of power,”¹⁴⁶ there do not seem to be many examples of the state hurrying to eliminate these, or other, corrupt practices. Rather, the system—at least for mining companies and Ghana—appears to be flourishing economically.¹⁴⁷

The perception is that the mining companies’ bribes extend further than the chiefs. According to more than one community member, the companies bribe authorities throughout the chain of mining. This includes the EPA, according to one source interviewed by the clinic.¹⁴⁸ On the one hand, if this is indeed true, the problem is obvious. Environmental concerns, for one, are clearly at risk if government officials are taking bribes from mining companies and then refuse or fail to monitor those companies.

On the economic side of things, it is not hard to see *why* the Government turns a blind eye to mining companies’ illegal advances and dealings with local communities. Gold mining alone contributes approximately 45% of the country’s entire foreign currency.¹⁴⁹ In a country in which natural resources are at a premium, the workforce is largely agrarian and uneducated, and was under the thumb of colonialism a mere half century ago, the royalties paid out by the mining companies can be quite enticing.

In terms of enforcement, a lack of transparency is a major impediment. The Extractive Industries Transparency Initiative (EITI), formed in 2002, is designed to combat just this problem.¹⁵⁰ The initiative requires that both payments made by mining companies and revenues collected by governments be reported and transparent.¹⁵¹ Described as “an independent, internationally agreed upon, voluntary standard for creating transparency in the extractive industries” the EITI accepted Ghana as a candidate for admission in 2007.¹⁵² In March of 2010 a deadline to complete validation and garner acceptance came and passed without Ghana meeting it.¹⁵³ Validation is achieved through implementation of EITI standards and judged by a report prepared by an EITI official and overseen by a national multi-stakeholder group.¹⁵⁴ As of the writing of this report, Ghana has yet to complete its validation. This is harmful to Ghana because without transparency in place a strong revenue management system is impossible.¹⁵⁵ According to the author of one paper, “[u]nless Ghana moves a step ahead to becoming “EITI Compliant Country”, we should expect nothing [more] than oil exploitation and production stricken by high-profile corruption.”¹⁵⁶ Another source concurred, commenting, “[w]hen contracts and payments are kept secret, corruption and mismanagement can spread, making it harder for poor

¹⁴⁵ Interview with Akroma, Community Member, in (October 26, 2009).

¹⁴⁶ Ghana Constitution, art. 35(8).

¹⁴⁷ See generally Part I, Introduction.

¹⁴⁸ Interview with Odei Nkrumah, *supra* note 117.

¹⁴⁹ Garvin, et al, *supra* note 1, 572.

¹⁵⁰ Stephen Yeboah, *Ghana and the Extractive Industries Transparency Initiative*, available at <http://mobile.ghanaweb.com/wap/article.php?ID=178427> (last accessed April 22, 2010).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ See Extractive Industries Transparency Initiative website, available at <http://eitransparency.org/validation> (last accessed April 22, 2010).

¹⁵⁵ Yeboah, *Ghana and the Extractive Industries Transparency Initiative*, *supra* note 150.

¹⁵⁶ *Id.*

communities to get their share of mining revenues.”¹⁵⁷ Without a reporting requirement such as one the EITI requires, revenue streams are easily manipulated and the local communities can be left without resources they sorely need.

Corruption is both a root cause of other problems and a by-product of still other difficulties. Issues such as inadequate compensation, a lack of transparency, and overall economic need oftentimes cause corruption. In turn, this blight can lead to community mistrust of both authority figures specifically, and government in general. In the next section, the Report discusses issues surrounding inadequate compensation.

C. Inadequate Compensation

Under Ghanaian domestic law, it is submitted that a farmer or community’s privacy of property may be subjected to interference if done in accordance with law and for the “economic well-being of the country.”¹⁵⁸ Moreover, such property may be compulsorily acquired so as to “promote the public benefit,” and if the necessity of acquisition outweighs the hardship placed on the person having an interest or right over the property.¹⁵⁹ However, that balancing test is something hotly contested in Ghana’s communities. There is the question of how much of the public benefit that is gained from the farmer’s loss of land actually goes to the farmer or the farmer’s community. The Government is supposed to manage the national economy in such a way that maximizes the “welfare, freedom and happiness of every person in Ghana and to provide adequate means of livelihood and suitable employment and public assistance to the needy,”¹⁶⁰ but critics have said that it has failed to live up to its duty in the case of seizure of farmland for mining activities.

Much of the current litigation by members of communities affected by mining focuses on the issue of compensation.¹⁶¹ The right to compensation is enshrined in several major international and regional human rights instruments.¹⁶² These instruments, all of which Ghana is a party to, call for adequate compensation for property lost in a government granted land concession. The African Charter says that those who have lost their land have the right to lawful recovery...as well as to an adequate compensation.” Ghana’s own constitution requires “fair and adequate compensation” when land is compulsorily taken by the State.¹⁶³ Unfortunately, many community members who have lost their property in land concessions either have not been compensated, or have been inadequately compensated for their losses.

¹⁵⁷ Oxfam, *US Legislators, Oxfam Partners Discuss Gold Mining in Ghana*, May 5, 2008, available at <http://www.Oxfamamerica.org/articles/us-legislators-Oxfam-partners-discuss-gold-mining-in-ghana> (last accessed June 13, 2010).

¹⁵⁸ Ghana Constitution, art. 18(2).

¹⁵⁹ *Id.*, art. 20(1).

¹⁶⁰ *Id.*, art. 36(1).

¹⁶¹ CHRAJ, *The State of Human Rights in Mining Communities in Ghana*, *supra* note 92, at 80 (“there are a number of cases in Tarkwa High Court over inadequate compensation”).

¹⁶² African Charter on Human and Peoples’ Rights, arts. 14, 21, OAU DOC. CAB/LEG/67/3 rev. 5 (Oct. 21, 1986); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), arts. 1, 47 U.N. GAOR Supp., 21st Sess., 16th plen. mtg., U.N. Doc. A/6316 (Dec. 16, 1966); International Covenant on Economic, Social, and Cultural Rights, arts. 1, 25; Universal Declaration of Human Rights, G.A. Res. 217A, art. 17, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948); International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), Annex, art. 5, U.N. GAOR Supp. 20th Sess., 14th plen. mtg., U.N. Doc. A/6014 (Dec. 21, 1965).

¹⁶³ Ghana Constitution, art. 20(2).

A major point of contention between community members and mining companies lies in the disagreement over whether mining companies should compensate not only for the crops and buildings destroyed, but also for the loss of the use of land. The MMA clearly requires that compensation should be given for “deprivation of the use or a particular use of the natural surface of the land or part of the land,” in addition to the loss of crops and immovable property.¹⁶⁴ Yet, many community members claim that they are only being given compensation for the loss of their crops and not the general loss of land use. Mr. Sarpong was given compensation only for his crops when the national government granted a land concession to AngloGold Ashanti in Teberebie. Land that had neither crops nor buildings was not compensated, even though Mr. Sarpong lost the right to utilize that land.¹⁶⁵ As Chief Nyamikeh said: “When mining companies come to take farmers land, they compensate for crops alone, not the land itself, which is a valuable asset.”¹⁶⁶ A special case of valuable territory not being adequately compensated is fallow land, which is purposefully left bare to restore productivity by increasing the mineral content of the soil. There is no special compensation for fallow land, even though it is an investment in itself.¹⁶⁷



AngloGold Ashanti sign in Tarkwa.

