

20TH ANNIVERSARY LECTURE SERIES

**25 YEARS OF CONSTITUTIONAL DEMOCRACY
MANAGING NATURAL RESOURCE WEALTH FOR
INCLUSIVE DEVELOPMENT:**

THE GOOD, THE BAD AND THE UGLY

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Preface

Ghana is very rich in natural resources. The country is blessed with several mineral deposits and, in recent years, have discovered begun and producing oil and gas. Article 257 (6) of the 1992 Constitution stipulates that every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the Republic of Ghana, and shall be vested in the President on behalf of, and in trust for, the people of Ghana. The Constitution, thus, confer the management of the country's natural resources wealth into the hands of the President. After over 60 years of political independence, how have successive governments (presidents) managed the country's natural resources for the benefit of all?

Concerns have been raised by well-meaning Ghanaians and stakeholders, such as Public Interest and Accountability Committee (PIAC), over the misuse and mismanagement of the resources accrued from the recently discovered oil and gas. It has been discovered, for example, that oil revenues have been invested inequitably, ineffectively, and have spread too sparsely across many sectors and projects, thereby undermining any chance of deriving any meaningful impact. The story with mineral resource revenues and their impact is no better either, regardless of our over 100 years of mining in Ghana.

The Constitutional Review Commission (CRC) in its work recommended that due to the economic significance of natural resources, the constitution should be amended to vest all natural resources in the people of Ghana and for the resources to be held in trust for the people by the President. Several years after the work of the

CRC, there has been no effort to deliberate on this recommendation and push for implementation. With the growing concerns by stakeholders and citizens in general, as to the poor management of the oil proceeds, what can be done differently to ensure that revenues accrued from the country's natural resources are used to promote inclusive development? What other institutional frameworks are needed to be put in place to ensure that natural resource (oil, gas and minerals) proceeds are managed prudently to guarantee value for money, and for the future generations who also have equal ownership of the resources benefit? What more should citizens do to demand for accountability and transparency in the use of natural resource revenues?

As Ghana celebrates Sixty-two (62) years of independence, this lecture will reflect on the 'good', 'the bad', and 'ugly' – how successive governments since independence have utilized and managed the country's natural resources for growth and inclusive development. The lecture will also interrogate the recommendations made by the CRC on this subject, and offer key and constructive recommendations that will inform possible reforms toward managing natural resource wealth for inclusive development.

Introduction

Nana Chairperson, distinguished guests, ladies and gentlemen. I feel honoured to be called upon to share with you, my perspectives on the theme for this public lecture, 25 Years of Constitutional Democracy – Managing Natural Resource Wealth for Inclusive Development, the good, the bad and the ugly.

The perspectives which I share in this paper, are reflections of what I have observed and learned from the way we have, managed this country's natural resources since we gained independence.

Nana Chairperson, ours is a blessed country. Not many countries, the size of Ghana, are this endowed in natural resources. The literature says we had so much gold that the early explorers chose to describe our country as the Gold Coast. The Portuguese, we are told, were fascinated by the amount of gold they found in the small coastal village of Edina, that they chose to name it Elmina, meaning 'The Mine'.

Our mineral endowment includes: gold, diamond, manganese, iron, bauxite, limestone and several others. We also have timber and marine resources, which of course we have been exploiting over the years.

The paradox we are confronted with in our time, is that, after exploiting these resources for decades, Ghana was declared a Highly Indebted Poor Country (HIPC) at the turn of the millennium. We should indeed, bow down our heads in shame, because this narrative speaks volumes of how badly we have mismanaged our God-given natural resources.

Nana Chairperson, sometimes I feel God is a Ghanaian. In spite of our recklessness, he blessed us once again, in 2007, with the discovery of substantial hydrocarbon reserves. Some have even argued that God must have deliberately made Nigeria to discover oil earlier, and allowed that country to make all the mistakes, so that Ghana can learn from it.

So it was, that in 2010, Ghana joined the league of oil producing countries with a mixed feeling of anxiety and great expectation. Indeed the deep and conflicting emotions of hope and trepidation had played out pretty strongly in the public discourses around the development of the governance framework for the emerging oil and gas sector in the years preceding first oil (2007 to 2010). This was predominantly because Ghanaians have come to appreciate from first-hand experience, how weak and unaccountable governance of the country's mining sector have led to the creation of an enclave that has no forward and backward linkages with the rest of the national economy, and how that situation has returned poor development outcomes to the country and its people.

