



Extractives Hub



**Minerals Fiscal Innovation,  
Responsive Governance, and Anti-  
Corruption: Ghanaian “Agyapa” Gold  
Royalties Case Study**

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**Extractives Hub**



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# EXECUTIVE SUMMARY

The Government of Ghana (GoG) began preparations to assign a significant proportion of the country's gold royalties to a Special Purpose Vehicle in 2018. Last year, the GoG accelerated its efforts to float 49% of this vehicle's shares on the London and Ghana Stock Exchanges. The following Insight examines the plan and its implications on effective responsive governance and anti-corruption in Ghana. This is achieved by analysing four independent valuations of the vehicle Agyapa Royalties Ltd, the events leading up to the parliamentary approval of the transaction documents in August 2020 and some of the controversial aspects of the plan itself. The findings arising from this review are as follows:

- The GoG justified their innovation as being a necessary venture which will raise short-term capital while also establishing a long-term structure for the investment and management of the country's gold royalties.
- Four independent valuations of Agyapa Royalties Ltd found that the GoG's valuation of the company was too low. The GoG expected to raise around \$500 million for the sale of 49% of the shares, whereas the independent valuations consistently placed the value at a minimum of \$1 billion.
- Civil Society Organisations and other major stakeholders were not consulted prior to the parliamentary approval of the Agyapa transaction agreements.
- The transactions agreements lack clarity in terms of the time period and volume of gold captured within the scope of the deal.
- The transaction agreements severely limit Ghana's future control over Agyapa Ltd, contradicting the GoG's assertions that Agyapa Ltd is owned by Ghana and will benefit Ghanaians.
- The transaction agreements liberate Agyapa Ltd's funds from the parliamentary oversight that the normal budgetary process in Ghana stipulates.
- Due to the proposed financial arrangements, the vehicle is likely to underperform in comparison to private sector companies that carryout similar business.
- The Office of the Special Prosecutor's analysis of the risk of corruption and anti-corruption risk assessment found dozens of improprieties and illegalities in the actions and omissions of the GoG and their associates.

The recommendations that evolved from these findings mainly concern the challenge of upholding accountability and transparency.

- Concerning governments:
  - Citizens, through Civil Society Organisations (CSOs) and public representatives, should be involved in the creation of innovative fiscal policies from the beginning. Therefore, governments should host stakeholder consultations throughout the research and planning process with a view to creating solutions that reflect the needs of the citizens.
  - Governments should facilitate the work of CSOs by making key information available to the public.
  - Governments should always aim to hold open and transparent bidding for contracts in order to increase the likelihood that truly independent parties will become involved.
  - Executive branches should interact with legislative branches in good faith in order to facilitate the former's capacity to hold the government accountable. The main avenue to this is by enabling access to information and affording reasonable time and training for Committees to scrutinise and question proposals.
  - The institutionalisation of independent gatekeepers with the mandate to investigate procurements and prosecute offenders. This includes funding, training, respect, cooperation and a clear separation of powers.
- Concerning CSOs:
  - CSOs in resource-rich developing countries should form partnerships with like-minded organisations nationally and internationally. This can help strengthen their individual and collective capacities, spread the pool of ideas and establish knowledge-sharing networks that lead to innovative approaches.

# 1. INTRODUCTION

Ghana is Africa's largest gold producer.<sup>1</sup> Gold mining constitutes more than 93% of the mining industry, with export earnings alone reaching \$6.23 billion in 2019.<sup>2</sup> Production is expected to increase significantly this year, stimulated by the Phase 2 completion of AngloGold Ashanti's Obuasi Project.<sup>3</sup> Yet like many countries around the world, Ghana is struggling to cope with and adapt to the economic fallout from the Covid-19 pandemic; and like many oil exporters globally, the sustained fall in oil prices since mid-2014.

At the same time, Ghana is dealing with a debt-to-Gross Domestic Product (GDP) ratio of over 70% and has been flagged by the International Monetary Fund (IMF) as being in danger of debt distress.<sup>4</sup> Therefore, it is no wonder that in 2020 the Government of Ghana (GoG) hastened their attempt to generate non-debt capital, free from the shackles of repayment obligations and interest payments.<sup>5</sup> The innovative fiscal plan that they designed, however, has raised numerous questions over its terms, opacity, and rushed parliamentary approval. In short, the GoG sought to package the rights to almost 76% of the nation's future gold royalties into an offshore company named Agyapa Royalties Ltd (Agyapa Ltd) in return for a \$500<sup>6</sup> million cash injection through an Initial Public Offering (IPO) on the London Stock Exchange (LSE). The plan shares some features with the business models of private sector precious metals streaming companies such as Franco-Nevada, indicating that the GoG was keen to capitalise on gold prices in 2020.<sup>7</sup>

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<sup>1</sup>Mark-Anthony Johnson, 'Ghana still Africa's largest gold producer in 2021 - Fitch' (*Further Africa*, 10 November 2020) <<https://furtherafrica.com/2020/11/10/ghana-still-africas-largest-gold-producer-in-2021-fitch/>> accessed 22 January 2021

<sup>2</sup>Doris Dokua Sasu, 'Export value of gold from Ghana 2015-2019' (*Statista*, 26 October 2020) <<https://www.statista.com/statistics/1172220/export-value-of-gold-from-ghana/#:~:text=Export%20value%20of%20gold%20from%20Ghana%202015%2D2019&text=As%20of%202019%2C%20the%20export%20upward%20trend%20in%20the%20country.>> accessed 20 January 2021

<sup>3</sup>'Ghana Gold Mining: Solid Growth on the back of robust project timeline' (*Fitch Solutions*, 26 October 2020) <<http://www.fitchsolutions.com/corporates/commodities/ghana-gold-mining-solid-growth-back-robust-project-pipeline-26-10-2020>> accessed 20 January 2021

<sup>4</sup>Christian Akorlie and Tom Arnold, 'Ghana regains lustre for investors ahead of Dec 7 election despite debt woes' (*Reuters*, 1 December 2020) <<https://www.reuters.com/article/ghana-election-economy-idUSL8N2IB2NI>> accessed 20 January 2021

<sup>5</sup>'What's the Rush? Ghana is planning to sell most of its future royalties' *The Economist* (London, 26 September 2020) <<https://www.economist.com/middle-east-and-africa/2020/09/26/ghana-is-planning-to-sell-most-of-its-future-gold-royalties>> accessed 6 January 2021

<sup>6</sup>All \$s quoted in this Research Insight are United States Dollars (USD)

<sup>7</sup>Henry Sanderson, 'Gold price hits \$2000 for the first time on Covid 19 and inflation fears' *Financial Times* (London, 4 August 2020) <<https://www.ft.com/content/566dd8f7-7efe-45b6-8a44-b20f7f0f283e>> accessed 25 January 2021

The purpose of this Research Insight is to discuss this innovative structure with a view to analysing its possible implications on responsive governance in Ghana. Section 2 continues below with a brief summation of events; from the inception of the underpinning Minerals Income Investment Fund Act to Agyapa Ltd's current stagnated status at the time of writing. Section 3 delves further into Agyapa Ltd by exploring complimentary and conflicting valuations of the company. Once this context has been established, section 4 will offer a critical examination of the Agyapa saga informed by concerns raised by the opposition parties, the Office of the Special Prosecutor and numerous CSOs in Ghana and abroad. In section 5, this Insight concludes by summarising the governance issues of the transaction and suggests some recommendations for tackling them.



