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Curbing Illicit Financial Flows from Resource-rich Developing Countries: Improving Natural Resource Governance to Finance the SDGs

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Gold Related Illicit Financial Flow Threats and How to Mitigate Them: The Case of Ghana

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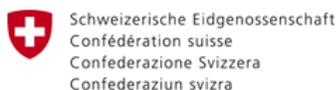
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1. INTRODUCTION

A. Definition of Illicit Financial Flows

The Global Financial Integrity (GFI) describes illicit financial flows (IFFs) as illegal movements of money or capital from one country to another. By this definition, if the monetary flow breaks a law at any point, it is illicit (GFI, 2015). For quantitative purposes, the United Nations Office on Drugs and Crime (UNODC) and the United Nations Conference on Trade and Development (UNCTAD)¹ agreed that to be considered IFFs, the flows "must be illicit in origin, transfer or use; reflect an exchange of value instead of pure movement of money; be measured over time as opposed to a stock measure, and cross country borders" (UNODC & UNCTAD, 2019).

Analyses of the key aspects of the IFF definition identified above establish that to be classified as IFFs, there must be a cross-border movement of the funds in question. Further, funds that are illicit in origin are monies illegal by virtue of their source. Monies involving crime or rule-violating activities such as corruption and smuggling are examples of funds from illegal sources for IFFs. Alternatively, the illicit or illegitimate aspect of funds could be in their transfer; that is how the funds crossed borders (Khan, Andreoni, and Roy (2019). This could be by evading official mechanisms of funds transfers in the form of tax evasion. Lastly, financial flows will be deemed illicit if the uses to which the funds have been put are illicit, or if the tax or other laws have been violated within the country. In this context, terrorism or political corruption are instances of illegal use (Khan et al., 2019). Consequently, funds that cross borders albeit through legitimate means will be deemed illicit if the sources or uses to which the funds are put are illegitimate (Khan et al., 2019). Another criterion, the requirement that the monies should reflect an exchange of value instead of pure movement of money means that monies should as a matter of necessity be offered in exchange for a commodity or service.

A distinction traditionally drawn between a ‘narrow’ and a ‘broad’ definition of IFFs, is highlighted by the Africa Centre for Energy Policy in a report on IFFs and the extractive industry in Ghana (ACEP, 2015). The narrow definition only considers illegal transactions that are prohibited under the legal system of the country where they are assessed. The broad definition of the term also encompasses practices that are not technically illegal but are nevertheless perceived as unethical or detrimental to development – hence ‘illicit’. While this distinction is appealing, it is less straightforward than it may appear. In real life, it is hard to draw a line between ‘illegal’ and ‘illicit’ activities: so-called illicit activities often involve illegal elements (Musselli & Bürgi 2020). In particular, most legal systems integrate far-reaching anti-abuse rules and principles that can be used to strike down otherwise lawful practices found to be carried out in a manner that undermines the intention of the law. Eventually, a far-reaching (broad) definition of IFFs can still be conveniently

¹ UNCTAD and UNODC are the custodian agencies of SDG indicator 16.4.1 on IFFs (‘total value of inward and outward illicit financial flows in current United States dollars’). The statistical definition for measuring IFFs was agreed upon by a Task Force meeting jointly organized by UNCTAD and UNODC in July 2019.

anchored to legal constructs of 'unlawfulness', upon the condition that the legal assessment is broadly encompassing.²

Legal definitions of IFFs are often contrasted with 'development approaches' to IFFs. Under a 'development approach', IFFs are defined as international financial flows that have a negative net impact on sustainable development, when all their direct and indirect effects are taken into account (Blankenburg & Khan, 2012; Miyandazi & Ronceray, 2018). The focus is on the development impact of transfers, rather than merely on the illegality of transfers. For example, artisanal mining may feature a high degree of subsistence-level criminal activity, but provides income for ordinary people lacking credible alternative livelihood. A 'development'-oriented definition of IFFs should exclude flows associated with informal artisanal activities, if pro-poor, whatever their legal status. Musselli and Bürgi (2020) argue that the 'development' approach is compatible with a legal definition of IFFs that fully acknowledges the role of standards and balancing in lawmaking and law implementation. For example, in the judicial assessment of rule-violating activities that provide income for poor people, the need to satisfy basic needs may be considered an attenuating circumstance that lessens the severity of a crime and results in reduced charges.

IFFs cover flows associated with a wide and heterogeneous spectrum of activities. They cover illicit flows arising from commercial practices, for example, trade misinvoicing and abusive transfer pricing; flows that are corruption-related, such as bribery, embezzlement, trading in influence; financial flows associated with domestic and international trade in illicit goods and services; as well as money laundering and terrorism financing (UNODC & UNCTAD, 2019). In the extractive sector, IFFs mostly originate from corruption, illegal resource exploitation, and tax evasion specifically through smuggling and transfer mispricing, according to ACEP (2015). These practices however often overlap and intertwine. Altogether these illicit flows constitute a major source of domestic resource leakage, which drains foreign exchange, reduces tax collections, restricts foreign investments, reduces government capital and social spending, and consequently worsens poverty in the poorest developing countries (ACEP, 2015).

B. Illicit Financial Flows in Ghana

There is a dearth of statistics on the entirety of IFF values in Ghana. Available data often analyses trade misinvoicing but not the other aspects of IFFs. Trade misinvoicing as defined by Forstater (2018) is the customs and/or tax fraud involving exporters and importers deliberately misreporting the value, quantity, or nature of goods or services in a commercial transaction. Baker, Clough, Kar, LeBlanc, and Simmons (2014) identify four basic categories of trade misinvoicing; import under-invoicing, import over-invoicing, export under-invoicing, and export over-invoicing. Ghana has experienced trade misinvoicing in each of the four categories, with the highest levels being in

² The assessment should include open-ended legal standards that go beyond bright-line rules, allowing scope for principled decisions, balancing tests, and circumstantial assessment. Furthermore, the legal definition of IFFs should not be specific to jurisdictions, but rather comparatively refer to major legal developments in other jurisdictions and at the international level (Musselli & Bürgi 2020).

export under-invoicing and import under-invoicing (Baker et al., 2014). Under-valued exports are interpreted as evidence of illicit outflow of financial capital from the exporting country (Hong & Pak, 2017). On the other hand, overvalued exports are interpreted as evidence of illicit financial inflows whereby financial capital enters the exporting country through the trade channel. Inward IFFs comprise the sum of import under-invoicing values and export over-invoicing values while outward IFFs comprise import over-invoicing and export under-invoicing.