When the Government compulsorily takes land, whichever Government department called for the concession provides compensation for the general loss of the use of the entire concession during the duration of the concession,¹⁶⁸ but mining companies only provide compensation for crops and buildings lost on the portions of land that the mining company utilizes. For example, when a mining company has a large concession, but only ends up using a small section of that concession, they only pay compensation for that small section rather than the entire concession, even though the farmer is still denied access to the unutilized sections. This further deprives residents of

adequate compensation for their total losses by only compensating them for part of the entire concession. This is different from the way in which the Government compensates compulsory takings. The Government compensates the whole of the land and not just the portions being utilized.¹⁶⁹ Since the Government is granting the land concessions to these mining companies, there should be no disparity between takings of a public or private nature.

Even in the incomplete scheme of compensating only the crops, correctly calculating compensation to ensure that it is adequate and fair is another pressing issue. One common complaint from the farmers is that mining companies are compensating them for the current value of the crops, thus failing to taking into account the potentially higher future value of the crops had they had the chance to reach maturity. As Chief Nyamikeh explains, “living plants

¹⁶⁴ Minerals and Mining Act, § 74.

¹⁶⁵ Interview with James Sarpong, *supra* note 114.

¹⁶⁶ Interview with Nana Nyamikeh, *supra* note 118.

¹⁶⁷ *Id.*

¹⁶⁸ Minerals and Mining Act, § 74.

¹⁶⁹ Interview with Augustine Niber, *supra* note 108.

need time to grow, but less money is given to younger plants” and that even though “this young plant will be worth more later, the mining companies only pay for its current value.”¹⁷⁰ The MMA sides with the farmers by requiring compensation for “loss of *expected* income, depending on the nature of crops on the land and their life expectancy.”¹⁷¹ But this provision, from the testimonies received by the Clinic, appears not to be properly enforced.

Other problems arise from how crop compensations are conducted. Mr. Sarpong says that although mining companies were required to compensate him by each crop lost, AngloGold Ashanti instead compensated him by acreage, yielding him less money in the process.¹⁷² Unfortunately for the farmers, while the individual crop method of counting allows for distinction between crops of differing values, the acreage method does not allow for such distinction. Some crops have a higher value than other crops. For example, a mature palm tree is worth more than a young palm tree. By not distinguishing between individual plants, a farmer with a field full of mature palm trees would be compensated as little as a farmer with a field full of young palm trees. As is Akwa Wonkye’s case, this lack of distinction between crops meant she received less money than she believed she was entitled to when she lost her farm in the community of Atta Ne Atta. Her more valuable crops, such as plantains and cocoa, those that have a higher profit margin at the market, were given the same compensation as her less lucrative ones, such as cassava.

This disagreement over which valuation method to use highlights both the lack of information farmers have on how compensation is calculated and the lack of input they have in the calculation itself. The MMA requires measurements and valuations to be done in the presence of a government official, the farmer and a mining company representative. “The owner of mining lease shall . . . in the presence of the owner . . . subject of a mining lease . . . and [Government] officer carry out a survey of the crops . . . for compensation.”¹⁷³ Unfortunately, this requirement is quite often not followed. Ms. Wonkye said that when she lost her land, the mining company did not accurately survey and measure her land. They used a measuring rod that the community did not understand and that the mining company knew was to the farmer’s disadvantage due to its inaccuracies. While mining companies are not required to abide by crop rates set by the LVB they often use those rates as a standard by which they set their own rates.¹⁷⁴ Mining companies often use these rates when trying to convince farmers that the mining company rates are not only fair, but also higher than the LVB determined rates. The problem is that these LVB rates have not been reviewed since 2002,¹⁷⁵ meaning that they are not necessarily an accurate calculation of current crop rates and they fail to account for inflation. Since it has been so long since the last review, LVB rates are lower than the current prevailing rates. As a result, the mining company rates artificially look higher when they are compared to the outdated LVB rates. Since many farmers are unaware that the LVB rates are outdated and inaccurate, they believe that the mining company rates are a good deal for them when they are compared to the LVB rates.

Farmers also argue that their compensation is not adequate since it does cover the relocation costs resulting from losing one’s farmland. Matthias said that the compensation

¹⁷⁰ Interview with Nana Nyamikeh, *supra* note 118.

¹⁷¹ Minerals and Mining Act, § 74(1)(d).

¹⁷² Interview with James Sarpong, *supra* note 114.

¹⁷³ Minerals and Mining Act, § 72(5).

¹⁷⁴ Interview with LVB Supervisor, in Tarkwa (Oct. 27, 2009).

¹⁷⁵ Interview with Peter Yeboah, *supra* note 130.

package he was given by Goldfields Ghana was not enough to cover all of his losses and certainly not enough for him to relocate.¹⁷⁶ He also said that he has been having a difficult time making as much money as he was prior to the loss of his farmland. Even when mining companies provide for some relocation costs, the results can be insufficient. In 1996, around 25,000 farmers were evicted from their land by Goldfields Ghana. Some of these farmers were moved by Goldfields Ghana into a new community, New Atuabo, which proved to be an insufficient resettled community. The new homes built by the mining company were only half the size of the community members' previous homes. Agnes Ackon, one of the relocated community members, and mother of five and grandmother of 12, said, "I had 12 rooms. They were going to replace them with six."¹⁷⁷ The mining company claims that they are following the "value for value" method, which only requires a replacement to be of equal financial value to what was lost. Since the new homes were built of concrete, as opposed to the old homes of mud and thatch roofs, a smaller new home was the same value as a larger old home. As a result, even though the monetary values of the new homes is equal to their old homes, these community members are dealing with homes that do not adequately replace all that they have lost since they are only half the size of their previous homes. While community members initially fought the smaller new homes, they negotiated with the mining companies and decided in exchange for accepting the smaller homes, they would receive a small amount of cash and a health clinic.¹⁷⁸ All is not well in New Atuabo though. There is a high level of unemployment and many of the displaced farmers are illiterate and thus unable to find work at the mines.¹⁷⁹ Also, community members, many of whom are unemployed, have to pay for water and sanitation in New Atuabo, new costs that were not a concern in their old community.¹⁸⁰

The root of the problem of inadequate compensation remains the uneven bargaining power between farmers and the mining companies, lack of information, and the inability to seek remedies through the judicial system. The Government is not present to counter-act this uneven bargaining power by disseminating more information and providing a legal framework that ensures remedies are not only more readily available, but also more effective. There is no policy to guide farmers on how compensation should be calculated, which means the majority of farmers remain uninformed of their rights. For example, many are unaware that they have the right to be present during the survey and measurement of their land. Another aspect of this uneven bargaining power is a disparity in information. This is evidenced by many farmers not knowing the true value of their loss, so they are unaware that the compensation they are receiving is inadequate since they fail to consider potential future value, relocation costs, and other hard to calculate losses. The unevenness in bargaining power and knowledge extends beyond the compensation negotiation process and extends to the remedies available for farmers who feel that they have been wronged. The legal framework makes compensation via the judicial system quite difficult. When asked why more farmers do not fight back against the mining companies, Mr. Yeboah of the Land Valuation Board said that many are ignorant of the laws

¹⁷⁶ Interview with Matthias, *supra* note 129.

¹⁷⁷ Oxfam, Christ Hufstader, *For Resettled Community, Not All Are Satisfied With New Home*, July 19, 2007, available at <http://www.oxfamamerica.org/articles/for-resettled-community-not-all-are-satisfied-with-new-home/?searchterm=None> (last accessed June 13, 2010).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

meant to protect their interests¹⁸¹, and that they lack the financial capacity and time to utilize the judicial system.¹⁸² This inability of community members affected by mining to effectively seek remedies for harm caused by mining companies extends beyond the compensation issue and includes unsafe living and working conditions.