## 2. AGYAPA GOLD ROYALTIES: AN OVERVIEW

### 2.1 The Minerals Income Investment Fund Act 2018 (MIIF Act).<sup>8</sup>

In 2018, the Parliament of Ghana passed the Minerals Income Investment Fund Act (MIIF Act), thereby establishing the Minerals Income Investment Fund (MIIF). The MIIF was created to manage Ghana's equity interests in mining companies and to receive and invest the mineral royalties paid to the government.<sup>9</sup> The MIIF Act authorised the creation of Special Purpose Vehicles (SPV) which could, *inter alia*, own and manage royalties allocated by the MIIF from "a selected portfolio of underlying gold mines under the current mining leases"; and was permitted to sell shares to generate short-term capital.<sup>10</sup> Moreover, the Act also contained provisions allowing the GoG to enter into a stability agreement with the Fund and SPVs in order to provide fiscal and legislative security to the subsequent arrangements.<sup>11</sup> Soon after, the Agyapa Royalties Limited company was registered in Jersey, a British Crown Dependency with a reputation for enhanced levels of commercial privacy (and hence lower public transparency).<sup>12</sup>

Agyapa Ltd has been described as the first majority State owned royalty company in Africa.<sup>13</sup> The innovation is further highlighted by the fact that most resource rich countries tend to manage their revenue through taxes, royalties, sovereign wealth funds and other state-owned enterprises (SOEs).<sup>14</sup> Ghana's own mining sector has two mining sector SOEs, one of which already engages in non-commercial activities by financing public infrastructure projects.<sup>15</sup>

<sup>8</sup> Minerals Income Investment Fund Act 2018 (Act 978)

<sup>9</sup> Memo from the Office of the Finance Minister to the President of Ghana, 'Gold Royalties Monetisation Transaction Under the Minerals Income Investment Act 2018 (ac 978) – Response to the Office of the Special Prosecutor's Report to Parliament' (30 October 2020) para E.2

<[https://mofep.gov.gh/sites/default/files/news/Response\\_to\\_OSP\\_Report\\_on\\_Agyapa.pdf](https://mofep.gov.gh/sites/default/files/news/Response_to_OSP_Report_on_Agyapa.pdf)> accessed 18 January 2021

<sup>10</sup> Ministry of Finance Infographic, 'Agyapa Royalties: An innovative approach towards mobilizing non-debt capital' <[https://www.mofep.gov.gh/sites/default/files/news/Agyapa\\_Info\\_Graphs\\_v2.pdf](https://www.mofep.gov.gh/sites/default/files/news/Agyapa_Info_Graphs_v2.pdf)>

<sup>11</sup> Minerals Income Investment Fund Act 2018 (Act 978), s 40

<sup>12</sup> Initially registered as Asaase Royalties Limited (the owners of which are not known) until the name was changed to 'Agyapa' shortly thereafter

<sup>13</sup> Statement by the Deputy Minister of Finance Charles Adu Boahen 'Agyapa Royalties best deal for Ghana's Gold' (29 August 2020) <<https://mofep.gov.gh/news-and-events/2020-08-29/agyapa-royalties-best-deal-for-ghana%E2%80%99s-gold-ken-ofori-atta>> accessed 8 January 2021

<sup>14</sup> Natural Resource Governance Institute, 'Revenue Management and Distribution' (March 2015) <[https://resourcegovernance.org/sites/default/files/nrgi\\_Revenue-Management.pdf](https://resourcegovernance.org/sites/default/files/nrgi_Revenue-Management.pdf)> accessed 22 January 2021

<sup>15</sup> Natural Resource Governance Institute 'Ghana – Country Profile' <<https://resourcegovernanceindex.org/country-profiles/GHA/mining>> accessed 22 January 2021



## 2.2 Agyapa Royalties Ltd

A few months after the passing of the Act, Executive Approval was sought from the President by the Ministry of Finance with regards to the management of the MIIF.<sup>16</sup> The Minister of Finance was quickly granted a blanket executive approval to prepare and implement: an 'Investment Agreement' detailing the authority of the MIIF to assign its rights to gold mineral royalties to Agyapa Ltd; a 'Relationship Agreement' concerning the degree of control the government and MIIF may exercise over the new Agyapa Ltd company; and an indemnity letter concerning banks, advisors and other external parties to the deal. Notably, the Minister also expressed that some scrutiny provisions of the Public Financial Management (PFM) Act<sup>17</sup> and the State Interests and Governance Authority Act could unduly constrain Agyapa Ltd.<sup>18</sup> These acts contain significant safeguards against corruption, such as the requirement for annual financial plans of entities resembling Agyapa Ltd to be submitted to the Ministry of Finance for approval. The Minister, however, requested that both Acts in their entirety should be disapplied with regards to Agyapa Ltd.<sup>19</sup>

In accordance with the provisions of the MIIF Act, Agyapa Ltd was assigned the right to receive 75.6% of future royalties paid by 12 existing gold mining companies, along with four more which were in the development process. Shortly after its launch, Agyapa Ltd incorporated a Ghanaian subsidiary by the name of ARG Royalties Ghana Limited with Agyapa Ltd itself as the sole shareholder. This wholly owned Ghanaian subsidiary was to be responsible for channelling the royalties due to Agyapa Ltd. The group of complex transaction documents later approved by Parliament allowed the MIIF to allocate the rights to 75.6% of royalties from 48 gold mining leases to Agyapa Ltd *through* ARG Royalties Ghana Limited for \$1 billion. Therefore, by seeking to float up to 49% of Agyapa Ltd's shares on the LSE, the GoG was essentially selling a significant portion of the country's future royalty payments.

According to the Deputy Minister for Finance, the income that the GoG expected to generate would not only be used to pay a dividend to Agyapa Ltd's shareholders, but also to buy more

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<sup>16</sup> Letter from the Ministry of Finance to the President of Ghana, 'Request For Executive Approval Of A Bill For The Amendment Of The Minerals Income Investment Fund Act 2018 (Act 978) And Execution Of Agreements By The Republic Of Ghana To Operationalise The Provisions Of The Minerals Income Investment Fund Act 2018' (23 March 2020)

<sup>17</sup> Public Financial Management Act 2016 (Act 921), s 77 and s 95.

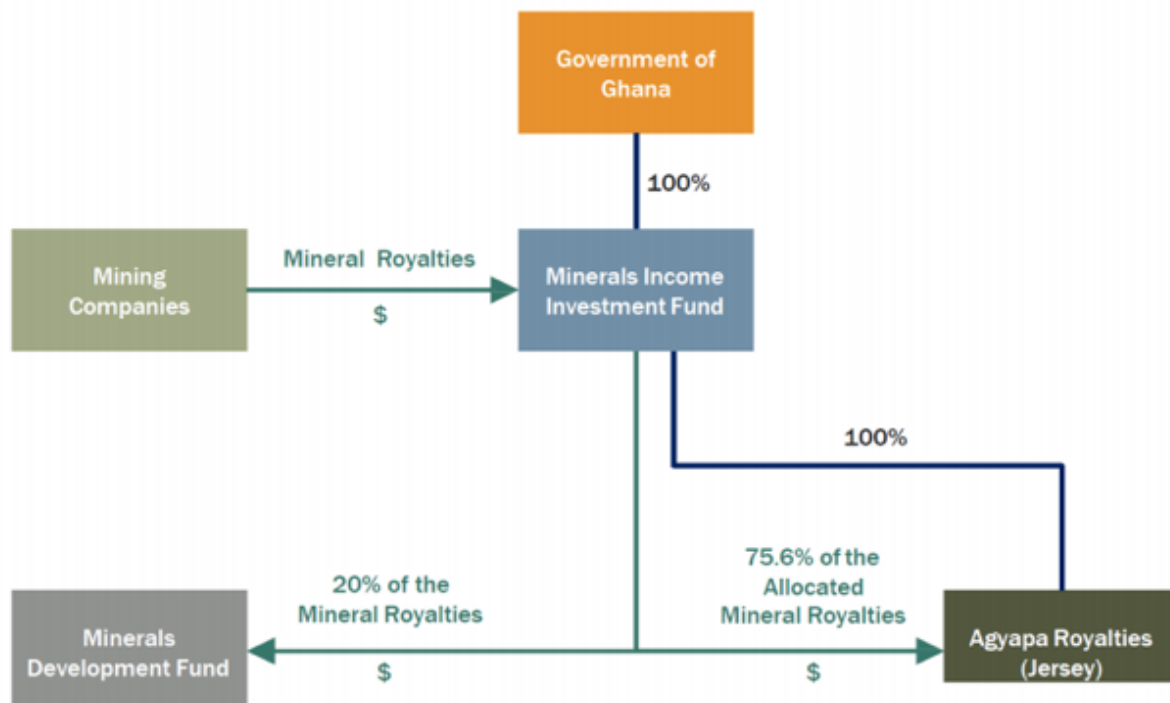
<sup>18</sup> State Interests and Governance Authority Act 2019 (Act 990), s 29 and s 32.