Trade misinvoicing is a prominent channel for IFFs in Ghana (Ahene-Codjoe, Alu, & Mehrotra 2020). Kar and LeBlanc (2013) argued based on estimates that trade misinvoicing accounts for over 80 percent of illicit outflows. ACEP (2015) identified trade misinvoicing as a major source of illicit outflows from developing countries. Over 10 years, from 2002 to 2011, cumulative gross illicit flows from trade misinvoicing in Ghana reportedly amounted to US\$14.39 billion (ACEP, 2015). According to Baker et al. (2014), the cost of fraudulent trade invoicing in five African countries – Ghana, Kenya, Mozambique, Tanzania, and Uganda amounted to \$14.4 billion in revenue between 2002 and 2014. The study showed that tax authorities in the five countries – lacked the trade, tax, and deals data to curb the illicit flows. Over and under-invoicing in the five countries facilitated the illegal inflows or outflows of more than \$60 billion between 2002 and 2011 (Ali-Nakyea, 2017; Baker et al., 2014).

Another report released by the Global Financial Integrity (GFI) estimated the IFF losses to trade misinvoicing in Ghana for both imports and exports as \$3.2 billion in 2015 (GFI, 2019). GFI (2019) further provided that Ghana lost \$758 million in import over-invoicing, \$722 million to import under-invoicing, \$117 million to export over-invoicing, \$1.6 billion to export under-invoicing. In total the report estimated the IFF inflows by trade mispricing to be 837 million dollars and outflows 2.38 billion.

Illicit financial outflows from Africa are concentrated in a few countries and a few sectors—in particular, the extractive and mining industries (Mevel, Ofa, & Karingi, 2013). Ali-Nakyea (2017) argues that excess dependence on extractive industries for revenue and export earnings in West Africa usually means that the sector is overly exposed to IFFs. Studies have further indicated exceptionally high IFFs from Africa of about \$60bn annually, particularly in the extractives sector (Kar & Spanjers, 2014). Quite unsurprisingly, Ghana on average loses US\$1.4 billion annually in the natural resources sector to IFFs (ACEP, 2015).

C. Illicit Financial Flows and Gold

Illicit financial flows from many developing countries derive from the poor governance of extractive industries. Resource-rich developing countries are dependent on tax revenues from the natural resource sector to finance their national budgets but tend to have low tax to GDP ratios, with IFFs suspected to be one of the underlying factors (Mascagni, Moore, & McCluskey, 2014). The entire value chain of extractives from the process of Licensing, Exploration, Development, Production, Transport & Storage and Marketing, Processing & Marketing, Abandonment right

through to Decommissioning can be prone to IFFs (Afenu, 2020). Le Billon (2011) notes that different extractive sectors are exposed to distinct risks of IFFs, reflecting the specific characteristics of the resources and modes of production.

Ghana's extractive sector remains highly susceptible to IFFs. Ghana is among the top ten (10) global leading producers of gold (ACEP, 2015). Despite this mineral's contribution to economic growth, it is traditionally associated with corruption, tax evasion through various illegal deals by mining companies such as transfer pricing, thin capitalization manipulations, and resource smuggling as well as illegal mining activities such as 'galamsey'. ACEP (2015) on IFFs and the extractive industry in Ghana stated that in 2013, IFFs from illegal mining alone cost Ghana US\$1.7 billion.

Grynberg, Nyambe, and Singogo (2020) in an article on "Illicit Financial Flows, Theft and Gold Smuggling in Africa" admit that illicit financial flows almost certainly do occur, but argue that the methods used to estimate the value of the phenomenon are flawed and lack credibility, thereby undermining the IFF debate. It is asserted that the discrepancies in trade data do not necessarily imply smuggling or fraud as various legitimate reasons may lead to such discrepancies. Emphasis is laid on issues such as the differing definitions of exports and imports, differing definitions of territory, the timing of transactions, declarations of the country of origin, exchange rates or currency conversions, and valuation issues which may all result in discrepancies in trade data (Grynberg et al., 2020).

Addressing these methodology concerns, Ahene-Codjoe et al. (2020) estimate the magnitude of abnormal pricing in gold exports from Ghana using transaction-level microdata from Ghana Customs measured against contemporaneous benchmark prices. Interestingly, abnormal pricing is a strong indicator for trade misinvoicing. Their results indicate that undervalued exports for gold from Ghana equaled 11% of its total exports between 2011 and 2017. The top five destination countries of these undervalued gold exports are India (USD 2.0 billion), South Africa (USD 659.3 million), United Arab Emirates (USD 457.7 million), Switzerland, (USD 343.4 million), and Portugal (USD 133.5 million). The total estimated revenue loss from Ghana due to the undervaluation of gold exports is USD 957.3 million.

The main IFF risks in the Ghanaian gold sector as identified by Ahene-Codjoe et al. (2020) are driven by the presence of artisanal, small-scale, and informal firms in the sector and the regulatory infrastructure for verifying export valuation. Consequently, the two main gold-related IFF threats to be discussed in this paper are export valuation issues and mispricing in gold and illegal gold trade. The problem of illegal gold trade is discussed under two headings; illegal mining (exploitation) in the artisanal and small-scale gold mining industry of Ghana and gold smuggling.

The recent upsurge in illegal mining is an increasingly sensitive issue in Ghana. In 2013, Ghanaian authorities arrested several miners for unlicensed gold mining, many of whom were foreign nationals. Illicit mining is estimated to have attracted about 50,000 foreign mine workers to Ghana (Jamasmie, 2014). This situation is further worsened by a growing trend of Ghanaians who have

subleased their mining concessions to non-Ghanaians. It is however difficult to estimate the total value of illegal mining in Ghana, most of which is smuggled outside of the country (ACEP, 2015).

2. EXPORT VALUATION ISSUES AND MISPRICING IN GOLD

A. Trade Mispricing; Trade Misinvoicing

Trade mispricing is an umbrella definition for incorrectly priced transactions by legally established business entities. Trade misinvoicing and transfer mispricing are two concepts under trade mispricing (Rojas, 2020). For this paper, the discussion in this chapter is restricted to the concept of trade misinvoicing. Rojas (2020) describes this as the false report of the value, quantity, or nature of the exported or imported goods and services in a commercial transaction. This practice is a form of customs and/or tax fraud that is used to evade tariffs, other taxes, and trade restrictions on particular commodities or countries' taxes.

Again, according to (WCO, 2018), trade misinvoicing is one of the primary methods of laundering money for illegal transfer to another country. Cobham and Jansky (2017), posit that trade misinvoicing occurs when exporters understate the value of exports and importers overstate the value of import, and is attributed to the desire of firms to evade trade restrictions and customs duties by illicitly shifting profits between countries.

As identified in the previous chapter, Baker et al. (2014) highlight four strands of trade misinvoicing. Export under-invoicing occurs when the amount of exports leaving a country are under-reported to evade or avoid taxes on corporate profits in the country of export by having the difference in value deposited into a foreign account. Similarly, export over-invoicing involves over-stating the amount of exports leaving a country, which often allows the seller to reap extra export credits or avoid capital controls or anti-money laundering scrutiny. On the import side, traders often under-report the amount of imports in a transaction to circumvent applicable import tariffs and value-added tax. Over-reporting imports, they are often doing so to legitimize sending out additional capital under the guise of legal trade payments. Import over-invoicing disguises the movement of capital out of a country (Baker et al., 2014). The above definitions demonstrate that the misrepresentation of a value, in the form of either undervaluation or overvaluation is a strand of trade misinvoicing.

