IN THE FOURTH SESSION OF THE SIXTH PARLIAMENT OF THE FOURTH REPUBLIC OF GHANA

REPORT OF THE SELECT COMMITTEE ON MINES AND ENERGY

ON THE

DEVELOPMENT AGREEMENT BETWEEN THE REPUBLIC OF GHANA AND GOLD FIELDS GHANA LIMITED, TARKWA

AND

THE DEVELOPMENT AGREEMENT BETWEEN THE REPUBLIC OF GHANA AND ABOSSO GOLDFIELDS LIMITED, DAMANG

MARCH, 2016

REPORT OF THE COMMITTEE ON MINES AND ENERGY ON THE DEVELOPMENT AGREEMENT BETWEEN THE REPUBLIC OF GHANA AND GOLD FIELDS GHANA LIMITED, TARKWA AND THE DEVELOPMENT AGREEMENT BETWEEN THE REPUBLIC OF GHANA AND ABOSSO GOLDFIELDS LIMITED, DAMANG

1.0 INTRODUCTION

1.1 The Hon. Minister for Lands and Natural Resources, Mr. Nii Osah Mills laid two (2) Development Agreements in Parliament on the 16th of March, 2016 for ratification in accordance with Article 268(1) of the 1992 Constitution and Section 49 of the Minerals and Mining Act, 2006 (Act 703). The Agreements are:

i. The Development Agreement between the Republic of Ghana and Gold Fields Ghana Limited, Tarkwa; and

ii. The Development Agreement between the Republic of Ghana and Abosso Goldfields Limited, Damang.

1.2 The Development Agreements were subsequently referred to the Committee on Mines and Energy for consideration and report pursuant to Orders 188 of the Standing Orders of the House.

2.0 DELIBERATIONS

The Committee met with the Hon. Minister for Lands and Natural Resources, Mr. Nii Osah Mills and his deputy, Hon. Kwabena Mintah Akandoh and Officials of the Ministry to consider the Agreements. Officials of the Minerals Commission were in attendance to assist the Committee in its deliberations.

The Committee is grateful to the Hon. Minister and his Deputy and the Officials for their attendance and for providing clarifications to issues raised at the meeting.

3.0 REFERENCE DOCUMENTS

The Committee referred to the under-listed documents during its deliberations:

i. The 1992 Constitution;

ii. The Standing Orders of Parliament;

iii. The Income Tax Act, 2015 (Act 896);

iv. The Minerals and Mining Act, 2006 (Act 703);

v. The Minerals and Mining (Amendment) Act, 2010 (Act 794)

vi. The Environmental Protection Agency Act, 1994 (Act 490);

vii. The Environmental Impact Assessment Regulations, 1999 (L.I. 1652);

viii. The Minerals and Mining (Health, Safety and Technical) Regulations, 2012 (LI 2182); and

ix. The Tarkwa and Damang Mining Leases.

4.0 BACKGROUND INFORMATION

The Government of Ghana in reversing the general stagnation in the mining industry in the early 1970s introduced a number of policy measures including divesting state-owned mining companies. As part of the measures, Gold Fields Limited bought the Damang Mine which is now known as Abosso Goldfields Limited from Ranger Minerals of Australia in 2002.

Gold Fields Ghana Limited (GFGL) and Abosso Goldfields Limited (AGL) are, therefore, the holders of two of mining leases in Tarkwa and Damang respectively in the Wassa West District of the Western Region of Ghana. Gold Fields Limited of South Africa holds 90% majority shares in both GFGL an AGL and the Government of Ghana holds the remaining ten (10) percent of the issued shares in each of the companies.

In furtherance of Section 49 of Act 703 which allows the State to enter into Development Agreements with holders of Mining Leases having proposed investments exceeding US$500million commenced discussions with Goldfields Ghana in 2004 to negotiate Development Agreements in respect of the Tarkwa and Damang Mines.

The terms of the Development Agreements under consideration were negotiated along the terms of the Revised Investment Agreement between the Government and Newmont Ghana Gold Limited which was ratified by the House in December, 2015.

The Development Agreement in respect of the Tarkwa Mine replaces the 2003 Investment Agreement.

5.0 PARTIES TO THE AGREEMENT

5.1 The parties to the Development Agreements are the Republic of Ghana and Gold Fields Ghana Limited.

5.2 Gold Fields holds 90% interest in both the Tarkwa and the Damang Mines whilst the State holds 10% interest in the two Mines.