<sup>19</sup> IMANI Centre for Policy and Education 'Why the CSOs Oppose the "Current" Agyapa Deal' (27 August 2020) 13-14

royalty streams from other mines in Ghana and around Africa.<sup>20</sup> Therefore after the IPO, its intended main purpose was to operate as a private royalties streaming company<sup>21</sup> - providing up-front financing for gold mining companies in exchange for an agreed percentage of their future production, or in this case, future royalty payments. This way, the company would continue to raise non-debt funding for capital investments. The Deputy Minister further asserted that Agyapa Ltd's proposed activities would attract more investment into the sector and increase exploration activity whilst providing financing to owners of mining enterprises in need of equity financing.<sup>22</sup>

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## Transaction Structure



Source: MoF Presentation to CSOs, 2020

### Legend

→ \$=Mineral Royalties    — Ownership

<sup>20</sup> Statement by the Deputy Minister of Finance Charles Adu Boahen (no 13)

<sup>21</sup> Royalty companies are common in the private sector of the extractives industry, the 'Big 5' being: Franco Nevada Corporation, Osisko Gold Royalties, Royal Gold, Sandstorm Gold Ltd and Wheaton Precious Metals Corp.

<sup>22</sup> Statement by the Deputy Minister of Finance Charles Adu Boahen (no 13)

<sup>23</sup> IMANI Centre for Policy and Education, 'Breaking Down Agyapa to Build the CSOs' case' (September 2020)

<[https://imaniafrica.org/wp-content/uploads/2020/09/CSOs\\_Position\\_Agyapa\\_Royalties\\_Webinar\\_Presentation\\_Sept\\_2020.pdf](https://imaniafrica.org/wp-content/uploads/2020/09/CSOs_Position_Agyapa_Royalties_Webinar_Presentation_Sept_2020.pdf)> accessed 18 January 2021

The transaction documents approved by Parliament stipulated that if Agyapa Ltd was not admitted to the LSE by 31 December 2020, then the agreements would lapse and all rights and obligations of the parties would cease.<sup>24</sup> This date has now passed and Agyapa Ltd has not been listed on the LSE. The incumbent GoG was re-elected on 7 December 2020 and the Minister of Finance, who spearheaded the deal, was reappointed to the Cabinet by the President. Therefore, although the deal's exact status is unclear, it is reasonable to assume that the GoG may indeed revisit the transaction. Regardless of what happens next, the entire saga has provided an excellent case study of governance issues that resource-rich countries must face when experimenting with innovative fiscal structures for the management of their minerals. This Insight takes a retrospective look at some of the most pertinent aspects of the plan as it was originally proposed.

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<sup>24</sup> Kush Amin, 'Ghana: What is going on with the controversial Agyapa gold royalties deal?' (*Transparency International*, 26 November 2020) <<https://www.transparency.org/en/blog/ghana-what-is-going-on-with-the-controversial-agyapa-gold-royalties-deal>> accessed 20 January 2021

### 3. THE VALUATION

The proposed Agyapa Ltd offering adopts a framework that is common in the private sector, in that the share price of publicly listed companies are based on the market's view of their future profitability. The payment expected from the IPO was estimated as being between \$500 and \$750 million for 49% of Agyapa Ltd's book value, placing the overall value at between \$1 billion and £1.5 billion.<sup>25</sup> The GoG's Minister of Finance defended this amount by insisting it was "primarily for accounting purposes and was arrived at in accordance with IFRS [International Financial Reporting Standards] rules on valuing a financial asset".<sup>26</sup> The Minister also insisted that the actual market value, which is the multiple of the price of gold as implied by Agyapa Ltd's market capitalisation or transaction amount to its net asset value, would be determined after the listing.<sup>27</sup> The royalty rate payable by each mining company is in the public domain, but the Ministry of Finance has not yet published the gold price projections or the projections of gold quantities expected from the relevant mines which were used to determine their \$1 billion valuation.

The public-private dynamic of the plan lends naturally to the fact that one of the most debated aspects of the transaction is the valuation of the Agyapa Ltd. OpenOil (a renowned provider of public interest financial extractive industries modelling and analysis globally and founding partner of the Extractives Hub project) was commissioned by the Ghana Extractives Industry Transparency Initiative (GHEITI) to publish an analysis of the valuation of Agyapa Ltd's shares.<sup>28</sup> The analysis concluded that, based on a discounted cash flow financial model to assess future revenues and their net present value, the guidance range of \$500 million to \$750 million for 49% of the shares in Agyapa Ltd was too low as against fair book value.

OpenOil's study illustrates that in this transaction, the value of the shares in 2020 depended on estimates of future gold royalties, which are themselves tied directly to sales. Therefore,

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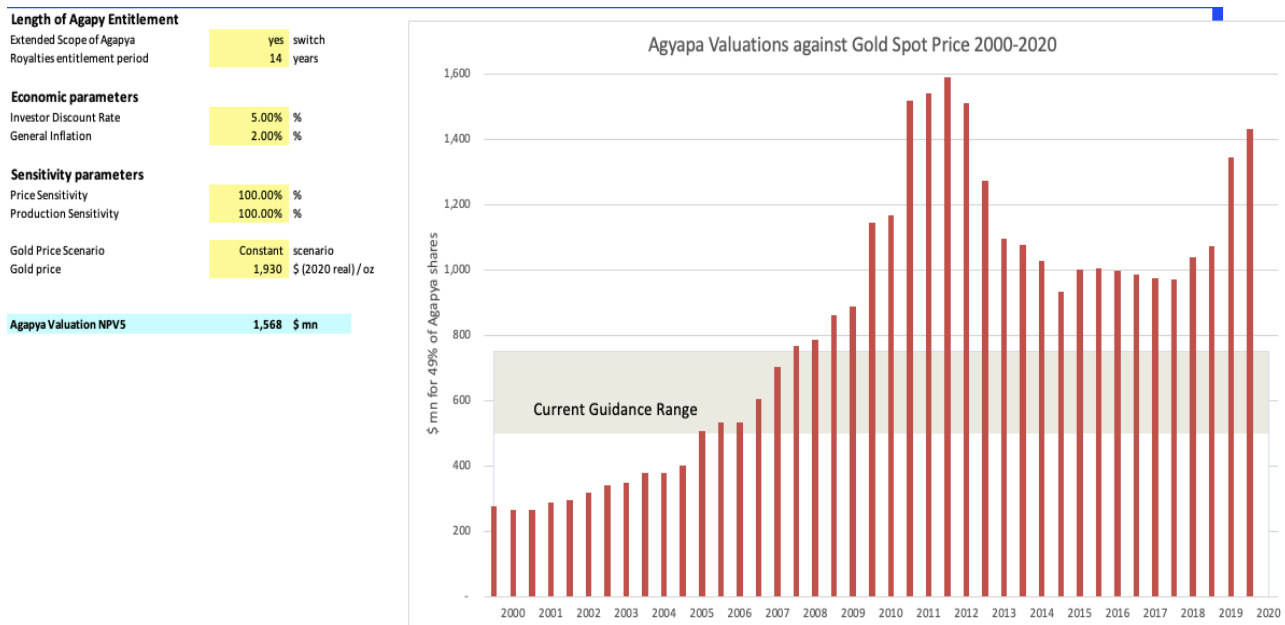
<sup>25</sup> Ekow Dontoh, 'Ghana to Raise \$750 million Through London IPO of Minerals Funds' (*Bloomberg*, 15 November 2018) <<https://www.bloomberg.com/news/articles/2018-11-15/ghana-to-raise-750-million-through-london-ipo-of-minerals-fund>> accessed 17 February 2021