Many discussions on export valuation issues in Ghana identify the phenomenon of export under-invoicing as prevalent. Thus, the paper primarily focuses on the under-invoicing of gold exports and IFFs in Ghana. Undervaluation in export values and its resultant under-invoicing has a big impact on government revenue since export taxes and royalties are based on the value of the mineral product export (Readhead, 2018).

Ahene-Codjoe et al. (2020) discovered using the London Bullion Market Association (LBMA) daily price series for gold that Ghanaian exports are undervalued by approximately 10% of the total value of gold exported (USD35.6 billion). The undervalued amount thus constitutes USD 3.5 billion below the contemporaneous London market prices adjusted for the purity of Ghanaian gold production.

A Ghana Revenue Authority (GRA) officer stationed at the assay office in the Ghana Airports Company Limited was interviewed on this issue of undervaluation. The officer revealed that although not subjected to strict proof, before the Precious Minerals Marketing Company (PMMC) was given the mandate to assay all exports in 2016, the possibility of the undervaluation of gold exports by LSE's existed. However, with the new regime which mandates PMMC to assay gold of both small and large-scale miners, it is virtually impossible to assert any form of undervaluation. A Technical Director of the PMMC in charge of assay and valuation at the airport also expressed pessimism at the likelihood of the undervaluation of gold export in Ghana post-2018 when the mandatory assay by PMMC began.

Again, both the GRA officer and the Technical Director of the PMMC allude to the methodological issues highlighted by Spanjers and Salomon (2017) and emphasize the need for more analysis in quantifying IFFs. It is argued that mismatches due to delays in the export/import process, different recording practices, and mismatches in reporting are some issues that cause legitimate discrepancies. While acknowledging that mixing methodologies and accounting for certain factors provide some insights, it is believed that estimates have been conservative given data issues and the complexity of IFFs. It is emphasized that the low quantities of gold declared as being exported from Ghana as opposed to the high values of the commodity recorded abroad as originating from the same could be attributed to other factors, such as administrative errors and not under-invoicing necessarily.

This chapter thus examines issues of gold export valuation, the mineral (gold) revenue regime in Ghana, the relationship between valuation and the revenue obtained, and other incidental issues in an attempt to identify and resolve the loopholes resulting in trade misinvoicing, if any, and consequently illicit financial flows out of the country.

B. Assay of Gold and Export Valuation

According to Readhead (2018), the three stages in the mineral export valuation process are sampling, sample preparation, and analytical testing. These stages constitute the process of assay through which minerals are valued to determine their quality. Analytical testing determines the quality and composition of mineral exports to establish the proportion of "payable metals" in the sample, as well as any impurities that might reduce the final sale price.

Gold assay is essential in determining the quantity of gold in a mineral deposit to tackle the menace of under-invoicing of exports. The process involves bringing a rock sample, most often a core obtained through drilling, to a laboratory where it is examined by experts (Barrera, 2017, May 11). Assay certifies the quantity and value of gold exports as part of efforts to tighten controls on the sector to ensure the state receives the revenues it is due.

Regulations 3(3) of the Minerals and Mining General Regulation 2012 (LI 2173) requires the holder of a licence to export, sell or dispose of gold or other precious minerals before a shipment

of minerals is made, provide to the commission particulars of the quantity and grade of the mineral to be shipped and access for samples to be taken by a government-designated laboratory for assaying purposes.

Unfortunately, Ahene-Codjoe et al. (2020) discovered that between 2011 and 2017, there existed significant loopholes for exporters to bypass regulatory oversight of the purity of their gold exports. The large-scale mining (LSM) companies often independently assayed all exports before shipment whilst ASMs were required to send their gold to a PMMC, for assaying before shipment. This resulted in the smuggling of gold out of Ghana resulting in the loss of billions of dollars to the government due to the failure to assay and certify gold produced by large-scale miners before export. Some estimates are that 25 billion dollars' worth of gold was exported between 2010 and 2015 but only 3.8 billion dollars was repatriated back to Ghana. Ghana also loses all the by-products when gold is refined outside Ghana (Mustapha, 2017, December 11).

The Government of Ghana in response to the undervalued quantities of gold declared in Ghana against high values of the commodity recorded abroad directed the Ghana Chamber of Mines to work with (PMMC) to check the real amount of gold exported out of the country. Vice President, Dr. Mahamudu Bawumia stated that the government will no longer accept the situation where gold is exported out of the country without an assessment from the PMMC. He bemoaned the habit where multinational mining firms operating in Ghana on their own, examine the gold they produce and export without the involvement of the PMMC (PMMC, 2018b).

Pursuant to LI 2173, the Precious Minerals Marketing Company Limited in 2016 was appointed as the Government's assayer with the sole mandate of assaying all gold that leaves the country (PMMC, 2018a). It is worthy of note that the new assaying regime has since 19th February 2018 ensured that both small and large Scale Mining Companies assay all their produce before export (PMMC, 2018b).

C. The Gold Export Regime in Ghana

Section 6(1) of the Minerals and Mining Act, 2006, Act 703 provides that except otherwise provided in the Act, a person shall not export, sell or otherwise dispose of a mineral unless the person holds a licence granted by the Minister for that purpose. This means that a person must as a matter of necessity acquire a licence to either buy or deal in gold ore. In Ghana, there is no export without a licence.

The officer at the GRA interacted with, spelt out the guidelines for the export of gold by a Licensed Gold Exporter (LGE). According to the officer, the practice is that the holder of a licence to export, sell, or dispose of gold or other precious minerals before shipment provides to the Minerals Commission of Ghana (MINCOM) particulars of the quantity and grade of the mineral to be shipped. The LGE shall also grant access for samples to be taken by a government-designated laboratory for assaying purposes. The gold ore to be assayed is then submitted to the PMMC

together with an export declaration form, a packing list, and an invoice. After the assay by PMMC copies of the report must be submitted to the LGE, GRA, Bank of Ghana (BOG), and MINCOM. 0.1% of the valued price used to be paid as the assay cost to PMMC which was in turn submitted to MINCOM. An amendment has been made to the 0.1% PMMC charge. This levy has been reviewed upwards to cater for Ghana Education Trust Fund (GETFund), Value Added Tax (VAT), and National Health Insurance Scheme (NHIS) payments. 0.2% of the valued price of the mineral is paid to MINCOM by the small-scale mining companies for sustainability development. Large scale companies are distinguished from small-scale exporters for revenue purposes. The payments by the large-scale companies are catered for differently in the form of various taxes and royalties to the government.

D. The Legal Regime of Mining Revenue in Ghana

This section outlines the charges and payments associated with the mining and export of gold in an attempt to identify reasons why LGE's may undervalue the quantity and quality of their gold export. As a starting point, it must be noted that there is no actual tax charged on gold export. Authority for this proposition is the fourth schedule of the harmonized commodities code on mineral export duty.