D. Unsafe Living and Working Conditions

The on-going presence of the mining companies creates an overwhelmingly negative impact on the lives of those in affected communities. This impact manifests itself through environmental degradation, illnesses, and dangerous working conditions. The presence of mining companies in a community can negatively impact the lives of community members in a broad spectrum of ways. Worse yet, mining companies often make no attempt to mitigate these harmful effects, even when required by law. Protections against these harms are enshrined in several international and regional human rights instruments that Ghana has signed.¹⁸³

Surface mining could be an environmentally damaging process, as frequent chemical spills in Tarkwa clearly demonstrate. These spills have destroyed, polluted, or dried up many water sources in communities affected by mining. The



Two boys near a pump set up by Goldfields in Abekoase that may have provided the dirty water that made some community members sick.

contamination of water in these communities often renders it unsafe and undrinkable, as reported in a CHRAJ study on water quality in the Tarkwa region.¹⁸⁴ For example, in October 2001, a

¹⁸¹ Administration of Lands Act, § 10; State Lands Act, §§ 1,2; Ghana Constitution art. 295; Minerals and Mining Act, §§ 53(1), 58(1).

¹⁸² Interview with Peter Yeboah, *supra* note 130.

¹⁸³ African Charter on Human and Peoples' Rights, arts. 15, 16, 24 OAU DOC. CAB/LEG/67/3 rev. 5 (Oct. 21, 1986); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), arts. 7, 11, 12, U.N. GAOR Supp., 21st Sess., 16th plen. mtg., U.N. Doc. A/6316 (Dec. 16, 1966); Universal Declaration of Human Rights, G.A. Res. 217A, arts. 23, 24, 25, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948); International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), Annex, art. 5, U.N. GAOR Supp. 20th Sess., 14th plen. mtg., U.N. Doc. A/6014 (Dec. 21, 1965).

dam burst near the Tarkwa gold mine, operated by Goldfields Ghana, unleashed thousands of cubic meters of toxic waste into the Astum River, contaminating it with cyanide and various toxic heavy metals. Over a thousand community members of Abekoase were left without access to clean water, and hundreds of fish and birds died in the aftermath. Beyond cutting of access to clean drinking water, local community members also dealt with being unable to sell their produce due to the contamination.¹⁸⁵ EPA reports detailing unacceptable levels of cyanide in community water are difficult to access. Emmanuel Kojo Kwarteng received the Ghana Journalist Association prize for best environmental reporter in 2007 for his article exposing a new Newmont gold mine in Ahafo having inadequate water treatment and improper tests for pollution. Mr. Kwarteng was only able to access this information after filing a petition to make the EPA environmental impact assessment public under the U.S. Freedom of Information Act, and only due to Newmont being a U.S. company.¹⁸⁶

Figure 4: Chart of Polluted Streams and Rivers in Communities Affected by Mining

<i>Area</i>	<i>Number of Streams/Rivers Reported Polluted</i>
Obuasi	50
Wassa	26
Bibiani	3
Ahafo/Tepa	2
New Abirem	0
Yale	1
Total	82

Source: Commission on Human Rights and Administrative Justice, *State of Human Rights in Mining Communities in Ghana* 173 (2008).

Mining companies quite often make no attempt to fix mistakes of their making that continue to cause problems for community members. There is no legal requirement under the MMA for companies to rectify such mistakes. While an out of court settlement for the 2001 spill required Goldfields Ghana to establish a development fund, there was no requirement to clean the residual contamination from the spill, which could pose environmental and health risks for decades to come.¹⁸⁷ As another example of community members asking for mining companies to rectify their mistakes, a 1996 cyanide spill in Agisakrom caused health problems for community members and made the local water undrinkable due to high levels of toxic chemicals. The Agisakrom spill led to skin rashes for community members who attempted to cross the polluted stream to get to their farms. Community members wanted the mining company to construct a

¹⁸⁴ CHRAJ, *The State of Human Rights in Mining Communities in Ghana*, *supra* note 92, at 174 (and see Appendix 5).

¹⁸⁵ No Dirty Gold, *Wassa District, Ghana*, available at http://www.nodirtygold.org/wassa_district_ghana.cfm (last accessed June 13, 2010).

¹⁸⁶ Oxfam, *Pollution Risk at New Gold Mine in Ghana Exposed*, Sept. 17, 2007, available at <http://www.oxfamamerica.org/articles/pollution-risk-at-new-gold-mine-in-ghana-exposed/> (last accessed June 13, 2010).

¹⁸⁷ No Dirty Gold, *supra* note 185.

bridge to remedy this problem, but the company refused until the community members backed away from their accusations. The mining company did eventually build the bridge, but it specifically pointed out it done as part of their social responsibility initiative and not in response to the cyanide spill.¹⁸⁸

In the Atta Ne Atta community, smoke fumes from mining site blasts have lead to skin rashes, breathing problems, and crop damage. Similarly in Prestea, the constant blasting has led to a high prevalence of skin rashes.¹⁸⁹ This blasting in Prestea led to more serious consequences when an 8-month-old child, Joyce Boako, fell from her bed, sustaining a head injury as a result of the close range blasting. As a result of her “incapacitation”, the Bogoso Gold Limited offered to pay GH 1000 not as damages, but on what they referred to as “humanitarian grounds.”¹⁹⁰

Many community members have suffered from health problems caused by the mining companies. Doctors in Obuasi Government medical facilities “acknowledged that some of the diseases prevalent in communities in the periphery of the mine are in part attributable to mining.”¹⁹¹ Members of these communities located very close to mining sites report that the air pollution due to chemicals and blasting causes dizziness and headaches. Unfilled water pits become stagnant, and thus become a breeding ground for mosquitoes, leading to an increase in



Human Rights Clinic student Melvin Huang traversing a makeshift bridge over a stream polluted by mining activity in Dumasi (note the red spots in the upper region of the water).

the rate of illnesses such as malaria.¹⁹² Ema, a member of the Dumasi community, fell ill after drinking water tainted by a chemical spill caused by Goldenstar in October of 2004. She suffered stomach pains and bouts of vomiting, but was compensated by the mining company only for medical expenses, not for her pain and suffering. Joanna Manu, another Dumasi farmer, and her father immediately collected water samples and dead fish, and sent them to WACAM and the EPA. Ms. Manu explained, “WACAM taught us that cyanide is extremely poisonous, but that exposure

to the sun reduces its toxicity.”¹⁹³ She further added, “Usually when we complain to the EPA they take 10 days to come here, so that is why we had to get the samples right away.”¹⁹⁴

¹⁸⁸ Interview with Michael Sandow Ali, *supra* note 121.

¹⁸⁹ CHRAJ, *The State of Human Rights in Mining Communities in Ghana*, *supra* note 92, at 83.

¹⁹⁰ *Id.*, at 84.

¹⁹¹ *Id.*, at 20.

¹⁹² *Id.*, at 82.

¹⁹³ Chris Hufstader, Oxfam America, Joanna Manu: Community Activist in Ghana, Jan. 23, 2008, *available at* <http://www.oxfamamerica.org/articles/joanna-manu-community-activist-in-ghana/?searchterm=cyanide> (last accessed April 23, 2010).