<sup>26</sup> Press release from the Ministry of Finance, 'Government to Broaden Consultations in Agyapa Royalties Transaction' (Ref: MOF/GA/D3/4, 4 September 2020) <[https://mofep.gov.gh/sites/default/files/news/PR\\_Govt\\_to\\_broaden\\_Consultations\\_in\\_Agyapa\\_Transaction.pdf](https://mofep.gov.gh/sites/default/files/news/PR_Govt_to_broaden_Consultations_in_Agyapa_Transaction.pdf)> accessed 20 January 2021

<sup>27</sup> *ibid*; Lee Hodgkinson and Derek Melo, 'Insights into Mining' (*KPMG*, December 2016) <<https://assets.kpmg/content/dam/kpmg/ca/pdf/2016/12/ca-insights-into-mining-issue-1-nav-multiples.pdf>> accessed 21 January 2021

<sup>28</sup> Johnny West, 'Agyapa Royalties Limited: a brief on potential valuation of the IPO' (*Open Oil*, December 2020) <<https://openoil.net/wp/wp-content/uploads/2016/12/Agyapa-IPO-Valuation-GHEITI.pdf>> accessed 18 January 2021 (OpenOil)

an important metric to consider is what price of gold would trigger the relevant valuation. It is understood that the GoG's valuation of \$500 million would be supported by a gold price of \$749 per troy ounce; while the upper limit of \$750 million would be consistent with a gold price of \$1,086.<sup>29</sup> This compares to the current gold price at the time of writing (24<sup>th</sup> February 2021) of \$1,790. Indeed, whilst the price of gold varies continuously, it is clear from the graph overleaf that the GoG's estimates are only consistent with the very low spot price of gold between 2005 and 2008. Using this model, Agyapa Ltd's 49% valuation could be worth \$1.568 billion if calculated based on the spot price of gold on the day the Agyapa transaction documents and memorandum were submitted for Parliamentary approval (\$1930 per troy ounce on 13 August 2020);<sup>30</sup> thereby putting the overall value of Agyapa at a price closer to \$3 billion.



The OpenOil analysis naturally contains margins of uncertainty related to, *inter alia*, future prices, production levels, and incomplete information in the public domain. Despite this, the analyst is certain that resolving these uncertainties would not materially change the conclusions provided. In fact, this model's sensitivity analysis indicates that the gold mining sector "would have to suffer a catastrophic collapse" where "production halve[s] instantly" for the valuation to drop down to the \$500 million figure provided by the government.

Furthermore, OpenOil considers the risk rate as a crucial aspect of the valuation. Investors need to ascribe a value to future streams in order to create valuations. This can be achieved

<sup>29</sup> *ibid* 3

<sup>30</sup> 'Gold Prices in USD per Troy ounce for the last 6 months' <<https://www.bullionbypost.eu/gold-price/sixmonth/ounces/USD/>> accessed 18 January 2021

by using a discount rate, which operates as a “kind of reverse interest rate”.<sup>31</sup> Put simply, an amount of money now is worth less than it will be in 10 years’ time. In applying interest alone, a valuation of today is worth more in 2030. In this case, however, the future payments are contingent on events which have not yet occurred, so a higher discount risk is applied in order to account for the risk.<sup>32</sup> Therefore, the size of the discount rate depends on how parties perceive the risk involved. OpenOil’s model has assigned a discount rate of 5% because financing for large infrastructure projects habitually fall at this amount. Investments in more stable securities attract rates of 2-3% while higher rates of 10% or more are applied to speculative and risky investments. According to this model, in order for future royalty earnings relevant to Agyapa Ltd to be worth *today* what the government valuations show; the \$500 million amount would be applying an enormous discount rate of 27% while the \$750 million end of the scale applies a 16% rate.<sup>33</sup> This is especially noteworthy as Ghana’s gold sector is considered to be stable with expectations of steady growth.<sup>34</sup> Within that context, these high discount rates further indicate strongly that the valuation proposed is undervalued.

The OpenOil author’s conclusions are echoed to a large extent by a variety of analysts. In an article published by Fui Tsikata, an experienced energy and minerals lawyer, and Kofi Ansah, the founding Chief Executive of the Minerals Commission; it was posited that even if the price of gold were to drop down to \$1500 for the period of 2020 to 2023, then the revenues from only eleven of the gold producing mines under the Agyapa transaction would be worth more than \$1 billion in today’s money.<sup>35</sup> Furthermore, Bright Simons of the IMANI Centre for Policy and Education in Ghana (IMANI) put forward the following conventional valuation equation:

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<sup>31</sup> OpenOil Report (no 28) 8

<sup>32</sup> OpenOil Report (no 28) 8

<sup>33</sup> OpenOil Report (no 28) 9

<sup>34</sup> ‘Ghana Gold Mining: Solid Growth on the back of robust project timeline’ (no 3)

<sup>35</sup> Kofi Ansah and Fui Tsikata, ‘Why the Akufo-Addo government must freeze the Agyapa Royalties Deal’ *Citi Newsroom* (Ghana, 26 August 2020) <<https://citinewsroom.com/2020/08/why-the-akufo-addo-government-must-freeze-the-agyapa-royalties-deal-article/>> accessed 18 January 2021

### The Agyapa Valuation Equation

Average Annual Production Forecast = AF

Average Price Forecast Over Term (per oz) = PF

Average Royalty Rate = RR

Average Royalty Stream = 75.6% x AF x PF x RR = C

Average Remaining Mine Life = Term (n)

Risk of Collection = Discount Rate (r)

Justified IPO Proceeds = Present Value of Annuity Stream (P)

$$P = C \times \left[ \frac{1 - (1 + r)^{-n}}{r} \right]$$

AF = 4.9MIL PF = \$1800

RR = 4.6% C = \$307MIL

n = 21 r = 6%

<p><b>P = \$3.6 BILLION</b></p> <p><b>VRS</b></p> <p><b>Govt Valuation = \$1 BILLION</b></p>
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This equation shows that by inputting an annual mine production forecast of 4.9 million ounces, setting the price of gold at \$1,800 per troy ounce, with a 4.6% royalty rate at \$307 million and a 6% discount rate, the resulting valuation exceeds \$3 billion. This implies that a 49% share should be valued at around \$1.8 billion, again a considerably higher amount than the GoG Ministry of Finance's sum.

Dr Yakubu Abdul-Salam, an economist who specialises in energy and development economics, concurs with Open Oil, Tsikata, Ansah and Simons that the government's estimate represents a considerable undervaluation of Agyapa Ltd. However, he deviates from their analysis as he finds that the deterministic techniques used (by Tsikata, Ansah and Simons) present an important limitation. They are driven by one scenario of the underlying variables - the price of gold and quantities produced by the mines tied to the transaction. Therefore, the volatile nature of gold prices and production levels cannot be properly accounted for within such analyses.<sup>37</sup> Despite this, those equations remain enlightening due to their simplicity and general accessibility.

