COMMUNITY PERSPECTIVES IN THE MINING AND MINERAL LAW BY HANNAH OWUSU-KORANTENG DIRECTOR OF TRAINING AND RESEARCH WACAM - JUNE 2005

Introduction

Based on the logic that mining contributed to the industrialisation of developed countries like United States, Canada, and Australia in the 19th and early 20th centuries, the World Bank and IMF promoted mining as a necessary means of achieving economic growth and poverty reduction objectives of mineral-endowed countries of the south.

Despite the role of mining in the industrialization of some developed countries, the historical reasoning of mining dependence may not be justified in the contemporary development efforts of developing countries because of the absence of economic capacity for developing countries to expand mineral exploitation beyond their borders. Africa is in a process of Economic Reforms to reduce poverty and achieve economic growth and mining is featuring prominently in the Economic Recovery agenda of developing nations.

The World Bank's role in the development of the Mining Sector of Ghana is quite significant and the government of Ghana has received assistance from the World Bank in many broad areas of the mining sector. According to a World Bank report (Ghana and the World Bank 2002-A Partnership for Progress, p32), the Bank's support to projects in the Mining Sector helped in the achievement of the following:

- a thorough assessment of the institutional arrangements of Ghanaian mining which established a clear blueprint of a forward looking institutional structure for Ghanaian mining
- a thorough assessment of the Ghanaian legal framework for mining which was discussed by stakeholders and resulted in a draft new mining law , and draft mining , fiscal and environmental regulations .
- the completion of aerial geophysical work for the attraction of investors to Ghana

The World Bank report states that the enactment of a modern competitive legal-regulatory framework to regulate the mining, fiscal and environmental aspects of the mining sector should be seen as a challenge.

The World Bank/IMF supported Economic Recovery Programme of the then PNDC government, which was launched in 1983 opened up the extractive sector for massive investment. The strategy for the attraction of foreign investment included reduction of taxation, privatisation of state-owned mines and liberalization of production and marketing regimes.

By its influence on broad issues in the mining sector of mineral-dependent countries, especially in the area of mining regulation, the World Bank has unleashed an unhealthy competition among poor countries in the Africa for the attraction of mining investment through the reduction of standards in what could be described 'as a race to the bottom'. For example, the industry players in Ghana have been pushing for the lowering of standards in order that the country would compete with other countries that have relatively weaker mining regulations to attract mining investment. From 1994, more than

70 countries in the south have changed their laws to attract foreign gold mining companies.
The fiscal policies in the mining sector from the onset of Economic Recovery Programme (ERP) in 1983 had made the extractive sector the largest recipient of Foreign Direct Investment (FDI) flows into the Ghanaian economy. Currently, the mining sector accounts for 70% of the total FDI flow into the economy of Ghana.

General comments on the Regulatory framework for mining
Our gold mining experience was based on underground mining and we must admit that the nation was caught up in the current mining boom with weak capacity that could not march up to the challenges of increased surface mining activities and heap leach method of gold extraction. Our mining laws provided generous incentives to the mining companies.

Fui Tsikata, lecturer in Law stated, "An *Environmental Protection Agency has been established in December 1994(by Act 490) with powers to promulgate and enforce standards. Neither precise standards nor detailed regulation have as yet been enacted, though impact assessments are now required and guidelines for mineral operations have been formulated*" (The vicissitudes of mineral policy in Ghana-Resources Policy. Vol.23, No 1/2, pp9-14, 1997)

George A. Sarpong, also a Law Lecturer raised the issue of gaps in the Ghanaian environmental law as follows:
"As regards standards, to be enforced, however, there are gaps in the Ghanaian environmental legal regime. There is no legislation regulating the discharge of wastes into water, riverine systems or the marine environment (Environmental Law from the Ghanaian perspective-published in the Environmental Law Reporter –International News and Analysis, 2002)