6.0 KEY PROVISIONS OF THE AGREEMENT

Some of the key provisions in the Development Agreements are:

6.1 Term and Stability Period of the Agreements

The term of the Tarkwa Development Agreement is eleven (11) years and that of the Damang Development Agreement is nine (9) years.

The Stability periods are the same as the term of the Development Agreements.

6.2 Payment of Taxes

The Development Agreements provide for the payment of the following taxes at agreed rates:

i. The income tax rate agreed within the stability periods is 32.5%. This is lower than the current income tax rate applicable to mining companies under the Income Tax Act, 2015 (Act 896).

ii. Regarding payment of Management fees, deduction for management fees for tax purposes is fixed at 2.25% of either total revenues from production or other operations in the financial year or 2.25% of development capital expenditure where production is yet to commence.

iii. Withholding Taxes shall be paid on fees paid for management and technical services at the rate provided by law.

iv. The Company shall be exempted from payment of import duties and excise taxes for items on the Mining List as amended from time to time.

v. The Company shall be exempted from paying VAT on all items specified in the Mining List to the extent used in its mining operation and mineral exports by the company shall be zero rated for VAT purposes.

6.3 Royalty

The Royalty rates agreed under the Agreements for gold have been agreed on the sliding scale of 3% to 5% as indicated in the Table below:

Table 1: Royalty Rates under the Agreements

Price Range (US$)	Royalty
Less than 1,300	3%
Between 1,300 and 1,499.99	3.5%
between 1,450 and 2,299.99	4%
More than 2,300	5%

6.4 Integrated Activity

The operations in respect of the production areas shall, for the purposes of any law relating to the calculation of applicable taxes and duties, be applied separately to each mining operation. Accordingly, all write-offs, deductions, reliefs and allowances incurred by or on behalf of the company may be deducted from any of its income or profits arising from that operation for purposes of determining any applicable tax and duties.

6.5 Termination Payments

On termination Operation or mine closure in respect of Tarkwa and Damang leases GFGL shall pay or otherwise satisfy any liabilities including taxes and duties and make appropriate provision as required by law for unknown or contingent liabilities and undertake reasonable efforts to collect all amount due to GFGL by any person.

6.6 Exchange Control

The Revised Agreement stipulates that GFGL shall return to Ghana, a minimum of 30% of the proceeds from sale of gold, except during the last two years of operations. If the gold is sold in Ghana, the quota shall be reduced by the amount of gold sold. This modifies the 2003 Investment Agreement which allowed the Gold Fields Ghana Limited and its affiliates to deal in currencies in whatever manner it chooses.

7.0 OBSERVATIONS

The following observations were made by the Committee during its deliberations:

7.1 Economic benefits

The Committee was informed that though the State will lose some revenue in respect of the royalties and taxes in the short term, an enormous economic benefit may be obtained from the investment of Two Billion, Five Hundred and Fifty Million United States Dollars (US$2,550,000,000.00) over the life of the mines. The amount comprises Two Billion United States Dollars (US$2,000,000,000.00) for the Tarkwa Mine and Five Hundred and Fifty Million United States Dollars (US$550,000,000.00) for the Damang Mine. These investment are to ensure the strategic vision to produce one million ounces (approximately 40% increase on current annual production) within the next 3 years. The investments is expected to increase current production to One Million ounces per year. This will go a long way to make the projects viable and also create more jobs despite the serious economic challenges facing the sector.

7.2 Contributions of Gold Fields to the Economy of Ghana

The Officials of the Ministry informed the Committee that the Goldfields Ghana Limited has demonstrated a good corporate responsibility since the commencement of its operations in the country. The Company has since 1993 paid over One Billion United States Dollars (US$1,000,000,000.00) to the Government of Ghana by way of corporate income taxes, royalties and dividends. For instance, in 2015 the Company paid an amount of Three Hundred and Nine Million United States Dollars (US$309,000,000.00) in direct taxes and One Hundred and Thirty Five Million United States Dollars (US$135,000,000.00) in indirect taxes, bringing its contribution to tax revenue to Four Hundred and Forty Four Million United States Dollars (US$444,000,000.00). This makes Gold Fields the second largest tax payer in Ghana after Ghana Commercial Bank for 2015.

With regards to employment, the Company is amongst the largest private sector employers in Ghana and employs about 6,100 people. About 99% of the Company's employees are Ghanaian and 50% of its employees are from the surrounding communities.

Apart from these, the Company has established a Foundation to serve as the funding vehicle for socio-economic development for stakeholder communities. The Foundation is funded by the Tarkwa and Damang Mines, and the Company pays US$1.00 per every ounce of gold produced and additional 1% of the company's pre-tax profit. The Foundation has so far invested over Thirty Million United States Dollars (US$30 Million) in community development projects.