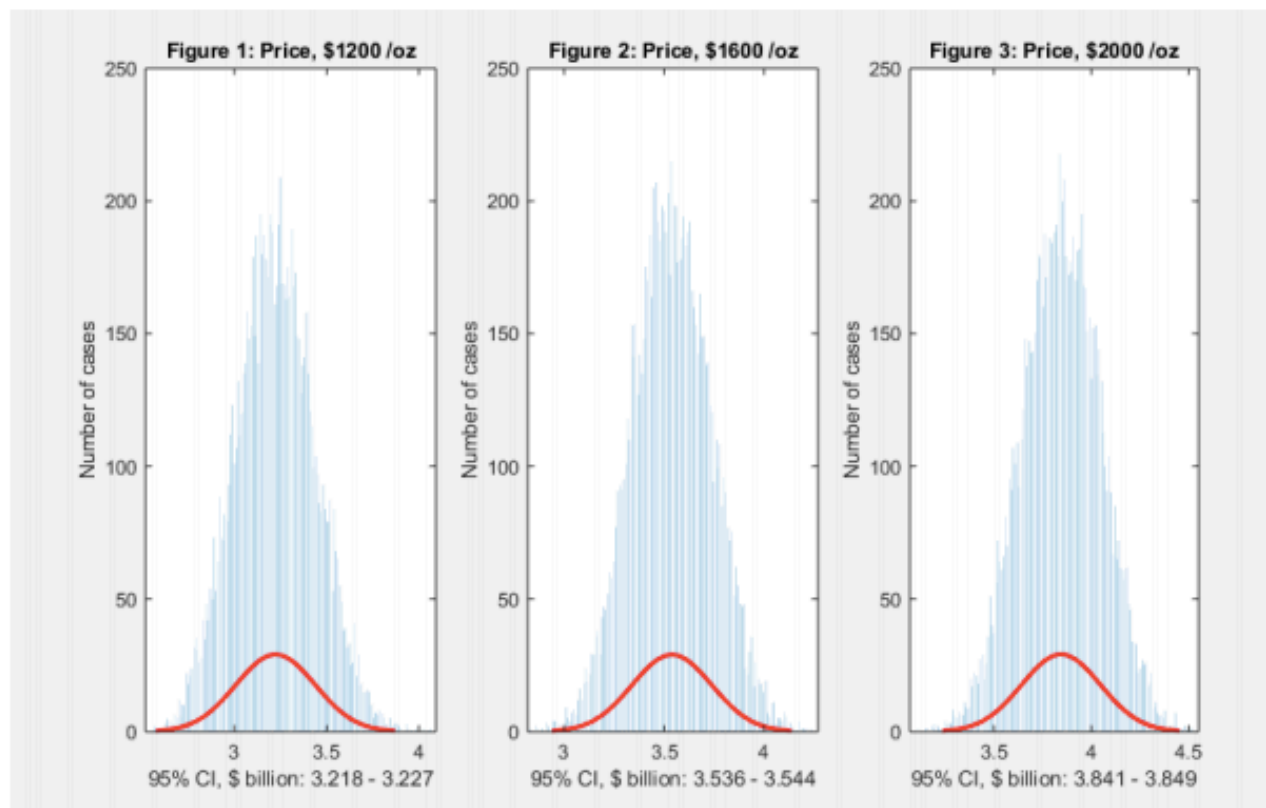
<sup>36</sup> 'Breaking Down Agyapa to Build the CSOs' case' (no 23) 16; Bright Simons, 'Is Agyapa a sweetheart deal?' *Citi Newsroom* (Ghana, 31 August 2020) <<https://citinewsroom.com/2020/08/bright-simons-writes-is-agyapa-a-sweetheart-deal/>> accessed 18 January 2021

<sup>37</sup> Dr Yakubu Abdul-Salam, 'The Agyapa Royalties Transaction – Challenging Government of Ghana's Valuation using an Advanced Monte Carlo Simulation Technique' (6 September 2020) <<https://drive.google.com/file/d/1RYEwu782GIWg1ztkSvaUUk4-mWXpHOSG/view>> accessed 21 January 2021



In order to value unpredictable assets such as gold, Dr Yakubu suggests the Monte Carlo Simulation technique as it can ensure that the results are not unduly biased by the choice of variable values inserted.<sup>38</sup> In his simulations, he assumed a minimum gold price of \$1,000 per troy ounce and a maximum price of \$2,200 per troy ounce. He set the minimum and maximum production level of the Agyapa Ltd mines as 5 million troy ounces and 7 million troy ounces respectively. He justifiably applied the same royalty rate as Tsikata and Ansah: 4.40% for gold prices of \$1500 or more, and 4.10% for prices below this. A discount rate of 5% was applied in all cases. The figure below shows that Dr Abdul-Salam's simulation including a 95% confidence interval of the calculated value of the Agyapa transaction for a range of gold price and production levels.<sup>39</sup>

**Results: Valuation of the Agyapa Royalties transaction using a Monte Carlo simulation technique**



<sup>38</sup> *ibid* 2-4

<sup>39</sup> *ibid* 4

**Results: Valuation of the Agyapa Royalties transaction using a Monte Carlo simulation technique**

Gold price, \$/oz	Production quantity, million oz	Transaction term, years				
		10	15	20	25	30
1200	5.5	2.393 - 2.401	3.218 - 3.227	3.869 - 3.878	4.371 - 4.380	4.769 - 4.778
1200	6	2.462 - 2.470	3.311 - 3.319	3.974 - 3.983	4.497 - 4.506	4.905 - 4.915
1200	6.5	2.529 - 2.537	3.402 - 3.411	4.087 - 4.097	4.619 - 4.629	5.041 - 5.051
1400	5.5	2.510 - 2.517	3.375 - 3.383	4.053 - 4.062	4.585 - 4.593	5.001 - 5.010
1400	6	2.580 - 2.587	3.470 - 3.479	4.170 - 4.179	4.717 - 4.726	5.142 - 5.151
1400	6.5	2.653 - 2.661	3.572 - 3.581	4.281 - 4.290	4.843 - 4.853	5.285 - 5.294
1600	5.5	2.632 - 2.639	3.536 - 3.544	4.244 - 4.253	4.806 - 4.814	5.240 - 5.249
1600	6	2.706 - 2.713	3.638 - 3.646	4.367 - 4.375	<b>4.942 - 4.951</b>	5.389 - 5.398
1600	6.5	2.780 - 2.788	3.742 - 3.750	4.492 - 4.501	5.080 - 5.089	5.541 - 5.550
1800	5.5	2.749 - 2.756	3.694 - 3.702	4.437 - 4.446	5.014 - 5.023	5.472 - 5.481
1800	6	2.825 - 2.832	3.797 - 3.805	4.561 - 4.570	5.158 - 5.166	5.628 - 5.637
1800	6.5	2.900 - 2.908	3.904 - 3.912	4.688 - 4.696	5.302 - 5.311	5.780 - 5.789
2000	5.5	2.860 - 2.867	3.841 - 3.849	4.611 - 4.620	5.217 - 5.226	5.688 - 5.697
2000	6	2.937 - 2.945	3.950 - 3.959	4.748 - 4.756	5.369 - 5.378	5.854 - 5.863
2000	6.5	3.020 - 3.027	4.058 - 4.066	4.877 - 4.886	5.518 - 5.527	6.020 - 6.029
2200	5.5	2.965 - 2.973	3.986 - 3.994	4.788 - 4.797	5.418 - 5.426	5.902 - 5.911
2200	6	3.052 - 3.060	4.102 - 4.110	4.928 - 4.937	5.571 - 5.580	6.076 - 6.086
2200	6.5	3.134 - 3.141	4.213 - 4.222	5.061 - 5.070	5.730 - 5.739	6.246 - 6.256

The figures highlighted in red show that the value of the Agyapa Royalties transaction, given a \$1,600 per troy ounce median gold price and production level of 6 million troy ounces, over 25 years, would range between \$4.942 and \$4.951 billion dollars.<sup>40</sup>

This section has shown that even though gold can be a volatile commodity subject to vast changes in supply and demand, resources are available to form predictions of its value for the purposes of investments. Numerous civil society actors are in public agreement that the GoG should publish the economic model(s) that it employed and upon which its contested valuations rest, particularly in relation to the discount rates and price scenarios applied.<sup>41</sup>

The initial undervaluation has set the Agyapa plan off on a lose-lose trajectory. If the IPO were to go ahead as planned, then the 49% of shares sold would be likely to be considerably undervalued, to the detriment of Ghana as a whole: both the GoG and the Ghanaian people.