Community Concerns
A publication of Ashanti Goldfields Company (AGC) with the title "Ashanti Gold" and authored by Professor Edward S. Ayensu in 1997 to commemorate the company's centenary celebrations quoted King Ferdinand of Spain's instructions to the conquistadors in 1511 as follows;
'Get gold humanely if possible, but at all costs get, get gold' (Ashanti Gold –p53)
This is an underlying philosophy of the gold mining companies to get gold 'at all costs' hence the need for an effective and clear binding laws to regulate mining since the other general provisions in the national constitution and laws do not offer adequate protection of community rights in the event of mining. Mining communities with weak technical and financial capacity are confronted with the problem of having engagements with multinational mining companies that have enormous resources. Some of the issues relate to the following:

- forced evictions
- displacement of communities
- compensation
- pollution of community streams

- impact of cyanide spillages
- emissions
- resettlement
- noise and air pollution
- human rights abuses including brutalization of galamsey suspects
- land degradation
- loss of livelihood
- conflict resolution

The existing mining law did not offer adequate protection of the environment and community rights in the event of mining.

Specific cases

The work of WACAM in the communities revealed that some mining companies established active mining pits virtually in communities and communities were faced with problems such as sleepless nights, hurling of rocks on buildings, cracking of buildings, noise pollution etc. Our mining laws do not have clear standards on allowable distance between mining pits and settlements. The decision is left to the whims of regulatory institutions and the mining companies. This issue has been the cause of conflicts and communities have had to waste scarce resources to wage struggles on such issues. E.g. Dumase and Binsere

The issue of compensation payment arises because of the conflict between the mineral rights of a mining company and the surface rights of the owner/occupier of land. The existing law and the new bill takes away the right of communities from resorting to court action in the event of a disagreement on compensation payment since the resort to court action could be done only after the Minister for Mines had failed to settle the disagreement.

Though the provisions in the existing law do not adequately protect Community Rivers and water bodies, there is a provision for the Minister to issue a license to authorise the diversion and, impoundment of a watercourse for industrial purposes. This provision has been watered down in the new mining bill. This may permit mining activities around important water bodies such as Lake Bosumtwi and the Volta Lake.

Mining communities have had the number of rooms reduced in new settlements built by mining companies and this has resulted in break up of families. The new mining bill should be clear that resettlements should be based on the principle of ‘room for room’ and not ‘value for value’.

Cyanide spillages have become synonymous with gold mining and it is time to have provisions in the mining law to hold companies accountable for the clean up costs and payment of compensation to communities in the event of cyanide spillages.

The stability agreement in the new mining bill (section 45) is discriminatory and retrogressive and tends to prevent future changes in the regulatory framework.

The Development agreement(section 45) provides sweeping powers to the Minister to decide on issues relating to the mineral rights or operations to be conducted under the mining lease; the circumstances or manner in which the Minister or the Commission would exercise any discretion conferred by or under the Act; Stability terms provided under section 45; Relating to environment issue and obligation of the holder to safeguard the environment in accordance with the Act or any other enactments; Dealing with settlement of dispute. This concentrates a lot of power in the Minister without any checks and this is a sure recipe for corruption. This sweeping power takes away all consultative and participatory processes that could involve communities.

The existing mining law and the new bill invest mineral rights in the President. It is important to safeguard community interests by giving them a say in decisions that takes away their indigenous lands. There should be a provision in the mining law for community participation in what affects their livelihood on the principle of 'free prior and informed consent 'of communities in the event of mining.

Mining is thought to be a leading polluting industry and apart from omnibus provisions in the new mining bill for the protection of the environment, enforceable obligations to achieve the protection of the environment. An important omission in the new mining bill is the fact that there are no provisions to protect forest reserves and other protected areas from mining

The new bill reduces the royalty rates.

Though community vulnerability is real there are no provisions to protect community rights, instead, the mining companies have the protection of their interests guaranteed even into the future in the new mining bill.

Conclusion

A weak mining law ensures increased environmental degradation, community conflicts, capital flight and minimal benefits to the nation. These would result in huge mine legacies for the nation when the mining boom is over.