A 2007 cyanide spill in Teberebie lead to acid pollution and dead fish. The director of WACAM, Daniel Owusu-Koranteng, spoke of the public health concerns. “Some people who mistakenly went swimming in the river had their skin peeled off. Those who drank the polluted water and ate some of the fish are having serious stomach problems.”¹⁹⁵ He went on to say that the mining companies were hesitant to accept responsibility for the spill and even the EPA was reluctant to blame the mining companies. “[The] EPA initially tried to push the blame on ‘galamsey’ activities and later shifted the blame to chemical fishing.”¹⁹⁶

The negative impact of mining companies extends to working and living conditions. Many community members are left with few, if any, employment options after losing their farmland. Since inadequate compensation does not cover relocation costs, many community members seek employment in the area. The mining companies, although required by the MMA to give preference to community members for employment opportunities,¹⁹⁷ rarely offer jobs to local residents.¹⁹⁸ According to the *Impact of Mining Sector Investment in Ghana: A Study of the Tarkwa Mining Region*, “the gold mines cannot provide enough jobs to absorb the total number of those agricultural workers who have been laid off.”¹⁹⁹ Instead, the mining sites are staffed by those from outside the Tarkwa area. Abosso Goldfields Limited negotiated with the members of the Damang community to employ locals, but this promise went unfulfilled, and AGL instead recruited employees from the community of Obuasi.²⁰⁰ According to the Chief in Prestea, Bogoso Gold Limited currently has 671 employees, but fewer than 200 are local community members.²⁰¹ According to Chief Nyamikeh, the mining companies defend this practice by saying that their line of work requires educated workers, and most of the community members applying for employment are illiterate.²⁰² Chief Nyamikeh’s assessment of the employment situation is echoed by the CHRAJ report that says, “one of the constraining factors why communities do not benefit much from employment is the apparent lack of skills required by the mines in some of these communities.”²⁰³

In some communities, mining companies have the chiefs set up task forces to guard mining sites. Local community members who have lost their livelihoods due to the concessions staff some of these task forces. Matthias is a member of such a task force set up by Goldfields Ghana, and spoke of working twelve-hour days with no food or overtime payment.²⁰⁴ The chiefs who head up these task forces often do so without written contracts for the employees, leaving those who have not been paid without concrete proof in court that they have been denied payment due to them.

¹⁹⁴ *Id.*

¹⁹⁵ Oxfam, Jerry Mensah-Pah, *Dead Fish and Acid Pollution Point to Cyanide in Stream*, Oct. 4, 2007, available at <http://www.oxfamamerica.org/articles/dead-fish-and-acid-pollution-point-to-cyanide-in-stream/?searchterm=None> (last accessed June 13, 2010). See also Appendix 5 on water quality analysis in Tarkwa communities affected by mining.

¹⁹⁶ *Id.*

¹⁹⁷ Minerals and Mining Act, § 105.

¹⁹⁸ Interview with Nana Nyamikeh, *supra* note 118.

¹⁹⁹ Thomas Akabzaa and Abdulai Darimani, (Draft Report) *Impact of Mining Sector Investment in Ghana: A Study of the Tarkwa Mining Region*. Paper presented at the Second National Forum in Accra, Ghana, May 7-9, 2001, available at http://www.saprin.org/ghana/research/gha_mining.pdf (last accessed June 13, 2010).

²⁰⁰ CHRAJ, *The State of Human Rights in Mining Communities in Ghana*, *supra* note 92, at 81.

²⁰¹ *Id.*, at 86.

²⁰² Interview with Nana Nyamikeh, *supra* note 118.

²⁰³ CHRAJ, *The State of Human Rights in Mining Communities in Ghana*, *supra* note 92, at 22.

²⁰⁴ Interview with Matthias, *supra* note 129.

For those in the community who have not lost their land, farming can still be made difficult by the presence of a mining company. Not only has there been no response from the Government, conditions in Teberebie appear to be worsening. The three boreholes that AngloGold drilled for community water have broken down, causing members to have to walk for kilometers for fresh water.²⁰⁵ Children are dropping out of school because the 4-8 kilometer one-way trek to the community school is too far and tiring for many children, and AngloGold has not responded to pleas to provide a school bus.²⁰⁶ Emelia Amoateng, a community member and activist in Teberebie, remarked that farming lands, both previously used and for potential future use, have now been buried under waste rock dumps. In Atta Ne Atta, mining trucks and debris have made many of the roads from homes to farms inaccessible. Ms. Wonkye complained to the mining company that she was unable to make the commute from her home to her farm because of dangerous debris ridden roads, the mining company insisted that she walk a longer, alternative route from her home in spite of the difficulty and near impossibility due to her old age.²⁰⁷ As a



Cracks in the post office, which is much sturdier than many of the community members' homes, in Prestea due to mining blasting activity.

result, farmers who mostly practice traditional and subsistence agriculture are displaced from their land, leading to a loss of livelihood, cutting down food production, and creating the conditions for increased food prices.²⁰⁸

Unlike the issue of fair and adequate compensation, public health and environmental safety are not as protected in the MMA and Ghanaian constitution. In addition to the lack of legislation, there is a lack of accountability by the Government for mining companies when they cause harm to communities near mining sites. Community members whose health, environment, and livelihoods are threatened and harmed by the presence of mining

companies, a frequent occurrence, have few available legal remedies and clearly cannot rely on the mining companies to correct their wrongs and compensate community members for harms suffered. Oftentimes when community members demonstrate to protest this unfair situation, they suffer more harm due to the action of mining companies and inaction by the Government.

²⁰⁵ Mike Anane, *Financing Misery: The Story of the World Bank and AngloGold Ashanti Iduapriem Limited*, PUBLIC AGENDA (ACCRA), March 2007, at 4, available at www.ifitransparency.org/uploads/AngloGoldfinal.doc (last accessed April 22, 2010). Ketiboa Blay, Community and Social Development Specialist, Sub Saharan Africa Department at the IFC office in Accra (a partner of AngloGold Ashanti) said, "It is true that there are problems with water at Teberebie, I am very much aware of this problem, the community needs to be helped to get potable water but this is a social responsibility and not legally binding on the company, therefore I cannot give any time frame." Anane, at 15.

²⁰⁶ *Id.* at 6-7.

²⁰⁷ Interview with Akwa Wonkye, Community Member, in Atta Ne Atta (Oct. 29, 2009).

²⁰⁸ Anane, *supra* note 205, at 3.

E. Violence Associated with Mining Activities

The unsafe living and working conditions caused by mining activities have angered many community members. The taking away of their land, which constitutes their livelihood and source of welfare, and the broken promises of employment with the mining company, further compel them to protest and demand parliamentary/legal action. As the National Coalition on Mining has expressed, “[The] loss of farmlands, clean environment, housing and fresh water, coupled with unsustainable [sic] alternative sources of livelihood, most communities on the fringes of mines logically protest.”²⁰⁹ The deprivation of property that community members in Tarkwa have suffered time and time again has generated considerable social, activist, and legal resistance. Sometimes this dissent manifests itself in firm, but peaceful protests and demonstrations against both company and Government officials. For example, Mr. Sarpong and 35 other farmers came together to protest at the District Chief Executive Office in Teberebie on unjust compensation practices of AngloGold Ashanti.²¹⁰ The only response Mr. Sarpong received from the office was to find his own place to go and live.

All mining companies, in addition to their own private security, utilize State security personnel (especially the police and military) to protect their property/concessions.²¹¹ These security forces sometimes use violent and forceful means to terminate such demonstrations resulting in loss of life, injuries, and terror.²¹² This violence violates Ghana’s Constitution, which guarantees all Ghanaians have the “freedom of assembly including freedom to take part in processions and demonstrations.”²¹³ International and regional treaties that Ghana has ratified, as well as the Universal Declaration of Human Rights, all uphold the rights of disgruntled farmers to liberty and security of personhood, to assemble peacefully, voice their dissatisfaction, and be free of arbitrary arrests.²¹⁴

Foodfirst Information Action Network (FIAN) issued a report in May 2008 that highlighted the use of military violence in Ghana to forcibly evict community members and punish those who protested mining operations. FIAN documented farmers as being victims of military and police aggression, who were denied access to their farmland or whose crops and fishponds were destroyed.²¹⁵ Such incidents involved gunfire, assaults on elderly members using canes and guns, and destruction of property.²¹⁶ The report also highlighted violence in the form

²⁰⁹ National Coalition on Mining, Press Release, *Ghana: Campaign to Stop the Violence in Mining*, May 4th, 2006, available at <http://www.minesandcommunities.org/article.php?a=264> (last accessed May 19, 2010).