<sup>40</sup> *ibid* 5

<sup>41</sup> OpenOil Report (no 28) 11

## 4. GOVERNANCE IMPLICATIONS

*“The Agyapa transaction is not a mystery. The transaction has been transparent; it's gone to Parliament on many levels, it's gone to cabinet on many levels, and there is truly nothing to hide”*

- Ken Ofori-Atta, Minister of Finance.<sup>42</sup>

### 4.1 Agyapa Ltd and Responsive Governance

The Minerals and Mining Act 2006 was the latest in a list of statutes which reiterate that Ghana's natural resources are “vested in the President in trust for the people of Ghana”.<sup>43</sup> This language is consistent with the rights and duties of governments and people in States that aim to practice effective responsive governance. Multisector cooperation and public participation are central to implementing responsive governance,<sup>44</sup> especially within mineral-rich countries where the government holds precious resources in trust for the benefit of the citizens. Ghana is a country with a number of active Civil Society Organisations working to promote transparency and accountability within its institutions. The ‘Alliance of CSOs working on Extractives, Anti-Corruption and Good Governance’ however, reported that the CSOs were unaware of the proposed Agyapa transaction until minority MPs in Parliament staged a walk out in protest of the Agyapa transaction documents. This occurred in August 2020 while the government aimed to list Agyapa Ltd on the stock exchange by 31 December 2020, leaving only four months for stakeholders to organise and engage with the GoG.<sup>45</sup> Furthermore, the leader of the largest opposition party - the National Democratic Congress - reflected the views of the minority MPs by stating that he would not honour the Agyapa deal if his party were to win the December 2020 election.<sup>46</sup>

<sup>42</sup> Julius Yao Petetsi, ‘Ghana: Special Prosecutor Begins Probe into Agyapa Deal’ *The Ghanaian Times* (Ghana, 14 September 2020) <<https://allafrica.com/stories/202009150238.html>> accessed 8 January 2021

<sup>43</sup> The Minerals and Mining Act 2006 (Act 703) s 1; The Constitution of the Republic of Ghana, art 257(6)

<sup>44</sup> UN Department of Economic and Social Affairs, ‘Responsive and Accountable Public Governance’ (World Public Sector Report 2015) <<https://publicadministration.un.org/publications/content/PDFs/World%20Public%20Sector%20Report2015.pdf>> accessed 14 January 2021

<sup>45</sup> Statement by Franklin Cudjoe, ‘Insulting Agyapa Deal must be rejected – IMANI’ *Daily Mail* (Ghana, 31 August 2020) <<https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Insulting-Agyapa-deal-must-be-rejected-IMANI-1046977>>

<sup>46</sup> ‘My gov’t will not respect Agyapa deal’ (3 September 2020) <<https://www.johnmahama.org/news/my-gov-t-will-not-respect-agyapa-deal>> accessed 14 January 2021

Despite the GoG's late and hurried engagement with the CSOs, many undertook detailed investigations into the transaction using the little public information available. The CSOs echoed a major concern held by the Attorney General at the time, Gloria Akuffo, concerning the lack of clarity in terms of the time period and volume of gold included within the scope of the agreement.<sup>47</sup> Although the public documents indicated that the agreement would cover 16 areas comprising of 48 mining leases; the deal also included prospecting licenses and future mining leases that may be granted in the areas covering these licenses. In addition to this, the true duration of the agreement was indiscernible. In Ghana, mining leases allow for continuous renewal as long as the company continues commercially viable mining activities. Therefore, renewals of any of the 48 mining leases automatically extended the agreement.<sup>48</sup> This is in contrast with comparable funding concepts such as resource-backed loan agreements where the repayment schedule usually sets out the total volume or value of the relevant resources.<sup>49</sup> The GoG's undervaluation of Agyapa Ltd was likely, to some degree, a result of the added uncertainty brought about by the implication of perpetuity in the agreements. It is noteworthy that the Attorney General had recommended that the Investment Agreement be limited to a fixed and explicit term of 30 years, but the documents presented to Parliament for approval in August 2020 did not incorporate this recommendation.<sup>50</sup>

Another major point of contention pertained to the question of what the average Ghanaian would stand to benefit from the transactions. On one hand, the GoG insisted that proceeds from the deal would finance socioeconomic development through a variety of infrastructure projects without incurring more debt obligations. On the other hand, independent analysts, CSOs and the opposition in Parliament perceived the initial undervaluation of the shares and possibility of the MIIF losing control of Agyapa Ltd as inherent obstacles to these goals. The latter perception was borne from an aspect of the deal found within the Relationship Agreement where some clauses severely curtailed the MIIF's future control over Agyapa Ltd's business. For example, the MIIF was prohibited from using its voting rights to compel Agyapa Ltd to make decisions solely for the benefit of the MIIF - that is to say, for Ghana.<sup>51</sup>

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<sup>47</sup> Interview with Dr Richard Amoako Baah, 'Agyapa Deal: Is Gabby Now the AG's Spokesperson? Amoako Baah Wonders' <<https://www.modernghana.com/news/1026694/agyapa-deal-is-gabby-now-the-ags-spokesperson.html>> accessed 20 January 2021

<sup>48</sup> IMANI Centre for Policy and Education, 'The 10 Most Alarming Problems with Agyapa' (26 September 2020) <<https://imaniafrica.org/2020/09/28/imani-alert-the-10-most-alarming-problems-with-agyapa/>> accessed 5 January 2021

<sup>49</sup> Aisha Adam et al, 'Resource-Backed Loans: Pitfalls and Potential' (*National Resource Governance Institute*, 27 February 2020) <<https://resourcegovernance.org/sites/default/files/documents/resource-backed-loans-executive-summary.pdf>> 6 January 2021

<sup>50</sup> 'Why the CSOs Oppose the "Current" Agyapa Deal' (no 19) 1

<sup>51</sup> *ibid* 11-12

In fact, the actual level of control which the GoG, through the MIIF, could wield over the board was not clear. For example, the MIIF was entitled to appoint two directors, who may vote on the appointment of other independent directors.<sup>52</sup> However, the MIIF could neither use their voting rights to prevent any shareholder resolutions which sought to appoint independent directors; nor to remove independent directors appointed by the rest of the board.<sup>53</sup> Furthermore, the agreement required that the two directors representing Ghana recuse themselves from discussions where Ghana may have a “conflict of interest”.<sup>54</sup> This would have allowed investors, who owned 49% of Agyapa Ltd, to ignore ideas and policies that favoured Ghana if they did not align with the investors’ share price maximisation aims. Shockingly, no provision was found which expressly or impliedly prevented Agyapa Ltd from diluting the MIIF’s 51% percentage ownership by the issuing additional shares.