The lessons most Ghanaians draw from the mineral sector are reinforced by the well documented experiences of how increased dependence on oil wealth in nearby Nigeria, Chad, Sudan, Equatorial Guinea, Angola and others have ended up eroding democratic accountability in these countries and in the process, pushing them into the 'resource curse' trap.

Indeed, in almost all these countries, we have witnessed a creeping, but steadfast tendency of elite capture of the benefits of resource extraction, that have confined the majority of the citizenry to a life of poverty and squalor, in the midst of plenty.

Most literature on the 'resource curse' syndrome suggests that, it is usually a failure of the policy, legal and institutional arrangements for managing the resource that create the phenomenon, and not the resource itself which constitutes the curse.

Extractive activities can indeed have great impact on the people, especially host communities. It has enormous potential to create employment opportunities for the youth in our communities, introduce better roads, and improved communication systems to the hinterlands, and many more. For this reason, the natural resource endowment of Ghana must have a strong correlation with economic growth and development. Ironically, the rural communities where such natural resources are extracted tend to exhibit very low levels of development.

Sachs and Warner (1999) indicate that natural-resource intensity is inversely associated with both the quality of legal and government institutions in a country, and the degree to which an economy is open to international trade. According to them the more dependent a country is on natural-resource exports, the poorer the quality of institutions and the more closed an economy tend to be to international trade. The 'resource curse' syndrome manifests itself not only in the over-dependence on imports and through the technical challenges of monetary and fiscal policy decisions, but also through the disregard of governments for collective decision-making in a participatory democracy.

Opacity provides the cover for corruption and invariably leads to unaccountable governance. Therefore, the degree to which Ghana listens to its citizens and the degree to which citizens are able to exercise control over their government will be key in ensuring that Ghana's natural resources benefit the majority of its citizens if not all.

The stakes for addressing the governance challenge posed by the recent oil discovery were heightened by the fact that Ghanaians have learned from the experiences of countries such as Norway, United Kingdom, Malaysia, Trinidad and Tobago, South Africa, Botswana etc. that natural resources possess an inherent potential for unlocking the development opportunities that a country seeks, in ways that are socially transformative and economically beneficial to the majority of the people. This is what inclusive growth is about, and this was the major underpinning of the hope with which many Ghanaians ushered in the first oil.

Getting the governance framework right

Nana Chairperson, our biggest challenge in managing our natural resources has to do with putting together a well sequenced, efficient and durable governance framework. Documented international best practices suggest that, the first thing that a country does when it discovers a natural resource as vital as gold or hydrocarbons, is to embark on a process of envisioning the role it expects the resource to play in the larger economy.

The vision is then expressed in terms of policy objectives. The next step is to enact laws that will operationalize, or in other words, pursue the set objectives. Regulations then follow in that order, to detail out how the various provisions in the laws are to be applied, and to give proper effect to the laws. (Torkonou & Associates, Review of Alignment between the Africa Mining Vision (AMV) and Ghana's Policy/ Legal, Frameworks for the Oil and Gas Sector, 2015).

Regrettably, many natural resource-dependent countries, including Ghana, have poorly sequenced these elements in establishing the governance framework for managing their natural resource endowment, and in the process have undermined the potential of the resource to bring about improved development and enhanced welfare of their people. For instance, in Ghana, we passed the Minerals and Mining Act 2006, Act 703 ahead of the Minerals and Mining Policy, which was adopted in 2014. Again, we passed the Petroleum Revenue Management (PRMA) Act, 2011, Act 815 ahead of the Exploration and Production (E&P) Act, 2016, Act 919. To the extent that production is what defines the revenues, the E&P Act should have preceded the PRMA. This does not suggest however that we operated in a regulatory vacuum. We had a primary law for the oil and gas sector, the Petroleum (Exploration and Production) Law of 1984, but this law was deemed by the country's first ever Oil for Development Conference, held in 2008 as NOT FIT FOR PURPOSE.