²¹⁰ Interview with James Sarpong, *supra* note 114.

²¹¹ CHRAJ, *The State of Human Rights in Mining Communities in Ghana*, *supra* note 92, at 21.

²¹² Sometimes this may even entail the use of guard dogs. National Coalition on Mining, *supra* note 209.

²¹³ Ghana Constitution, art. 21(d).

²¹⁴ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), arts. 9, 19, 21, U.N. GAOR Supp., 21st Sess., 16th plen. mtg., U.N. Doc. A/6316 (Dec. 16, 1966); African Charter on Human and Peoples’ Rights, arts. 6, 11, OAU Doc. CAB/LEG/67/3 rev. 5 (Oct. 21, 1986); Universal Declaration of Human Rights, G.A. Res. 217A, arts. 3, 9, 20, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948); *see also* International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), Annex, arts. 5(d)(viii), (ix), U.N. GAOR Supp. 20th Sess., 14th plen. mtg., U.N. Doc. A/6014 (Dec. 21, 1965).

²¹⁵ Foodfirst Information Action Network, Press Release, *Ghana Announces Discontinuation of Military Protection for Mining Companies*, May 5, 2008, available at <http://www.fian.org/news/press-releases/ghana-announces-discontinuation-of-military-protection-for-mining-companies/?searchterm=no> (last accessed May 19, 2010).

²¹⁶ Foodfirst Information Action Network, Universal Periodic Review – Ghana, *Human Rights Violations in the Context of Large-Scale Mining Operations*, 5 (2008) available at <http://www.fian.org/news/resources/documents/others/mining-related-human-rights-violations-ghana/pdf> (last accessed May 19, 2010).

of mining operations itself. It criticized the Government for failing to “issue directives regarding the constitutional responsibility of the Ghana Armed Forces and the Ghana Police Service to uphold the rights of citizens.”²¹⁷ It also noted a “high degree of complicity in multinational mining companies” in such human rights violations, and company support and logistics for the deployment of State security agencies into mining communities.²¹⁸ At least one company, AngloGold Ashanti, issued a public response saying, “[N]ormal police functions are sometimes necessary. Where company officials have occasionally called for military assistance this is out of desperation at the fact that many employees have been seriously injured in attacks by artisanal miners.”²¹⁹

The HRC’s visit to Tarkwa confirmed that violence has been, and is still being, inflicted upon community members. Odei recounted an incident in October 2006 when close to 1000 community members went to a mining site to demonstrate and gain the attention of an unresponsive Government.²²⁰ The Canadian-owned mining company Bogoso Gold (now Golden Star Resource Limited) countered the demonstration with police and military force, brutalizing the protestors. Some were beaten, others had their phones forcibly taken away, while still others were hit by stray bullets from warning shots. Odei also told the HRC that the companies hired the military, which harassed and beat the farmers for no apparent reason.²²¹ He said unfulfilled promises of employment with the mining company, lack of adequate compensation, and an overall sense of being shut out of important matters concerning the community all helped fuel the Dumasi protest.

Another episode of violence occurred in the major mining community of Prestea, where the military opened fire on protestors who were voicing their dissatisfaction with Bogoso Gold’s surface mining operations and disregard for local communities. In this June 15, 2005 incident, at least seven people were injured as both tear gas and bullets were fired into the crowds.²²² Again, on October 31, 2006, several people were shot after a clash broke out between security forces and the community due to the police setting ablaze a structure where galamsey operators lived.²²³ When the HRC visited Prestea, the Urban Council there remarked that protesting against the companies was difficult since they have established themselves in the very heart of the community.²²⁴ If members tried to protest at the mining site, military forces would appear the next day, allowing the companies to continue working.

The most vivid episode of violent conflict that the HRC learned about was the story of Anthony Baidoo, a farmer in Teberebie, whose work, like that of many other local farmers, was severely diminished or eliminated since the arrival of the mining companies around 1986, particularly AngloGold Ashanti. Much of their farmland was degraded due to activity of AngloGold’s Iduapriem Mine, and relocated farms were far beyond the mining sites. Farmers had to traverse through dangerous roads and the mining site to get to the new farms. AngloGold had constructed a road for the farmers and provided a truck for transportation. However on the

²¹⁷ *Id.* at 5.

²¹⁸ *Id.* at 3.

²¹⁹ AngloGold Ashanti, *Response to the FIAN/WACAM Commentary on Mining in Ghana*, June 2, 2008, available at <http://198.170.85.29/AngloGold-Ashanti-response-FIAN-WACAM-2-Jun-2008.doc> (last accessed May 19, 2010).

²²⁰ Interview with Odei Nkrumah, *supra* note 117.

²²¹ *Id.*

²²² CHRAJ, *The State of Human Rights in Mining Communities in Ghana*, *supra* note 92, at 413, 431.

²²³ *Id.* at 85.

²²⁴ Interview with Members of the Prestea Local Council, in Prestea, Ghana (Oct. 28, 2009).

morning of February 2, 2006, a roadblock that the military, police, and company security guards had erected stopped the farmers. A dispute broke out as to which roads the farmers had to use to get to their land. Some soldiers became physical and demanded the farmers use a muddy, old road.²²⁵

The military fired warning shots, which caused the farmers to flee the scene. Mr. Baidoo tried running home but was shot in the buttocks, with the bullet exiting out of his upper thigh.²²⁶ He fell unconscious, lying in a pool of blood for two hours, until he was taken to a company medical clinic. Mr. Mensah-Pah reports that it was only after Mr. Owusu-Koranteng called the head of AngloGold that Mr. Baidoo received the medical care he needed at the company's expense.²²⁷ However, the company clinic could not treat his wound because it was too serious, and airlifted him to the 37th Military Hospital in Accra for an operation.²²⁸ Mr. Baidoo's wound has healed, but he is partially paralyzed, unable to walk without the aid of a crutch, and unable to work. He lamented to a local journalist about his initial return home:

For the past two weeks since I was discharged and came home, I have had to rely on friends and my brother in law to give me food, but in this Teberebie village everyone is poor and I cannot shift this burden to my friends and brother in law. But now I cannot walk the 10-kilometer distance to my farm to work. I am still in pain, I still use clutches [sic], I can't do any strenuous work, I just don't have the strength and that means I don't have any money to buy food and look after my children.²²⁹

Responses to Mr. Baidoo's injury from the mining company and the International Finance Corporation (a World Bank group) (IFC), a partner of AngloGold Ashanti, have been detached at best. Kwamena Sekyi Yorke, Head of the Community and Publications Department of AngloGold Ashanti, told reporter Mike Anane, "I am personally disturbed by this unfortunate incident [Mr. Baidoo's injury], but I guess some of these things happen and we learn from

²²⁵ This is very different from AngloGold's version of the story:

"On 2 February Teberebie community members converged at the gate leading to the haul road, blocking it and reportedly trying to force their way through the barrier that had been established. During a struggle between a community member and state security personnel, Mr Baidoo was struck by a bullet in the thigh. Four other people sustained minor injuries in the scuffle.

Mr Baidoo was taken to the mine clinic for initial treatment. Later the same day he was transferred to the Effia-Nkwanta Government Hospital after which he was air lifted to 37 Military Hospital in Accra. He was discharged in October 2006 and is under medical surveillance and receiving treatment as necessary at the mine clinic. Iduapriem is paying for all his medical expenses.

On 3 February 2006 the Wassa West District Assembly invited Iduapriem representatives and Teberebie community leaders to the District Security Committee meeting to resolve the matter. The committee concluded that the farmers should use the new road while the mine should hasten construction of the culverts. The following day farmers were observed to be using the new road."