1. Revenue Associated with Mine Production

Article 257(6) of the 1992 Constitution of Republic of Ghana (1992 Constitution), provides that every mineral in its natural state in, under, or upon any land in Ghana, rivers, streams, watercourses throughout Ghana 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. A combined reading of Articles 175 and 176 of the 1992 Constitution reveals the existence of the consolidated fund into which all revenues or other money raised or received for, or on behalf of, the Government; and any other amounts of money raised or received in trust for, or on behalf of, the Government shall be paid.

Among other things, Section 23 of Act 703 as amended requires a holder of a mineral right shall pay annual ground rent as prescribed. This ground rent will be paid to the owner of the land in question except that in respect of mineral rights over stool lands which shall be paid to the office of the administrator of stool lands. Section 24 of Act 703 references some annual mineral rights fees which shall be made to the Minerals Commission. Provision is also made for mineral royalties that may be paid to the Republic in Section 25 of Act 703. This is an ad valorem royalty calculated as not more than 6% or less than 3% of the total revenue of minerals obtained by the miner. It is also provided in Section 43 of Act 703 that where a mineral right is for mining or exploitation, the Government shall acquire a ten percent free carried interest in the rights and obligations of the mineral operations in respect of which financial contribution shall not be paid by Government. These are dividends from state participation deemed to be paid into the consolidated fund.

The law does not categorically speak to the royalties paid, however inferring from Articles 175 and 176 of the 1992 constitution which reveals the existence of the Consolidated fund into which all revenues or other amounts of money raised or received for, or on behalf of, the Government; and

any other sums of money raised or received in trust for, or on behalf of, the Government shall be paid, we can safely assert that the royalties are paid into the consolidated fund. The royalties from mining together with all other monies in the fund are then used to meet expenditure that is charged on that Fund by the Constitution or by an Act of Parliament among other things.

Dividend and Corporate taxes paid by mining companies are all lodged into the consolidated fund i.e. Central government's treasury. Mineral Rights Payments and Property rates are used by the recipient agencies, i.e. Minerals Commission and District Assemblies respectively as internally generated funds. Mineral Royalty is first paid into the consolidated Fund. 20% of the mineral royalty receipts is thereafter released to the Minerals Development Fund and the Office of the Administrator of Stool Lands.

Ground rent received by the Office of the Administrator of Stool Lands is distributed per Article 267(6) of the 1992 constitution. This provision provides that 55% of the funds received are allocated to the District Assemblies; 25% to stools and 20% to Traditional Authorities within the jurisdiction of the paying mining company.

2. Revenue Derived at the Point of Export

On 15th May 2020, the Commissioner-General of the GRA under the Commissioners order-CGO 2020/05 imposed a 3% withholding tax on all Small Scale exports of gold from the country. The power to impose this tax is borne out of Section 49(6e) of the Customs Act, 2015 (Act 891). Exporters are now required to show proof of payment of the 3% levy before they can proceed with their exports. This withholding tax is paid by the small-scale miner through the exporter. Practically it is paid by the exporter on behalf of the small-scale miner. During the transaction between the miner and the buyer, the buyer withholds 3% of the money due to the miner which is in turn given to the exporter for payment to the GRA. Interestingly, there had been previous attempts to introduce this withholding tax but unfortunately, these attempts barely yielded any results. In 2016, the Authority imposed a 10 percent withholding tax on small-scale mining in a bid to increase domestic revenue mobilization and getting members in the sector to pay the appropriate taxes under the revised Income Tax Act, 2015 (Act 896) (Myjoyonline, 2019, February 6). This directive failed to work. Subsequently, it was reviewed downward to seven percent and finally three percent after a series of meetings between regulators and operators in the sector. It must be noted that even at this point the GRA still found it increasingly difficult getting small-scale and artisanal miners to pay the withholding tax despite the downward adjustment of the levy (Myjoyonline, 2019, February 6).

Earlier in 2017, according to the B&FT (2017, January 26), the Association of Gold Exporters, Ghana, asked the government to reduce and consolidate taxes and levies in the mining industry. The Chairman of the association argued that gold exporters were expected to pay a 3 percent withholding tax to the Ghana Revenue Authority (GRA); 0.5percent to Minerals Commission for the Small-Scale Mining Sustainability Fund; and a 0.118percent to the Precious Minerals Marketing Company but the taxes were scaring them away and encouraging Smuggling (B&FT, 2017, January 26).

Rent charges, loading fees as stated in Section 97 of the Customs Act, (Act 891). Section 97(5) of Act 891 list some of the available charges on gold export. The value of goods exported is (a) the cost to the purchaser abroad excluding freight, (b) the charges incurred for transport up to the port or place of exportation, (c) harbour dues and loading charges, and (d) all other costs, profits, charges and expenses and duties, accruing up to the point where the goods are deposited on board the exporting conveyance at the place of departure from the country. Some of which accrue to the government and contribute to gold export revenue.

It is argued to a large extent that some of these charges are paid according to quantities mined/exported so they can be undervalued to avoid high charges.

E. GRA and Gold Export Valuation in Ghana

As highlighted earlier, before being granted the mandate of assaying all gold exported from Ghana, PMMC only assayed gold exported by small-scale miners. Gold from the LSM companies was assayed by the individual companies in the presence of a GRA officer. Consequently, several issues arose concerning the GRA's involvement in the export valuation process.

Ayee, Søreide, Shukla, and Le (2011) for instance, lamented over the GRA's lack of capacity to value the actual gold produced by the large scale miners. It was observed that the personnel of the Customs Division of the GRA in charge of the mining companies were not necessarily present in the bullion room to authenticate the shipping documents and monitor the assay of the gold. They were called to validate the records only at the time of sealing the boxes for export. Also, the GRA did not have the facility or capacity to independently verify the weight and quality (finesness) of gold submitted by the large-scale miners. This created a serious handicap for the large taxpayer unit in monitoring the production figures and assessing the profits tax liability and royalty payments (Ayee et al., 2011). The assaying regime in place since 2016 has however rectified all these issues.

The GRA officer stationed in the assay room interviewed referenced Section 3 of the GRA Act 2009, Act 791 as authority for the GRA's present role in the gold export valuation process. He listed the GRA's role as including the assessment and collection of taxes, interest, and penalties due to the Republic, administering laws for which the CGO 2020/05 was cited, promoting tax compliance, and finally combating tax fraud and evasion.

From the interview with the officer, a GRA officer is always present in the assay room at the airport when the assay is done to determine and enforce the payment of the right amounts to the state. Also, this officer ensures the 3% withholding tax on all Small Scale exports of gold and all other payments are made for the appropriate clearance to be obtained for the export to take place.

F. Reconciliation of Ghanaian Assay Values with that from Refineries abroad

Most African jurisdictions accept the volume and purity estimates provided by mining companies when exporting doré or concentrate from their country without any attempts to verify the numbers. Mention is made of South Africa, the continent's largest mineral exporter who does not undertake an independent assessment of the content of exports of minerals (Grynberg et al., 2020). The situation in Ghana, however, appears different.