Of course, the challenge of instituting a well-sequenced and durable governance framework for the natural resource sector of many a developing economy has been compounded by opacity and perceived widespread corruption along the value chain of resource extraction, management and use of the derived revenues.

The search for solutions to the challenge we face

Nana Chairperson, the challenge we face, is not peculiar to Ghana. And so, when at the turn of the millennium, world leaders gathered in Johannesburg, South Africa, for the World Summit on Sustainable Development (WSSD), to deliberate on how to mitigate the factors that inhibit global development, among the issues on the table was the role of natural resources: mining, timber, oil and gas, and fisheries in the pursuit of development and growth of developing economies.

The Extractive Industries Transparency Initiative (EITI) is a product of the deliberations on how natural resources could make a positive contribution to economic growth and development. The initiative is a global effort to end the culture of opacity in the generation and use of extractive sector revenues, especially in natural resource-endowed countries, and to ensure that resource extraction contributes to national development and poverty reduction in the host countries. It is premised on the assumption that, by encouraging public disclosures of company payments and government receipts of extractive revenues, citizens of resource dependent countries will be empowered to demand accountability, in terms of how these revenues are used by their governments, and this is expected to lead to the elimination of waste and large scale embezzlement of these revenues.

However, the initiative came under some criticisms for addressing just one link (revenues) in the entire extractive industry value chain. This has been addressed, following the adoption of the EITI Standard in 2013, and its revision in 2016.

The 2013 EITI Standard with its 2016 revision, expanded the scope of reporting and introduced new elements such as setting the macro-economic context within which resources are extracted. Implementing countries are also to describe the distribution of revenues from the extractive industries; include further information on revenue management and expenditures in the EITI report, and any relevant budgetary information. They are also encouraged to disclose information on contracts.

Linked to the recommendation to disclose contracts, are the requirement to open up the contracting process, disclosing details of licenses that provide the terms attached to the exploitation of oil, gas and mineral resources, and to provide beneficial ownership information.

EITI reports are also required to document the government's policy on disclosure of contracts and licenses. This should include relevant legal provisions, actual disclosure practices and any reforms that are planned or underway. The report is also to provide an overview of the contracts and licenses that are publicly available, and include a reference or link to the location from where it can be accessed (EITI Standard 2016).

Ghana has so far complied with most of the requirements. Areas where the country has not fully complied with, are: the establishment of a legally mandated open contracting regime for the mining sector. In the oil and gas sector, the passage of the Petroleum (Exploration and Production) Bill into law in August 2016, provided legal backing to open contracting.

It is indeed, worth noting that most of the disclosure provisions in Ghana's petroleum laws, in particular, the Petroleum Revenue Management Act, 2011, Act 815 with its 2015 amendments, have been inspired by lessons from Ghana's mineral sector, as documented by Ghana's EITI.

The Africa Mining Vision

At the continental level, attempts to help natural resource endowed African countries to improve their natural resource governance, have led to the development of a blue print to guide the development of the governance frameworks to manage these resources. The Africa Mining Vision (AMV) imposes an obligation on all AU member states to align their governance arrangements and approaches to the management of their natural resources to a set of prescribed principles pulled together from international best practices and lessons drawn from the continent's century old experience in mining.

The Vision was conceived by a technical task force meeting convened on August 22, 2008 by the United Nations Economic Commission for Africa (UNECA) in

preparation for the First African Union Conference. The African Union requires natural resource-dependent member states of the AU to articulate their respective national visions of what role they expect their mineral resources to play in their economies and the expected contribution of mining to their national development agenda. The essence is to afford member states the opportunity to fashion out strategies to interrogate the current status, and integrate their natural resources into the rest of the national economy and through that, make that critical, sustainable paradigm shift from the enclave nature of resource extraction.