AngloGold Ashanti, *Country Report: Ghana and Iduapriem Mine*, 18 (2006) available at <http://www.anglogold.com/subwebs/informationforinvestors/reporttosociety06/files/Iduapriem.pdf> (last accessed May 19, 2010).

²²⁶ Interview with Anthony Baidoo, Community Member, in Tarkwa, Ghana (Oct. 30, 2009).

²²⁷ Jerry Mensah-Pah, *A New Leader of Concerned Farmers in Rural Ghana*, Oxfam America, Aug. 6, 2007, available at <http://www.oxfamamerica.org/articles/a-new-leader-of-concerned-farmers-in-rural-ghana/?searchterm=None> (last accessed May 19, 2010).

²²⁸ Baidoo's final operation was in October 2008. Interview with Anthony Baidoo, *supra* note 226.

²²⁹ Anane, *supra* note 205, at 2.

them.”²³⁰ Ketiboa Blay, Community and Social Development Specialist, Sub Saharan Africa Department at the IFC office in Accra, told Anane that the shooting incident was unfortunate and had been discussed at the management level, but that he would not discuss the extent of legal responsibility. “Let me also explain that nobody informed IFC that soldiers were being sent to the communities,” Blay said, “In any case neither IFC nor the company has control over the military. Under the law here private companies cannot call in soldiers. It’s the district or regional security council that can do that,” he added.²³¹

In its 2007 Country Report on Ghana, AngloGold states, “On humanitarian grounds, the mine assumed responsibility for Mr. Baidoo’s medical rehabilitation and care which is ongoing, and has provided income to him. It has also covered the costs of education for Mr. Baidoo’s son.”²³² The HRC learned Mr. Baidoo does indeed receive GH 100 per month (a small amount),

but he is unaware of the details of his compensation due to the fact that the final report of this entire incident has not been given to him, despite repeated requests to obtain it.²³³ This GH 100 cannot possibly cover his living costs. Mr. Baidoo bemoaned, “I am indeed a worried man because I have suddenly become poor and physically challenged and dependent on others.”²³⁴ He has received neither an apology from nor been granted a meeting with the AngloGold.²³⁵



Anthony Baidoo, a farmer in Teberebie, with Human Rights Clinic students Melvin Huang and Nita Garg.

Although Mr. Baidoo’s tragic story has not been officially reported (Mr. Baidoo said the Government is not too involved in his situation), it has been documented by CHRAJ,²³⁶ local and international newspapers and radio,²³⁷ and even publicized on the Internet.²³⁸

Even as recent as December 8, 2009, the people of Atta Ne Atta, a community the HRC visited, made complaints to the EPA, District Chief Executive of the Prestea-Huni Valley District, and Member of Parliament for the Prestea-Huni Valley Constituency about the intense

²³⁰ *Id.* at 11.

²³¹ *Id.* at 15.

²³² AngloGold Ashanti, *Country Report: Ghana and Iduapriem Mine*, *supra* note 225, at 34.

²³³ Interview with Anthony Baidoo, *supra* note 226.

²³⁴ Anane, *supra* 205, at 2.

²³⁵ Interview with Anthony Baidoo, *supra* note 226.

²³⁶ CHRAJ, *The State of Human Rights in Mining Communities in Ghana*, *supra* note 92, at 100.

²³⁷ Mensah-Pah, *A New Leader of Concerned Farmers in Rural Ghana*, *supra* note 227.

²³⁸ Anane, *supra* note 205, at 11.

blasting, dust and noise pollution, as well as poisoned water supplies to due Goldfields' mining activity. Since they did not receive any response, they resorted to a peaceful demonstration on December 8 after obtaining a green light from the Tarkwa Divisional Police Command. Goldfields called in the military to "brutalize innocent people in the community including the two journalists who tried to capture the incidence [sic]."²³⁹

The acts of militarization and violence in Ghana can be seen as attempts by transnational mining companies and the Government to quell local resistance to mining activities. Such military actions are increasing social tensions and insecurity in the communities. For example, Teberebie community members were sometimes searched by armed soldiers and policemen at barriers erected by the company, even when they were returning from their farms or visiting their relatives in other villages.²⁴⁰ Farmer Akosua Nti described the effects of the soldiers' presence on the community:

The soldiers have been controlling our movements to and from our farms, they have even refused to allow us to take vehicles to our farms to convey farm produce to the market so our produce always gets rotten on the farms if we are not able to mobilize enough people to carry them bit by bit on their heads and backs.²⁴¹

Even journalists trying to cover the incident at the time, such as Mr. Mensah-Pah were manhandled. Mr. Mensah-Pah said a soldier asked him to surrender his mobile phone when he arrived on the scene, but when he refused, the soldier then hit him with the butt of his gun and forcibly collected the phone from him.²⁴² With so many incidents of violent conflict, yet no disciplinary or legal action being levied against the perpetrator, it appears that mining companies can employ violent measures with impunity. The use of intimidation, abuse, violence, and violations of human rights in the form of arbitrary arrests, illegal detention,



Trees uprooted by Goldfields serving as notice that it will later come and demolish Atta Ne Atta, and a warning for community members not to stay behind.

²³⁹ Stephen Yeboah, *Why "Militarization" in the Mining Sector Must Stop!*, ALLAFRICA.COM, Jan. 25, 2010, available at <http://allafrica.com/stories/201001251602.html> (last accessed April 22, 2010).

²⁴⁰ Anane, *supra* note 205, at 9.

²⁴¹ *Id.* at 10.

²⁴² GhanaWeb, Ghana News Archive, Teberebie Community Clashes with Security Men, available at <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=98821#> (last accessed April 22, 2010).

beatings, shootings, forceful evictions, rape, and murder must be addressed by the Government.²⁴³

F. Lack of Access to Justice

A lack of access to justice, a common thread running throughout the problems discussed above, further compounds the issues. This deficit manifests itself in various ways and exacerbates the challenges that community members face. An overall lack of knowledge in a number of pertinent areas and in practice a disparate amount of power in bringing and sustaining a court case appear to be among the most glaring inadequacies in the justice system regarding mining and its effects. Insufficient procedural remedies afforded to land owners both during and after adjudication or settlement of their grievances is a third major difficulty faced. The Ghanaian Government, both through its own legislation and by ratifying various relevant international treaties, has undertaken to provide access to justice to all of its citizens; it appears at times they have fallen short of their goal.

Lack of knowledge, by both the affected community members and governmental actors, during all stages of this predicament, appears to be rampant. The Ghanaian Constitution provides all people with the right to information, subject to such qualifications and laws as are necessary in a democratic society.²⁴⁴ The nature of what is happening to their land, their homes, and their communities cannot be of the character that any qualifications would apply. International instruments signed by Ghana also attempt to ensure a open and transparent process for all.²⁴⁵ Community members are faced with a dearth of information, conflicting reports, and laws and provisions that are sometimes so challenging to read and comprehend even governmental actors are confused.

Every step of the way community members' paucity of information impedes their ability to thwart mining companies advances and their unwanted effects. In many instances, the Constitutional mandate to provide information is not being met. For example, Mr. Mensah-Pah says community members don't even know their rights are being violated because they don't know such rights exist.²⁴⁶ Naturally, this limits the informed resistance they might offer and allows mining companies to exploit them and their land. It is the Government's responsibility to disseminate information in a manner in which is accessible and informative to its citizens. Mr. Mensah-Pah also worries that people, assuming they know their rights are being violated, do not know where to report these transgressions. This holds true not only for issues surrounding property rights, but also environmental infractions. Finally, many community members are

²⁴³ Albert T. Armstrong, Foodfirst Institute for Food and Development Policy, Development Report no. 18, *Gold Strike in the Breadbasket: Indigenous Livelihoods, the World Bank, and Territorial Restructuring in Western Ghana*, 32 (2008), available at <http://www.foodfirst.org/en/node/2113> (last accessed April 22, 2010).

