

GHANA NATIONAL COALITION ON MINING (NCOM)

Honourable Emmanuel K. Gyamfi,

Memorandum from the Ghana National Coalition on Mining (NCOM) on the
Development and Tax Concession Agreements between the Government of Ghana and
AngloGold Ashanti (Ghana) Ltd

I write further to the request, by a letter dated 23 March 2016, to the Ghana National Coalition on Mining (NCOM) to submit a memorandum to the Joint Committee on Mines and Energy and Finance of Parliament on the Development and Tax Concession Agreements between the Government of Ghana and AngloGold Ashanti (Ghana) Ltd which have been submitted for consideration by Parliament.

I am pleased on behalf of the NCOM to submit the attached Memorandum to the joint committee. The Memorandum sets out the NCOM's analysis, conclusions and proposals on the Tax Concession Agreement (TCA) and the Development Agreement (DA).

The NCOM is a grouping of community-based organisations in mining areas, NGOs and individuals working for policies and practices which ensure that the exploitation of Ghana's mineral resources contribute to integrated national development and transformation whilst respecting human rights, community livelihoods and environmental sustainability.

1. The NCOM's analysis of the TCA and the DA and the content of the attached Memorandum are informed by a number of principles and factors. The most important of which are a) the provisions of the 1992 Constitution; b) the terms of the national Minerals and Mining Policy (2014) as well as the 2011 ECOWAS Mineral Development Policy (EMDP) and the agenda of the 2009 Africa's Mining Vision of the African Union, and c) the stance of the current government on the role mineral resources should play in Ghana's development and transformation; and d) the grim symbolism of Obuasi town and its environs as a testament to the history of value extraction by foreign investors without local development benefit.

Based on the grounds fully set out in the Memorandum the main recommendation of the NCOM to the joint Committee is that the two Agreements in their present forms should be rejected and the Executive invited to take steps to revise them.

The principal ground for recommending the rejection of the two agreements is that key elements, notably the fiscal concessions in the TCA which are stabilised under the DA are illegal on two main grounds. These are:

- a. **the legal authority to make fiscal concessions to a holder of a mining lease are those set out under section 48 of the Minerals and Mining Act, 2006 (Act 703). The only fiscal concessions that can be made under that provision is to freeze (stabilise) current fiscal obligations. The law does not give the Minister the power to waive or reduce fiscal obligations.**
- b. **Parliament does not have the power on its own motion to waive or vary taxes. Under Article 174 (2) of the Constitution it can do so only by approving the exercise of a power to waive or vary taxes by a person or authority vested with the legal power to do so.**

NCOM Secretariat

Third World Network-Africa, 9 Asmara Road, East Legon, Accra
Email: environment@twnafrica.org; Tel: (+233-302) 511189 or 503669
Mailing: P.O. box AN 19452 Accra

The Memorandum also analyses and makes proposals on the following issues:

- a. **The fiscal concessions**
- b. **Local content**
- c. **Community Development of Obuasi and its environs**
- d. **Labour and the training of Ghanaians**
- e. **The scope of the confidentiality clause in the DA**
- f. **Environmental Protection**
- g. **General Policy issues arising from the two Agreements, including 1) proposals for amending Sections 48 and 49 of the Minerals and Mining Act, 2006 (Act 703) and 2) the need to improve policy coherence and quality of stakeholder engagement in Government decision making.**

The members of the NCOM look forward to being invited to meet and interact with the members of the Joint Committee on the attached Memorandum.

Yours sincerely



Yao Graham,
behalf of the Ghana National Coalition on Mining (NCOM)

The Chairman,
Joint Committee on Mines and Energy and Finance of Parliament
Parliament House,
Accra