The AMV is founded on the following fundamental pillars:

- ◆ Optimizing knowledge and benefits of finite mineral resources at all levels of mining and for all minerals
- ◆ Harnessing the potential of small scale mining to improve rural livelihoods and integration into the rural and national economy
- ◆ Fostering sustainable development principles based on environmentally and socially responsible mining, which is safe and includes communities and all other stakeholders
- ◆ Building human and institutional capacities towards a knowledge economy that supports innovation, research and development
- ◆ Developing a diversified and globally competitive African mineral industry which contributes to broad economic and social growth through the creation of economic linkages
- ◆ Fostering a transparent and accountable mineral sector in which resource rents are optimized and utilized to promote broad economic and social development
- ◆ Promoting good governance of the mineral sector in which communities and citizens participate in mineral assets and in which there is equity in the distribution of benefits

Even though the AMV has been developed with mining in view, its precepts are universal, and therefore required to be integrated into the entire spectrum of natural resources of AU member states.

Ghana has taken its initial steps, towards aligning the governance of its natural resources with the AMV precepts. In 2015, the country undertook a study aimed at identifying gaps between the current state of resource governance in Ghana, and the recommendations of the AMV.

The analysis found that, the country has made some progress in meeting the AMV requirements.

Among the achievements are:

- ◆ The sequencing of the policy, legislative, regulatory and institutional frameworks
- ◆ Disclosure and accountability provisions in most of the petroleum laws passed
- ◆ Legislative provision on what is to be spent and what is to be saved
- ◆ Clarity on basis for arriving at spending choices
- ◆ Establishment of Infrastructure Development Fund, to support investments in infrastructure
- ◆ Establishment of an additional public oversight body to promote transparency and accountability in the oil and gas sector
- ◆ Creation of an independent regulatory body
- ◆ Development of separate guidelines for the conduct of ESIA in the offshore zone
- ◆ Establishment of a Local Content law to promote indigenization, linkages, and diversification etc.

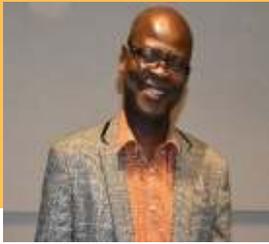
Challenges however remain, and I will crave your indulgence to discuss a few pertinent ones.

1. The principle of Free, Prior, Informed Consent (FPIC) of host communities ahead of resource extraction has now become an imperative. In Ghana, the ESIA, apart from being a tool for identifying and managing the unintended, negative environmental and social fallout of resource extraction, also serves as a mechanism for obtaining the FPIC of host communities.

Our environmental laws require that after the ESIA is completed, it is subjected to a public hearing, and must receive the seal of approval of the relevant communities before the necessary permits would be issued for the project to proceed. A typical public hearing, on the ESIA reports that companies submit, is however a far cry from what it is meant to be. They are simply reduced to promises of a booming local economy, and jobs for the host communities. Of course we cannot blame our compatriots for this parody of a consultation. The documents they are supposed to be engaging on, is beyond the comprehension of the average educated Ghanaian. They are very technical, bulky, and replete with industry jargons. It is indeed, surprising to me, that it has never occurred to anyone to provide these communities with technical support to make meaning of these documents, in terms of the benefits and the disadvantages of the proposed project, ahead of the consultations.

Notes





Dr. Steve Manteaw is a policy analyst with the Integrated Social Development Center (ISODEC). He has wide range experience in policy research and advocacy. He facilitated the multi-stakeholder preparatory workshop (Mankessim Forum) towards the first ever Oil for Development Conference in Ghana, following the country's Jubilee oil discovery, and he chaired the governance session of the conference. He has since been involved in several projects and programs at both national and continental levels, aimed at improving natural resource governance in natural resource-dependent African countries.

Dr. Manteaw serves on several national boards and committees, including the Ghana Extractive Industries Transparency Initiative (GHEITI), whose National Steering Committee he co-chairs. He is also a member of the National Steering Committee of the Open Governance Partnership Initiative hosted by the Public Sector Reform Secretariat; the Senchi Forum Implementation Advisory Committee hosted by the National Development Planning Commission (NDPC), and a member of the adjudicating committee of the 2015 Ghana Mining Industry Awards.

Dr. Manteaw also chairs the Civil Society Platform on Oil and Gas; Convenes the Ghana chapter of 'Publish What You Pay', a global campaign for transparency in the generation and use of extractive sector

revenues, and was the pioneering chair of the Africa Regional chapter of

the campaign. He has also served as a member of the World Bank Extractive Industries Advisory Group in Washington.

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