7.3 Current Economic Difficulties facing Mining Companies

The Committee found that the ratification of the Development Agreements would enhance the fiscal incentives provided for under the law to enable the company continue to operate in the face of falling gold prices. The Development Agreements will protect the Company's investments against unpredictability and uncertainty in the planning and operations of the company, external market pressures, such as low gold prices (i.e. from approximately $1,900/oz in 2011 to the current price level of $1,200/oz) and high costs of inputs required for the mining operations such as fuel, utilities and equipment. Officials of the Ministry of Lands and Natural Resources informed the Committee that due to these economic challenges the company is compelled to consider laying off over 600 of its staff, if no intervention comes from Government.

7.4 Incidents of the State's Free Carried Interest

The Committee noted that the Agreements contain provisions to safeguard the realisation of revenue from the State's participating interest in the two Mines. The Development Agreements would ensure that the State realizes the full incidents of its shareholding in the two (2) companies including the right to sell the shares, board representation and participation in General Board Meetings. The Government shall also receive 10% of any dividend paid to the shareholders of the companies (equivalent to a 10% share of declared dividends). The State will from January, 2017 receive a guaranteed annual payment equivalent to 5% of profit after tax in the year in which dividend is not declared, as an advance against the payment of future dividends.

7.5 Payment of Local Taxes

The Committee further noted that the Development Agreements provide for the payment of all local taxes and levies as may be imposed by District Assemblies including property tax. Such taxes shall however not impose disproportionate burden on the Company as compared to other persons in the same category, including persons engaged in exploration or mining operations in Ghana.

7.6 Upfront Arrangements for the Projects

The Committee was informed that the Goldfields Ghana Limited has undertaken to construct a 33km road between Tarkwa and Damang at the estimated cost of Fifteen Million United States Dollars (US$15,000,000.00) as part of the upfront arrangements for the project. The road when constructed would ease traffic and enhance economic benefits to the surrounding communities.

7.7 Payment of Capital Gains Tax

It was also noted that the Development Agreements provide for the payment of capital gain taxes. The Company shall pay capital gains tax in accordance with the general law arising with respect to the conveyance or transfer of any minerals right realized. Where the Company or its affiliates maintain at least 25% of controlling shares, no capital gains tax shall apply because it shall be seen as re-organisation of the company and share transfer shall only be between the Company and its affiliates.

7.8 Negotiation of the Agreements

The Committee was informed that the Development Agreements were negotiated by a Tripartite Committee constituted by Government to negotiate the terms with Gold Fields Ghana Limited and Abosso Goldfields Limited. The Committee comprised representatives of the Ministry of Lands and Natural Resources, Ministry of Finance and the Attorney General's Department.

7.9 Provisions Regarding Termination of Agreements

The Committee noted that the Development Agreements provide comprehensive provisions regarding the termination of the Agreement by the parties. The Company may terminate the Agreements upon the given of specified notice to the State. On the other hand, the State may terminate the Agreements under grounds agreed in the Tarkwa and Damang Mining Leases. Disputes in respect of the termination shall be resolved by arbitration, non-binding mediation or conciliation.

7.10 Review of the Agreements

Finally, the Committee noted that the Development Agreements provide for their review by the parties in event of significant changes in the economic conditions in the industry. Upon the establishment that there have been significant changes in circumstances, the parties have agreed to enter into good faith discussions to consider proposals for either modification or clarification of the terms of the Agreements.

8.0 CONCLUSION AND RECOMMENDATION

The Committee has duly scrutinized the two Development Agreements and it is of the view that their ratification would pave the way for the planned investment of Two Billion, Five Hundred and Fifty Million United States Dollars (US$2,550,000,000.00) in the Tarkwa and Damang mines. Apart from the substantial economic benefits that may accrue to the State with this investment, the State would also receive dividends of its 10% carried interest in the mines and receive revenue from taxes. It would further lead to job savings.

In this regard, the Committee recommends to the House to adopt its Report and to ratify the following Development Agreements in accordance with Article 268 of the Constitution:

i. The Development Agreement between the Republic of Ghana and Gold Fields Ghana Limited, Tarkwa; and

ii. The Development Agreement between the Republic of Ghana and Abosso Goldfields Limited, Damang.

Respectfully submitted.

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HON. ALHAJI AMADU B. SOROGHO
CHAIRMAN, COMMITTEE ON
MINES AND ENERGY

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PEACE FIAWOYIFE (MS.)
CLERK TO THE COMMITTEE

MARCH, 2016