Moreover, the LSE allows state entities to list as a ‘sovereign controlled commercial company’ with a different set of rules which allow governments to retain control over the company being listed.<sup>55</sup> However, the effective control hand-over in the Relationship Agreement was completed when the GoG sidestepped this option by seeking to list Agyapa Ltd on the Main Market of the LSE. In a nutshell, the definitive amount of power bestowed upon Agyapa Ltd as an independent commercial entity, free to pursue profit without holding Ghana’s budgetary needs as an explicit priority, posed serious questions as to the mid-to-long term benefits that its existence could truly have for the Ghanaian people. Along with the added hallmarks of Agyapa Ltd’s tax-exempt status within Ghana and its incorporation in Jersey; it was clear that the lack of any real guarantee of accountability demonstrated a serious threat to the effective responsive management of revenue from Ghana’s gold resources.

Many members of Parliament, along with the CSOs, saw the Agyapa transaction as a means to pledge one of Ghana’s most important revenue streams to an offshore company for the foreseeable future. The manner in which funds from this sale would be redistributed were still unclear at the time the plans were approved by Parliament. The later amended MIIF Act granted a wide discretion to the Ministry of Finance; and did not clearly state whether the funds raised were to be subjected to the same parliamentary oversight that the normal budgetary process in Ghana stipulates. Furthermore, Agyapa Ltd was granted the power to

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<sup>52</sup> Relationship Agreement Clause 3

<sup>53</sup> *ibid*

<sup>54</sup> Relationship Agreement clause 3.2

<sup>55</sup> Jamie Corner and Dan Hirschovits, ‘Listing sovereign-controlled companies in the United Kingdom’ (11 December 2018) <<https://www.internationallawoffice.com/Newsletters/Banking-Financial-Services/United-Kingdom/Davis-Polk-Wardwell-LLP/Listing-sovereign-controlled-companies-in-the-United-Kingdom>>

“borrow money or raise equity in foreign currency ... on the back of the gold royalties ... without the requirement for any further approval, consent or administrative act of the Government of Ghana.”<sup>56</sup> This presented another glaring gap in the exercise of accountability, further complicated by the complexity of the entire process.

In terms of the structure of the deal and its valuation, the GoG explained that this was the best way to attain short-term financing while establishing a long-term fund management vehicle. The Alliance of CSOs disagreed that the public route was the best way for the country to capitalise on its gold assets based on the understanding that royalty agreements within the private market were far more valuable. As mentioned before, several large gold royalties streaming companies operate within the private sector, although most of their activities are not based in Africa. The companies provide financial investment to mining projects, in exchange for either a set percentage of revenue (royalty) or gold itself (stream). Generally, these companies enjoy the benefits from mining activities while incurring no additional costs.<sup>57</sup> Over the last year, the largest royalty and streaming companies Franco Nevada, Wheaton Precious Metals and Sandstorm Gold saw increases of 71%, 95% and 71% in the value of their shares, respectively.<sup>58</sup> Despite the Covid-19 pandemic, Franco Nevada, Wheaton and another large company by the name of Royal Gold had amassed \$402 million in positive free cash flow in the first quarter of 2020 alone.<sup>59</sup>

Analysts from IMANI suggested that a negotiation and fixed-term deal with a private royalty company would have produced a fairer, less unnecessarily complex and more transparent valuation for Ghana’s gold assets. They further illustrated their preference for a private sector option by comparing the abandoned IPO of Triple Flag Precious Metals Corp with Wheaton Precious Metal International Ltd’s<sup>60</sup> recent royalty agreement with Caldas Gold Corp. While Triple Flag shelved its stock market launch at the end of 2019 due to “lacklustre demand from investors” and a “challenging” environment for share offerings;<sup>61</sup> Wheaton purchased 6.5% of future gold royalty streams from just one of Caldas Gold Corp’s

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<sup>56</sup> Statement by Dr Steve Manteaw, a spokesperson for CSOs in ‘Ghana: Special Prosecutor Begins Probe into Agyapa Deal’ (no 42)

<sup>57</sup> OpenOil Report (no 28) 10

<sup>58</sup> OpenOil Report (no 28) 11

<sup>59</sup> Gold’s Big Year: A Look Back’ <<https://www.bullionvault.com/gold-news/gold-2020-011420211>> accessed 23 February 2021

<sup>60</sup> A private subsidiary of Wheaton Precious Metals Corporation

<sup>61</sup> Jeff Lewis and C Nivedita, ‘Elliott-backed Triple Flag scraps IPO, signals tough 2020 for listings’ (*Reuters*, 11 December 2019) <<https://www.reuters.com/article/us-tripleflag-ipo/elliott-backed-triple-flag-scraps-ipo-signals-tough-2020-for-listings-idUSKBN1YF1T9>> accessed 22 January 2021

upcoming projects for \$110 million.<sup>62</sup> Other CSOs agreed, expressing concerns that the level of investment that Agyapa could make from its earning would be far less than that of the private companies. The dividend yield and the return on investment would be low while the underwriters, brokers and early investors who were allocated shares during the book-building would profit from the undervaluation.<sup>63</sup>

The IMANI analysis in particular indicates that had the CSOs been consulted earlier, they may have been amenable to lending their support towards a more valuable and transparent private royalties transaction, as opposed to the long-winded, opaque and expensive IPO.<sup>64</sup> This controversy demonstrates that comprehensive stakeholder consultations at various levels of the planning process of similar fiscal innovations can be instrumental in closing governance gaps, thereby increasing the likelihood of finding solutions which benefit the people.

## 4.2 Agyapa Ltd and Anti-Corruption

Aside from the valuation concerns discussed in this Insight, the Agyapa plan attracted even more push-back due to the poor transparency and disregard for substantial due process that permeated the actions and omissions of officials involved in the transaction. Ahead of the planned IPO, Transparency International, along with almost 30 Ghanaian and international CSOs submitted urgent concerns on signs of corruption within the deal to the Finance Conduct Authority (FCA).<sup>65</sup> Ghana already maintains some structures which are theoretically well-placed to lower the risk of corruption, but the implementation of these processes falls short.

Take for example the model Office of the Special Prosecutor (OSP) which was established following the President's 2016 campaign promise to do so.<sup>66</sup> The work of the Office is governed by the Special Prosecutor (Operations) Regulations 2018,<sup>67</sup> which appears to be

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<sup>62</sup> Alleyn Sykora, 'Caldas Gold, Wheaton announce planned streaming deal for Marmato project' *Kitco News* (Montreal, 22 June 2020) < <https://www.kitco.com/news/2020-06-22/Caldas-Gold-Wheaton-announce-planned-streaming-deal-for-Marmato-project.html> > accessed 22 January 2021

<sup>63</sup> IMANI (no 48) 4

<sup>64</sup> 'Why the CSOs Oppose the "Current" Agyapa Deal' (no 19) 6

<sup>65</sup> 'Financial Institutions in the UK urged to review and withdraw from Ghana gold royalties deal' (*Transparency International*, 22 December 2020) < <https://www.transparency.org/en/press/financial-institutions-in-uk-urged-to-review-and-withdraw-from-ghana-gold-royalties-deal> > accessed 25 January 2021

<sup>66</sup> Established by the Office of the Special Prosecutor Act 2017 (Act 959)

<sup>67</sup> (L.I. 2374)



the first in Africa and is in accordance with international standards and best practices.<sup>68</sup> The undertaking of the OSP Report on the Agyapa transaction was the first time that an independent anti-corruption agency established by the GoG had analysed the risk of corruption pertaining to Parliament's approval of public agreements.