²⁴⁴ Ghana Constitution, art. 21(1)(f).

²⁴⁵ For example, Article 27 of the Declaration of the Rights of Indigenous People states: "States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process..." Any concern that these issues affect people other than the indigenous and as such Article 27 does not apply is washed away by multiple provisions of various documents, such as Article 14 of the International Covenant on Civil and Political Rights, the first sentence of which reads, "All persons shall be equal before the courts and tribunals."

²⁴⁶ Interview with Jerry Mensah-Pah, *supra* note 93.

unaware that free legal aid exists, another instance of ignorance pointed out by Bright Baiden, a private practitioner who lived in Tarkwa for six years.²⁴⁷

This lack of knowledge is not limited to community members, but also extends to the Government. Enforcement becomes difficult, if not impossible, when the enforcer does not have proper knowledge of the situation on the ground. Mr. Yeboah at the Land Valuation Board charges that the Government fails to check whether the mining companies are complying with legislation designed to protect communities. It appears that the Government does not effectuate periodic checks on mining companies compliance (or non-compliance as the case may be) with legislation. There is no law in place requiring governmental agencies to make visits to mining sites.

There are three distinct problems surrounding various documents. The LVB rates tables are not only hard to find, according to Mr. Yeboah, they are difficult to comprehend.²⁴⁸ Also difficult to access and understand is the EIA. It was alarming to hear Mr. Mensah-Pah say that even the EPA itself often does not have enough time or knowledge to review the long and technical EIAs.²⁴⁹ In theory, the EIA is a public document that all interested citizens could access and read. However, in reality, only a few copies are stored in offices or libraries, some of which are in Accra, that are not easily accessible by community members.²⁵⁰ Furthermore, if the EPA Director himself has admitted the language is difficult, then certainly community members with a lower education will find it next to impossible to comprehend.²⁵¹ Community members are unsure what they are entitled to, not only when it comes to compensation but also in terms of environmental protection and having an adequate voice in the decision-making process. This lack of information can also translate to a lack of proper monitoring as demonstrated by the EPA.

The EPA can “ensure compliance with any laid down environmental impact assessment procedures in the planning and execution of development projects,”²⁵² and can direct the “immediate cessation”²⁵³ of activities that pose “a serious threat to the environment or to public health”²⁵⁴ (even through the use of force via police officers for those who fail to comply²⁵⁵). It also authorizes “Inspectors” to enter any premise at “any reasonable time” to ensure compliance with the EPA Act or “any other law pertaining to the protection of the environment.”²⁵⁶ Finally, it can “request any person” to “give any information which the Executive Director considers reasonably necessary for the purposes” of the EPA Act.²⁵⁷ By its own governing framework, the EPA seems empowered to monitor and ensure that companies disseminate proper information to the communities regarding the environmental impact of their mining activities. However, the HRC did not get the impression that the EPA disciplined companies that failed to provide adequate information or that it monitored their operations closely at all.²⁵⁸ The only positive

²⁴⁷ Interview with Bright Baiden, Private Attorney, in Tarkwa (Oct. 26, 2009).

²⁴⁸ Interview with Peter Yeboah, *supra* note 130.

²⁴⁹ Interview with Michael Sandow Ali, *supra* note 121.

²⁵⁰ Interview with Molobah Nyamikeh, *supra* note 118.

²⁵¹ Interview with Michael Sandow Ali, *supra* note 121.

²⁵² Environmental Protection Agency Act, 1994, § 2(i) (Ghana).

²⁵³ *Id.*, § 13(3).

²⁵⁴ *Id.*, § 13(1).

²⁵⁵ *Id.*, § 14(2).

²⁵⁶ *Id.*, § 15(2).

²⁵⁷ *Id.*, § 27(1).

²⁵⁸ One local reporter stated, “In almost all the affected communities visited, the common complaint was that despite their rising frustration, impoverishment and anguish, there hasn’t been sufficient dissemination of information concerning the monitoring of the impacts of the company’s mining operations. They told this writer that they

story the HRC heard from community members was an instance when the EPA shut down a gold mining pit that was operating too close to Dumasi community.²⁵⁹

In the rare instance where a community member is able to ascertain his or her rights, communicate with a legal professional and bring a mining company to court, he or she encounters another roadblock in the form of unequal resources. According to Mr. Baiden, companies look to frustrate cases and cause delays,²⁶⁰ a sentiment echoed by Mr. Yeboah.²⁶¹ Obviously, a large-scale mining company, through the filing of unnecessary motions and the like, is in more of a position to weather a long litigation process. When the small farmer or land owner can no longer wait for a judicial resolution, an inadequate settlement is reached. It appears the Government's insufficient at best, non-existent at worst, protections for less than wealthy plaintiffs, such as disallowing the filing of frivolous motions, has combined with the



Odei Nkrumah, a farmer in Dumasi, explaining his rights as found in the Mining and Minerals Act to Human Rights Clinic student Melvin Huang.

Government's lack of insight into the true nature of the problem to create a situation where realistically the community members have at best a marginal chance to receive adequate compensation, stop the environmental damage, or otherwise achieve victory.

Another hurdle a community member faces in the fight against mining companies' infractions is in the area of procedural remedies, specifically in terms of final resolution and obtaining answers. Article 8 of the

Universal Declaration on Human Rights provides: 'Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.'²⁶² Clearly, part of an effective remedy is adjudication.

[community members] have requested that copies of the results of the laboratory analysis of water quality samples collected in their communities be made available to them so that they know which well, borehole or stream is clean and which is not and the source of the contamination but they have not received any satisfactory response from the company. They also called on the company to make public, results of blast and vibration monitoring in their communities." Anane, *supra* note 205, at 8.

²⁵⁹ Interview with Odei Nkrumah, *supra* note 117.

²⁶⁰ Interview with Bright Baiden, *supra* note 247. The HRC is not certain if the grievance was a written complaint or an oral one.

²⁶¹ Interview with Peter Yeboah, *supra* note 130.

²⁶² Universal Declaration of Human Rights, G.A. Res. 217A, art. 8, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

Odei, a self described representative for all the farmers of the community, maintained he went to the EPA with a grievance, but never recieved a response.²⁶³ Governmental agencies typically grant jurisdiction for many community decisions to chiefs. Unfortunately, the chiefs themselves often avoid entirely the situation. Mr. Sarpong, a farmer, recalled going to the chief and complaining about the level of compensation he received.²⁶⁴ Mr. Sarpong claimed the chief told him the amount was fine and, perhaps even more fatal to Sarpong's complaint, that he would have nothing to do with the situation.²⁶⁵ Without the chief's support, the uphill battle the community members faces becomes even tougher. There appears to be a conflict of interest, of course, in that the chief receives royalties from the granting of consessions to mining companies. A fellow Dumasi community member, Ema, told another disturbing tale of alleged chieftian corruption interfering with community members' rights to a trial, and ultimately, an effective remedy for their grievances.

According to Ema, the community succeeded in bringing a mining company to court; however, they were told by their paramount chief that they should not proceed because the company had offered to pay the chief to stay out of court and the community members were messing up his allodial interests.²⁶⁶ This allegation is an excellent example of how corrupt practices can interfere with a community member's access to justice.

²⁶³ Interview with Odei Nkrumah, *supra* note 117.

²⁶⁴ Interview with James Sarpong, *supra* note 114.

²⁶⁵ *Id.*

²⁶⁶ Interview with Ema, Community Member, in Dumasi (October 28, 2009). As of the writing of this report, the case had not been brought to trial.