Per Regulations 3(4) of LI 2173, the holder of a licence to export, sell or dispose of gold or other minerals shall, not later than thirty days after a shipment of minerals, submit to MINCOM the certified copies of the refinery returns. The volume and purity estimates from refineries abroad are compared to that of PMMC and the mining company/ (LGE) in question and the highest values are used for valuation purposes. Mostly, the assay values from the refineries abroad are used if they fall within the tolerance level. If the refineries' values are higher than that of PMMC, the refineries' values are used. If refineries' values are less than PMMC but within tolerance level refineries values are used. If the refineries' values are less than that of PMMC but outside tolerance level, a third party is invited to assay. To a large extent, the refineries' values seem to take precedence under all circumstances. Taxes and royalties are paid after results are gotten from the refinery and compared.

Unfortunately, another problem arises when the mining companies get the value of gold from refineries outside Ghana for royalty determination. It is the case that Gold Fields Ltd, one of the largest producers of gold in Ghana, is a significant shareholder of the refinery in South Africa, where their produce is refined and the results sent to Ghana. This goes back to the point raised by Ayee et al. (2011) in the previous chapter that the Customs Division of the GRA does not have the facility or capacity to verify the weight and quality (fineness) of gold independently.

G. Point of Mineral Valuation and Matters Arising

The precise point at which export valuation should take place will depend on when taxes and royalties are levied. For example, if royalties are imposed on mine production, then valuation may need to be done at the mine gate (Readhead, 2018). Consequently, if royalties and taxes are imposed at the point of export, then valuation should be done at the last point encountered before the mineral product is exported.

In Ghana, there is no export tax on the actual export of gold. On the other hand, the provisions highlighted above provide for the royalties and other payments paid before and during mining operations. The assertion that the precise point at which export valuation should take place will depend on when taxes and royalties are levied goes to say that valuation should not only be on assay results at the airport but earlier. Infact, it is argued that the lack of valuation of exports at the point when taxes and royalties are levied might be one strand of undervaluation.

One African country reported cases of smaller companies requesting export permits based on analytical work and valuations done on lower-grade ore, but the actual exports contained higher-grade material. The problem was that royalties were based on the low values generated for export Permits (Readhead, 2018). It seems that because no valuation was requested at the point of export

hence this anomaly was not determined. According to Readhead (2018), the government of this country sought to resolve this issue by comparing the value of actual exports at the border with the stated value in the export permit.

Valuation was done by the LGE on the mine site before the new regime that began in 2018 but clearly, this does still not satisfy the “when taxes and royalties are levied” requirement from the mineral revenue regime explained above. In Ghana, the point where taxes and royalties are levied over our minerals is not absolute. Some taxes are paid at the point of export; others are imposed on mine production.

3. ILLEGAL GOLD TRADE

A. Introduction

The discussion of the illegal gold trade in this chapter focuses on artisanal and small-scale mining (ASM) rather than large-scale mining (LSM). This is largely because ASM in Ghana is mostly informal, thus vulnerable to exploitation by criminal networks. LSM on the other hand is strictly formalized with very limited avenues for exploitation. Upstream artisanal and small-scale gold mining (ASGM) activity is often best characterized as an informal livelihood activity. This informality renders the sector and those involved vulnerable to exploitation thereby increasing the risk of illicit actors deriving illicit profits (Hunter, 2020). Le Billon (2011) identified the risks of illegal exploitation and tax evasion as prevalent in the ASM sector.

Due to the informal and clandestine nature of the ASGM trade, it is difficult to estimate its scale. McQuilken and Hilson (2016) posit that Ghana's ASM industry employs about one (1) million people and supports approximately (four and a half) 4.5 million others. Again, as of 2018, there were over three hundred (300) ASM firms registered in the country. Apart from the legally recognised artisanal and small-scale miners, there are also quite a considerable number of illegal miners (referred to as *galamsey*) in the industry (Ahene-Codjoe et al., 2020).

Research by Hunter (2020) revealed that both licit and illicitly mined gold is exported through official channels, as well as smuggled out of Ghana. Again, respondents interviewed by Hunter (2020) widely alleged that Chinese nationals were not selling the gold they mine to legal buyers in Ghana but were rather smuggling or selling it to foreign buyers or exporters who did not declare the quantities obtained. Quite naturally, the lack of a discernible supply chain linked to Chinese ASGM operations, especially when other groups of ASGM operators visibly sell gold, indicates the gold mined by Chinese operators may be smuggled out of Ghana before it is sold. When this happens, all benefits from mineral resources are lost. This contrasts with informally mined gold that works its way into the legal gold market before export, allowing the Ghanaian government to collect revenue.

IFFs associated with the West African ASGM sector are extremely complex. Possible variations to a linear ASGM supply chain include individuals playing multiple roles, financial exchanges skipping actors or creating tangential benefits, and profits being invested back into mining operations (Hunter, 2020). As such, mapping ASGM IFFs in West Africa is challenging. In very specific terms, it is difficult to assess the value of IFFs associated with ASGM and gold smuggling. Hunter (2020) however estimates the IFFs associated with ASGM and smuggling in Ghana as USD 1.7 billion per year as of 2013.

ACEP (2015) also argues that it is difficult to estimate the total value of illegal mining in Ghana. Illegal mining and smuggling both serve as sources of ASM IFFs. Again, a relationship between illegal mining and smuggling is often established as this; most, of the proceeds of illegal mining, are said to be smuggled outside the country. Both illegal mining and smuggling are known to be done in secret.

This chapter addresses two main issues on illegal gold trade in the ASM industry; illegal mining and smuggling both resulting in IFFs.

B. Illegal Mining (Exploitation) in the Artisanal and Small-Scale Gold Mining Industry of Ghana and IFFs

There is a tendency to equate ASGM to "illicit mining". This, however, is not right. Not all ASGM is illicit or illegal. Some countries legally recognise ASGM; the domestic legislation at any material point in time determines whether or not a mining activity is illicit. Thus, where (explicitly) prohibited by domestic legislation, ASGM is considered illicit. Again, when laws and regulations require certain conditions and procedures to be followed, any mineral extraction without corresponding authorisation is deemed illicit. Where mineral extraction without formal authorisation is not explicitly prohibited, ASGM is "informal". Informal ASGM comprises all operations that do not have an explicit written authorisation to extract the minerals, all permits obtained and all required documents approved. Finally, if there is no specific legislation regulating ASGM (which allows or prohibits it) ASGM is not regarded as "illegal", but rather "unregulated" (Hruschka, 2013).

ASGM in Ghana is regulated. Section 82(1) of the Minerals and Mining Act 2006, Act 703, hereinafter referred to as Act 703 explicitly prohibits the undertaking of a small-scale mining operation without authorisation. As such, all ASM conducted in the country without formal authorisation is illicit activity (Hunter, 2020). Hunter (2020) in a study on ASM in both Ghana and Liberia discovered that in practice, there was a thin line between legality and illegality. For instance, Section 85 (a) of Act 703, stipulates that a licence granted to a person, a group of persons, a co-operative society, or a company shall be for a period of not more than five years from the date of issue in the first instance and may be renewed on expiry. Section 93 of Act 703 also provides that a person licensed to undertake ASM may win, mine, and produce minerals by an effective and efficient method and shall observe good mining practices, health and safety rules and pay due regard to the protection of the environment during mining operations. These provisions notwithstanding, legally licensed miners often work in areas outside their allocated land, allow their licences to expire, or violate the environmental obligations stipulated in their licences. As such although Ghana has laws that allow for formal, legal ASGM, most ASGM is done illicitly in the informal sector (Hunter, 2020). Illegal mining in Ghana is referred to as 'galamsey', a slang from 'gather them and sell'. Despite the requirement in Section 83 (a) of Act 703 that small-scale mining is a prerogative of Ghanaian nationals, Jamasmie (2014) posits that illicit mining has attracted about 50,000 foreign mine workers. This situation is further worsened by a growing trend of Ghanaians who have subleased their mining concessions to non-Ghanaians contrary to Section 88 of Act 703 which specifically provides that a licence granted for small-scale mining proposes may be transferred only to a citizen and with the consent of the Minister.

Hausermann and Ferring (2018) argue that foreign companies have taken advantage of loopholes in the acquisition of licenses to operate on small-scale mining concession sites. These companies have taken advantage of administrative and technical irregularities and have stretched their involvement beyond the provision of technical support to the complete operation of mining concessions. To a large extent, the recent trouble with illegal mining primarily exposes a failure of management over one of the country's main natural resource exports-gold (Nwokolo, 2019).

Hunter (2020) is certain that the rising involvement of foreign nationals in the ASGM sector has played a significant role in the increasing amount of illicit activity and the rise of related IFFs.

Quite naturally, illegal mining naturally results in undeclared corporate and other revenues from illegal resource exploitation as this activity is not regulated and accounted for. Even where minerals mined illegally are exported through legal channels and point of exit taxes paid for, monies that should have been paid at the point of extraction are lost. Another strand of the problem arises when minerals mined illegally are smuggled outside the country. In this case, payments at both points of extraction and export are avoided.

According to Section 86 of Act 703, the size of the area in respect of which a licence may be granted for small-scale mining shall be per the number of blocks prescribed. Facilitation payments (bribes) paid by companies however enable illegal resource exploitation outside of concession areas (Le Billon, 2011). At this point, royalties are not paid and monies that should have been paid at the point of extraction are lost resulting in a loss of revenue for the country involved. While the extent of galamsey has been difficult to measure, in 2016, it is estimated to have cost the country about \$2.2 billion in uncollected tax alone (Nwokolo, 2019).

Hunter (2020) classifies the problem of illegal mining in the artisanal and small-scale gold mining (ASGM) industry and IFFs three headings for easy analysis. Consequently, this paper follows that module and discusses ASGM licensing regimes, regulatory frameworks and IFFs, pre-mining financial transactions and IFFs, and gold sales and IFFs.

1. ASGM Licensing Regimes, Regulatory Frameworks, and IFFs

The Minerals Commission of Ghana has suggested that 80% of ASGM operators in Ghana engage in illegal activities (Collins & Lawson, 2014). As identified above, according to the Minerals and Mining Act of Ghana (Act 703), a licence for a small-scale mining operation shall not be granted to a person unless that person (a) is a citizen of Ghana. Again, Section 88 of Act 703 provides that a small-scale licence may be transferred only to a citizen. It must be noted that both the grant and transfer must be by the Minister in charge of an officer authorized by the Minister.

In February 2019, Ghana's President Nana Akufo-Addo at a mining conference noted that artisanal mining which began as a small-time venture has been transformed into "large-scale and dangerous" operations run by foreign-controlled criminal syndicates (David Lewis, Ryan McNeill, & Shabalala, 2019). Hilson, Hilson, and Adu-Darko (2014) posit that since 2005, an estimated 50,000 Chinese nationals have engaged in ASGM in Ghana, mostly illegally.

There are allegations that concerns about jeopardizing foreign relations hinder efforts to combat the activities of illegal foreign miners in Ghana. For example, some individuals believe a national task force to help "flush out" illegal foreign nationals mining for gold was delayed due to concerns it might harm relations with donors (Hilson et al., 2014). Ultimately, a dearth of local funding options has pushed ASGM operators to explore alternative support channels. This has often meant reaching out to foreign partners. The decision by scores of Ghana's galamsey miners to reach out to foreign financiers has ultimately stimulated the inflow of foreign nationals to the sector (Hilson et al., 2014).

Section 82(1) of Act 703 stipulates that despite a law to the contrary, a person shall not engage in or undertake a small scale mining operation for a mineral unless there is in existence in respect of the mining operation a licence granted by the Minister for Mines or by an officer authorized by the Minister. On the contrary, the AGSM sector is fraught with informal modes of licensing allocation.

Access to plots of land for ASGM is usually granted through direct negotiations according to traditional customary practices to the detriment of legal stipulations (Nyame & Blocher, 2010). This is because relatively high entry fees and long licensing processes make it difficult to adhere to legal stipulations such as this.

While upstream ASGM activity is often best characterized as an informal livelihood activity, it is this informality that increases the risk of illicit actors deriving illicit profits. There is a vast assortment of actors exploiting the ASGM sector, both in degree and culpability, ranging from small-time gold buyers illegally smuggling gold across borders, to designated terrorist groups directly engaging in the mining, smuggling, and laundering of gold (Wagner, 2016). IFFs definition by OECD (2018a) as ‘money illegally earned, transferred or used’ is almost always the product of illicit activity. These illicit activities are manifested in the forms referred to by Wagner (2016) above.

In very simple terms, IFFs linked to the ASGM sector are the product of small-time gold buyers illegally smuggling gold across borders, to designated terrorist groups directly engaging in the mining, smuggling, and laundering of gold. In Ghana, although the latter has not been established to exist, there is a grave suspicion of the former occurring in clear contravention of the licensing regimes, regulatory frameworks identified in this section.

2. Pre-mining Financial Transactions and IFFs

Interestingly, IFFs begin to form before the gold even leaves the ground (Hunter, 2020). In the ASGM sector, there are two main problems associated with pre-mining financial transactions and IFFs. Firstly, there is the issue of hidden actors illicitly pre-financing mining operations and secondly the pre-financing by actors who will engage in IFFs once gold has been mined (Hunter, 2020). The IFFs at the pre-mining financial transactions phase can further be broken down into pre-financing of mining operations, mercury sales, and payments for land use.