IV. APPENDICES

Appendix 1: Ghana's Large-Scale Gold Mining Operations

Company	Mine(s) Owned/Operated	Company Ownership
AngloGold Ashanti Company (AGC)	Obuasi (100% owned by AGC) Iduapriem/Teberebie (85%) Anyanfuri (mine closed)	Anglo American Plc. (UK) and others; IFC holds a 20% stake in Iduapriem; Government of Ghana (GoG) holds a 10% interest in Teberebie
Central African Gold Ghana Ltd. (CAG)	Bibiani (100% owned by CAG)	Central African Gold Plc. (UK)
Newmont Ghana Gold Ltd. (NGGL)	Ahafo (100% owned by NGGL) Akyem (not yet operational)	Newmont Mining Corporation (US)
Goldfields Ghana Ltd. (GGL)	Tarkwa Damang	Goldfields South Africa Ltd. (90%); GoG (10%)
Bogoso Gold Ltd. (BGL)	Wassa Bogoso/Prestea Dunkwa Mampon Abosso (mine closed)	Golden Star Resources Ltd. (US); GoG (10%)
Prestea Sankofa Gold Ltd.	Prestea	Ghana National Petroleum Corporation; GoG (10%)
Bonte Gold Mines Ltd.	Manhyia/Bontefufuo	Akrokerrri-Ashanti Gold Mines Ltd. (Canada); GoG (10%)
Amansie Resources Ltd.	Amansie	Resolute Ltd. (Australia); GoG (10%)
Obenemase Gold Resources Ltd.	Obenemase	Resolute Ltd. (Australia); GoG (10%)
Siam Goldfields Ltd.	Nkawkaw	State of China and others; GoG (10%)

Source: Albert T. Armstrong, Foodfirst Institute for Food and Development Policy, Development Report no. 18, *Gold Strike in the Breadbasket: Indigenous Livelihoods, the World Bank, and Territorial Restructuring in Western Ghana*, 32 (2008).

Appendix 2: Estimated Small-Scale Gold Mine Production in Ghana, 1989-2003

Year	Sales (US \$ million)	Ounces	% Small-scale to total
1989	3.4	9272	2.2
1990	6.3	17,233	3.2
1991	5.3	15,601	1.8
1992	6.1	17,297	1.7
1993	11.5	35,144	2.8
1994	34.7	89,520	6.2
1995	48.7	127,025	7.4
1996	36.0	112,349	7.1
1997	28.4	107,094	5.9
1998	36.6	128,334	5.4
1999	35.2	130,833	5.2
2000	40.9	145,662	6.2
2001	39.3	185,596	8.7
2002	58.9	160,879	7.2
2003	79.8	211,414	9.5

Source: R.K. Amankwah & C. Anim-Sacky, *Strategies for Sustainable Development of the Small-Scale Gold and Diamond Mining Industry of Ghana*, 29 RESOURCES POLICY 3-4 (2003).

Appendix 3: Production of Major Minerals and Aluminum in Ghana from 1990-2007

Year	Gold		Diamonds	Bauxite	Manganese	Salt (SnaCl)	Aluminium	Aluminium Imports
	OZ	MT**	Cts	MT	MT		MT	Mt
1990	541.147	16.83	636.503	368.659	246.869	-	172.255	314.277
1991	847.559	26.36	687.736	324.313	311.824	-	173.430	340.430
1992	1,004.625	31.25	656.421	399.155	276.019	-	179.022	330.024
1993	1,261.890	39.25	590.842	364.641	295.296	-	174.082	367.622
1994	1,438.483	44.74	746.797	451.802	238.544	-	139.051	274.872
1995	1,715.867	53.37	631.708	530.389	187.548	-	134.514	257.194
1996	1,583.830	49.26	714.738	383.370	266.765	-	135.725	253.851
1997	1,752.452	54.51	829.524	536.723	332.703	-	149.995	300.995
1998	2,371.108	73.75	822.563	341.120	384.463	-	55.446	94.958
1999	2,608.102	81.12	681.576	355.263	638.937	-	110.768	208.907
2000	2,457.152	76.43	878.011	503.825	895.749	-	152.363	255.864
2001	2,381.345	74.07	1,090.072	678.449	1,076.666	-	161.670	315.683
2002	2,236.833	69.57	963.493	683.654	1,135.828		131.858	263.928
2003	2,274.627	70.75	904.089	494.716	1,509.432		15.909	19.005
2004	2,031.971	63.20	905.344	498.060	1,597.085		-	-
2005	2,138.944	66.53	1,065.923	606.700	1,719.589		-	-
2006	2,337.784	72.72	972.991	841.775	1,699.546	123.162	-	-
2007	2,547.730	81.92	839.235	1,033.368	1,305.809	124.072		

Oz - Ounces, MT- Metric Tones, Cts - Carats and **1 MT = 32149.17,Oz

Source: Ghanaian Ministry of Lands, Forestry and Mines.

Appendix 4: Select Human Rights Incidents Observed by the Clinic in Tarkwa, using the model outlined by former U.N. Special Rapporteur Rodolfo Stavenhagen in his observation of how large-scale development projects affect indigenous peoples

Human Right Violation	Location	Details
Loss of Traditional Land/Property	Teberebie	Farmer James Sarpong detailed how his farm was destroyed by AngloGold Ashanti, which was able to hire the military to tear down structures.
Eviction	Abekoase	Farmer Abena Koale was evicted from her farmland without prior notice, and is forced to work on unused portions of other people's land.
Migration/Resettlement	Atta Ne Atta	Due to Goldfields' mining activity, farmers had to be relocated to new homes that were further from farmlands.
Depletion of Vital Resources	Throughout Tarkwa	CEPIL explained how the profits reaped by the mining companies that are extracting gold from territories that belong to the local communities rarely return to the communities. Furthermore, land, perhaps the most vital resource of all, is often taken without adequate compensation.
Pollution and Destruction of Environment	Dumasi	Multiple cyanide spills in nearby rivers by Bogoso Gold (2004 and 2006) resulted in dead ducks, fish, and nauseating smells.
Social and Community Disorganization	Prestea	Due to Bogoso Gold's mining in the heart of town, community members were unable to continue their professions.
Long-term Negative Health Impacts	Dumasi	Community members drank water that had been polluted by cyanide from Goldenstar's operations, and suffered both stomach pains and vomiting.
Harassment and Violence	Teberebie	Farmer Anthony Baidoo was shot during a violent conflict that ensued between the AngloGold Ashanti (employing security and the military) over road access to farmland.

Source: Clinic's observations and Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, (Executive Summary) 2, U.N. Doc. E/CN.4/2003/90 (Jan. 2003) (prepared by Rodolfo Stavenhagen).

Appendix 5: Water Quality Analysis

Prestea-Tarkwa	Turbidity	Silica	Iron	Manganese	Cadmium	Nickel	Lead	Zinc
Abekaase	21.82	18.36	3.907	0.154	b/d	0.112	b/d	0.04
Nkraka								
Huniso River	6.96	14.16	10.695	0.326	0.015	0.296	b/d	0.021
Hemang River	0.12	14.16	10.695	0.325	0.015	0.296	b/d	0.021
Hemang (BH)	1.8	65.56	0.608	0.102	b/d	0.022	0.001	0.011
Prestea River	4.82	14.16	2.60	0.017	b/d	0.017	b/d	0.021
Teberibie	3.05	17.11	2.059	0.047	b/d	0.059	b/d	0.064
River								
Teberibie (BH)	0.042	30.96	0.436	0.086	b/d	0.019	0.001	0.025
Huniso (BH)	0.95	9.26	0.176	0.982	b/d	0.019	0.02	0.082
WHO Limits	5.00	30.00	0.30	0.40	0.005	0.02	0.01	5.0

Source: Commission on Human Rights and Administrative Justice, *State of Human Rights in Mining Communities in Ghana* 174 (2008).



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