Agreements for the pre-financing of mining operations easily take advantage of miners who do not possess the competencies and experience of investors. Hunter (2020) further discovered that Ghanaian, Chinese, and Indians are the main nationalities of individuals identified as pre-financing ASGM operations. Some pre-financing arrangements take the form of the provision of machinery or funds to locals to undertake ASGM. This translates into Boafo, Paalo, and Dotsey (2019)'s the proposition that Chinese miners in collaboration with local actors have imported sophisticated machines that have gradually replaced the rudimentary methods and implements used by their Ghanaian counterparts. Chinese organizations focus on providing services to mining entities in the extractive industry; yet these services are plagued by illegalities, as most companies eventually offer services to small-scale miners or end up working in this sector, contrary to the rules and regulations in Ghana (Ahiadeke, Quartey, Bawakyillenuo, & Aidam, 2013). In most cases, Chinese miners, with their modern technology, actually extract the minerals and share the proceeds with their local counterparts (Odoom, 2016). Some cases of pre-financing result in the illegal involvement of foreigners as demonstrated above. Arrangements that were initially made for pre-mining support metamorphosed into illicit pre-financing mining operations. In other cases, the foreign actors that are not seen or heard off suddenly appear once mining is done to engage in IFFs once gold has been mined. In extreme circumstances also, Hunter (2020) discovered that diggers and miners reportedly adopt arguably unethical strategies, such as exaggerating the volume of ore produced each day, to ensure that pre-financing continues.

Secondly, Section 96 of Act 703 states that "A small-scale miner may purchase from any authorized mercury dealer the quantities of mercury that may be reasonably necessary for the mining operations of the small scale miner". Mercury is known to be widely used in Ghana, with pre-financiers and gold buyers providing it to miners to encourage partnerships and loyalty in business transactions (Hunter, 2020). These pre financiers later tend to get back their returns in other forms compounding the issue of IFFs.

Finally, the 1992 Constitution of the Republic of Ghana mandates chiefs to receive a percentage of income from natural resources and to use this income to finance development in their respective jurisdictions (Hilson et al., 2014). Although this varies in practice, chiefs in Ghana, are not legally accountable to anyone. This lack of accountability enables some chiefs to collect payments for people to mine (largely considered bribes), usually without suffering any consequences (Hunter, 2020). Article 267 (1) of the 1992 Constitution provides that all stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool per customary law and usage. The other clauses of Article 267 speak to the collection and disbursements of royalties and revenues accruing from stool lands. As observed by Hunter (2020), payments for using land are often bribes or are pocketed by local officials. Thus such payments are part of IFFs, with landholders being peripheral actors benefiting from the ASGM sector. Hilson et al. (2014) also observed that while Ghana's 1992 constitution indicates that relevant chiefs are to receive a percentage of income from natural resources to finance development in their respective jurisdictions, these monies are typically squandered and/or used for personal gain. Again, in some circumstances, chiefs regard lands in their traditional areas property of their ancestors passed down to them. To mine, the small-scale miner fulfils the requirements of the law, and may have to appease the chief. Sometimes, chiefs may exercise the sole power without recourse to the provisions of the law, and allocate lands to ignorant small-scale miners to operate illegally (Ibrahim, 2018).

3. Gold Sales and IFFs

IFFs in gold sales are usually analysed from the perspective of diggers and miners on the one hand and buyers, dealers, and exporters on the other hand. Hunter (2020)'s study revealed that miners and diggers contribute largely to the revenue lost by governments and profits generated by criminal actors.

In the second instance, buyers sell their gold to dealers, who either export or smuggle the gold out of the country and region. With the high suspicion that many dealers are reportedly foreign nationals, a significant portion of profits is likely invested off-shore. In particular, it is thought money is held or invested in the home-country of the dealer. Profits may also be reinvested back into the ASGM sector as pre-financing for mining operations (Hunter, 2020).

C. Gold Smuggling and IFFs

A United Nations Office on Drugs and Crime (UNODC) 2011 report posits that IFFs thrive on criminal activities, an example of which is smuggling (ACEP, 2015). Gold is smuggled to evade official mechanisms of gold export transfers. Taxes and other payments due to the country are then lost in the process. Proceeds from smuggling for IFFs are classified as being illicit both in origin and transfer.

According to Hunter (2020) there have been several reports of licensed buyers not declaring all the gold sold to exporters, or of dealers under-declaring exports to increase profit margins and enable smuggling. The study by Hunter (2020) revealed that both licit and illicitly mined gold is exported through official channels, as well as smuggled out of the country. Again, it is also widely alleged that Chinese nationals are not selling the gold they mine to legal buyers in Ghana, but rather smuggling or selling it to foreign buyers or exporters who do not declare it. The lack of a discernible supply chain linked to Chinese ASGM operations, especially when other groups of ASGM operators visibly sell gold, indicates the gold mined by Chinese operators may be smuggled out of Ghana before it is sold. When this happens, all benefits from mineral resources are lost. This contrasts with informally mined gold that works its way into the legal gold market before export, allowing the Ghanaian government to collect revenue (Hunter, 2020).

Baker et al. (2014) make an important distinction between pure and technical smuggling, worthy of note. “Pure smuggling” is said to occur when contraband is transported clandestinely to the blind side of authorities in charge. “Technical smuggling” on the other hand occurs through the manipulation of customs documentation to misrepresent the value, quantity, or quality of goods being imported or exported. The unreported quantities are then believed to be smuggled. This ties in with trade misinvoicing which is sometimes detected when goods are recorded differently in the importing and exporting country (Baker et al., 2014). In Ghana, under-declaring the amount or value of gold exported is one mechanism known to facilitate smuggling. Sometimes, false receipts are used to downplay the quality and quantity of gold exported (Hunter, 2020). Since the preceding chapter analyses the concept of trade misinvoicing, this section discusses pure smuggling rather than technical smuggling.

There are several cases of countries emerging over the last few years as smuggling hubs in the African gold market. This is attributed to shortcomings in the ASGM sector through smuggling and trade with tax havens like the UAE/Dubai (Grynberg et al., 2020). For instance, aside the harmonization between Mali, Côte d'Ivoire, and Burkina Faso of a 3% export tax on gold, Mali has an additional export policy of applying a tax to only the first 50kg of gold exported per month. This has made the country a central hub for smugglers from neighboring countries and it has inadvertently lost tax income to its neighboring countries as well as itself (Grynberg et al., 2020).

Also, an Organisation for Economic Co-operation and Development (OECD) study of mineral supply chains in the African Great Lakes Region found that stakeholders thought most Congolese gold was smuggled from Uganda by air through Entebbe Airport, with gold traders alleging the best manner in which to smuggle gold is via cargo or as hand luggage (Mthembu-Salter, 2015). Smuggling of gold out of countries' overland borders is rife in some countries, Liberia for instance (Hunter, 2020).

Recently in October 2020, officers of Ghana's National Security arrested a popular gold dealer and his accomplices, suspected to be part of the gold smuggling syndicate. It is unclear, which country the gold, which weighed 14.4kg with an estimated street value of about 1 million dollars, was being transported to, but many suspect Dubai in the UAE to be the ultimate destination (Herald, 2020). Barely a month before, a separate gold smuggling syndicate was rounded up at the border town of Aflao in the Volta Region. The cartel, including Ghanaians and foreigners from neighboring countries, in partnership with their Indian financiers, have been behind the smuggling of Ghana's precious mineral resources in huge volumes using Togo. The Herald's information is that they have

some political and security backing in their illegal business, which is making Ghana lose millions of US dollars by way of revenue (Herald, 2020).

Due to porous borders and alleged pervasive smuggling, it is difficult to confirm from which cities or even countries, ASGM gold from Ghana and Liberia is exported out of the region. Interlocutors in Ghana tend to believe gold enters the formal supply chain within the country and is exported from Ghana (Hunter, 2020).

One measure of smuggling has been to analyse the import figures of primary destination countries for Ghanaian gold. It is believed that comparing import and export figures indicates what percentage of gold could be smuggled. For instance, calculations based on UN Comtrade provide that in 2011, the United Arab Emirates (UAE) imported 27.6 tonnes of gold from Ghana. However, Ghana reports exporting only 19.4 tonnes to the same country in the same year (OECD, 2018b). Hunter (2019) then argues that if all gold imported to this country that reportedly came from Ghana did originate there, 30% was smuggled out of Ghana.

Similarly, according to Nwokolo (2019), illegal gold exports to the UAE suspected to be carried in hand luggage on planes have raised concerns especially after Ghanaian President Nana Akufo-Addo observed a \$5 billion discrepancy between trade statistics and actual gold exports in 2017.

The officer at the Minerals Commission of Ghana interviewed on smuggling emphasized that the secret nature of the act has made it virtually impossible to compile statistics and analyse any supposed trends of smuggling in the country. Although there is a high suspicion of gold smuggling there is no concrete evidence to corroborate the intensity or otherwise of the menace. Accordingly, it is only the instances where people are caught smuggling gold consignments across borders or in airports that are recorded and this is not representative of the minerals and revenue leaving the country unaccounted for.

4. SUMMARY AND CONCLUSIONS

A. Summary

Primary and secondary sources of data were employed in identifying and studying the gold-related illicit financial flow (IFF) threats in Ghana in an attempt to arrive at solutions to curb the menace. Respondents from the Minerals Commission of Ghana (MINCOM), Precious Minerals Marketing Company (PMMC), and the Export seat of the Ghana Revenue Authority (GRA) were interviewed. The findings corroborate assertions of the prevalence of two gold-related IFF threats - export valuation issues and mispricing in gold and illegal gold trade in Ghana. There is a need for government intervention to provide mechanisms and resources to equip officials of state institutions to better understand and combat the identified IFF threats.

The appointment of the PMMC as the national assayer is commendable. However, increasing research on gold-related IFFs continues to reveal various intricacies that require urgent attention. Recommendations to this effect are outlined below.

B. Limitations of the study

Firstly, the global Coronavirus pandemic posed a challenge to the data collection process of the study. The shift system of work in some organisations and the remote work culture adopted by many others made it difficult to interview many of the respondents initially envisaged.

Secondly, some officials were not forthcoming on the gold-related IFF threats in question. In assessing under invoiced gold exports, for instance, some of the officials were convinced that the compulsory assay mechanisms implemented by the PMMC completely discourage any form of misinvoicing. On the issue of gold smuggling and IFFs, another official interviewed at MINCOM admitted the high likelihood of smuggling in the ASGM industry. This official however emphasized continuously that smuggling is a criminal activity, hidden and without a defined scope as such much could not be said on the issue.

These issues posed severe constraints to the study as many questions are still left unanswered.

C. Recommendations

To mitigate the identified gold-related IFF threats in Ghana, many grey areas require attention. The paper recommends the following;

- a. Need for contextual data to better interpret the concept of mispricing in gold

There is the need to contextualize the identified illicit financial flow threats to allow for better analysis. An officer at MINCOM questioned the metrics for measuring mispricing. This officer argues that the existence of a globally accepted price for the sale of gold makes it unlikely for gold to be mispriced and suggests the contextualization of mispricing as relates to IFFs on a national level for better analysis.

Furthermore, when presented with statistics such as Dubai reported 1.5 billion worth of gold import from Ghana while Ghana recorded 1 billion worth of export to Dubai what is the certainty that the metrics for quantifying the monetary value in both jurisdictions is the same. There are various

schools of thought on this issue. Some writers have argued that varied reasons may account for the differences in export and import revenue records and require further investigation.

Engagement with the private sector through organisations such as the Extractive Industries Transparency Initiative will provide the much-needed contextual data and industry insights to assist in analysing and resolving issues of interpretation that may exist.

b. Need to streamline and simplify procedures

Interactions with the officials in the mining sector of Ghana reveal a lack of clarity on many facets of the identified gold-related IFF threats. Resolving the unanswered questions highlighted above and consolidating the rules and procedures for calculating and obtaining revenue will help curb the menace.

Legal guidelines, rules, and procedures for tracking gold export revenue in Ghana must be streamlined and consolidated. This way, the government can properly establish the specific points where taxes and royalties are levied and ensure the proper valuation of gold exports at those sites to prevent IFFs. Also, there currently exists no established systematic procedure for tracing gold export revenue. The 1992 Constitution, the Minerals and Mining Act, and the Ghana Revenue Authority have various provisions and regulations on gold export revenue. The study suggests a compilation of these separate provisions and the development of a comprehensive manual that outlines all the sources of revenue from extraction to the point of export which amounts to gold export revenue. This together with a mechanism that determines whether or not all payments have been accounted for before gold consignments are approved for export will help in resolving the identified IFFs.

The officer at the export seat of the Ghana revenue authority contacted outlined the process of final gold export. The customs officer on duty ensures the amount corresponding to the assay value is paid, the 3% due the GRA is paid and other due processes followed. Reference is also made to the payment of royalties to landowners, pre-financing of mining operations, and payments for land use. Consolidating and clarifying all laws on tracing gold export revenue will help identify and abolish avenues for IFFs.

c. Training

The paper recommends the education and training of the primary officials in the Minerals and Mining sector on IFF threats in the gold sector and methods of vigilance to help curb the menace. Most of these officials admit that gold in Ghana is one of the largest revenue earners in the country and allude to the fact the country is not making as many returns from the industry as should be the case. The glaring problem however lies in the lack of skill to identify the lacuna in the regulatory and oversight procedures which are enabling the IFFs and resulting in a lack of returns.

Finally, on the issue of gold smuggling, the tightening of border controls and the established legal and regulatory measures are suggested. It is advised that technology-based solutions such as systemic container scanning should be implemented. Officers of the Customs Division of the GRA should be specifically trained to detect and prevent smuggling at the principal points of exit in the country.

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Personal Interviews

MINCOM Officer 1- 29th April 2020

MINCOM Officer 2 - 29th April 2020

GRA Officer- 25th June 2020

PMMC Officer – 3rd July 2020