The Special Prosecutor (SP) reportedly faced a multitude of challenges during his investigation: from the fractured and late delivery of key information by the Ministry of Finance to a lack of permanent staff and adequate facilities.<sup>69</sup> The case in the latter was so severe that the SP, Martin Amidu, himself carried out all of the research and writing in person. This suggests that even though the President's 2016 campaign promise was fulfilled, the international best practice guidelines were in place and the investigation was approved; the treatment described by the SP constituted a hindrance to the proper fulfilment of the Office's role. Despite these difficulties, the OSP in Ghana undertook a robust investigation into the process of the creation of the Agyapa transaction.

The dominating conclusion in the report was its corruption risk assessment of the selection and appointment of transaction advisors for the Agyapa transaction. This was particularly illuminating as public procurement is one of the areas in the mining sector which is most vulnerable to corruption. The large amounts of money paid out to transaction advisors such as consultancies and legal service providers were subject to the Public Procurement Authority Act 2016; as well as to subsequent approval by Parliament.<sup>70</sup> The report concluded that no approval was sought at any stage of the bidding, procurement or selection process for these advisors in contravention of the Public Procurement Authority Act.<sup>71</sup> It was the position of the Special Prosecutor that each of these appointments constituted such a major redirection of public funds that they warranted a transparent and accountable bidding process.<sup>72</sup> What transpired, however, was an opaque bid-rigging exercise wrought with violations of Ghana's laws.

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<sup>68</sup> Martin A.B.K. Amidu, 'Report on the Analysis of the Risk of Corruption and Anti-Corruption Risk Assessment of the Processes Leading up to the Request for approval and approval of the Transaction Agreements and tax Exemptions Granted by Parliament Thereunder in Relation to the Gold Royalties Monetisation Transaction under the Minerals Income Investment Fund Act 2018 (Act 978) and Other related matters thereto' (*Office of the Special Prosecutor, Republic of Ghana*, 15 October 2020). (The OSP Report) 53

<sup>69</sup> Letter from Martin A.B.K. Amidu, 'Resignation of Appointment as Special Prosecutor' (Ref: OSP/2/AM/1416 November 2020) 55

<sup>70</sup> The OSP Report (no 68) 58-59; Public Procurement Authority Act 2003 (act 663) as amended by the Public Procurement Authority (Amendment) Act 2016 (Act 914); Constitution of the Republic of Ghana 1992 art 181 (5)

<sup>71</sup> The OSP Report (no 68) 55-59

<sup>72</sup> The OSP Report (no 68) 58

The aforementioned transaction advisors included Databank Group (founded and formerly chaired by the Minister of Finance, also the President's cousin)<sup>73</sup> and Africa Legal Associates (owned by the nephew of the aforementioned Minister).<sup>74</sup> The IPO initialisation would have cost Ghana around \$40 million; with 95% of this amount being paid to the transaction advisors including investment banks, legal service providers and accountancy firms.<sup>75</sup> The report also highlighted that the beneficial owners of the initial Asaase Royalties company, the MIIF's governing board and the executive board of Agyapa Ltd itself were affiliated with or part of the National Patriotic Party (NPP) - the ruling party.<sup>76</sup> These included the son of a Senior Minister, a former Vice President of Databank and an NPP member of Parliament.<sup>77</sup> This does not represent a rare occurrence within the political economy of Ghana, which is often exemplified by Presidential appointments based on patronage and kinship. The heavily partisan nature of this composition undermines the notion that such appointments were made taking into account the interest of all national stakeholders.

Furthermore, this also presents a myriad of conflict-of-interest complications, intensified by the lack of parliamentary oversight of these appointments. Consider the case of the Malaysian government who recently sued Goldman Sachs for its role in facilitating the misappropriation of funds from Malaysia's sovereign wealth fund.<sup>78</sup> A \$3.9 billion settlement was eventually reached, providing a degree of accountability and some restitution for the Malaysian people. This case study's situation begs the question: if Agyapa Ltd's IPO were to proceed, and the allegations of impropriety made by the CSOs, opposition MPs and OSP were proven, would the GoG be in a position to investigate and take legal action against advisors that are closely related to the President and the ruling party?<sup>79</sup>

Notably, in February 2021, Databank announced its decision to withdraw its services from the transaction due to attacks on its reputation stemming from the Minister of Finance's

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<sup>73</sup> Ken Ofori-Atta: Minister of Finance, Ghana <<https://live.worldbank.org/experts/ken-ofori-atta>> accessed 26 January 2021

<sup>74</sup> 'REVEALED: Ken Ofori Atta gives Gabby Otchere Darko US\$ 20 million review contract' *The New Statesman* (September 12 2017)

<<https://www.thenewstateman.com/single-post/2017/09/12/REVEALED-Ken-Ofori-Atta-gives-Gabby-Otchere-Darko-US-20-million-review-contract>> accessed 20 January 2021

<sup>75</sup> Baffour Gyasi, 'In Whose Interest: Agyapa IPO' (*Modern Ghana*, 4 October 2020)

<<https://www.modernghana.com/news/1033420/in-whose-interest-agyapa.html>> accessed 15 January 2021

<sup>76</sup> The OSP Report (no 68) 27-30

<sup>77</sup> The OSP Report (no 68) 28

<sup>78</sup> 'Goldman Sachs to pay \$3bn over 1MDB corruption scandal' *BBC News* (London, 22 October 2020)

<<https://www.bbc.co.uk/news/business-54597256>> accessed 25 January 2021

<sup>79</sup> 'In Whose Interest: Agyapa IPO' (no 75)

association with the bank.<sup>80</sup> The CEO explained that the bank’s “deep market knowledge” and “extensive experience” led them to conclude that the negative media coverage could cause “incalculable” damage in both foreign and domestic international markets.<sup>81</sup> If the Agyapa Ltd IPO is pushed through despite these developments and alongside CSO protests, it is likely that its extreme unpopularity may discourage investors and lead to even lower income streams.

Another key aspect of the report concerned the process of Parliamentary approval of the Investment Agreements. The most glaring observation was the fact that the transaction Agreements contained clauses which sought to give retroactive effect to a proposed Amendment to the MIIF Act. This Amendment had not yet received Presidential assent and was therefore not law.<sup>82</sup> Yet, the Finance Committee approved the Agreements presented by the Minister of Finance and recommended parliamentary approval. This process was initiated on 13 August 2020 and passed on 14 August 2020, casting even more doubt on the level of scrutiny that could have possibly been applied by the Committee and Members of Parliament in under 24 hours. The OSP’s subsequent analysis of each Agreement concluded that they all suffered from the “same lack of probity, transparency, unaccountability, illegality and unconstitutionality.”<sup>83</sup> The report also noted that the GoG’s lack of consultation with major stakeholders until after obtaining parliamentary approval heavily contributed to its findings on the opacity and impropriety of the processes leading up to the approval.

Corruption at the start of the mine lifecycle compromises the rest of the process. It creates a culture which impairs the way future operations are monitored and regulated, while undermining monetary aspects down the line, such as the collection and management of royalties and taxes. When the public, through their representatives, are excluded from having a say in the initial procurements as accorded to them by law, it becomes more likely that the risk of corruption will increase; that unsound or destructive projects will be approved; and that the rights to a nation’s mineral wealth may be granted to unethical parties.

It is, thus, imperative that independent gatekeepers similar to the OSP are well-funded and encouraged so as to improve their ability and motivation to ask pertinent questions and

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<sup>80</sup> Godwin Akweiteh Allotey, ‘Databank withdraws from Agyapa Deal as transaction advisor’ *Citi Newsroom* (February 2021) <<https://citinewsroom.com/2021/02/databank-withdraws-from-agyapa-deal-as-transaction-advisor/>> accessed 18 February 2021

<sup>81</sup> *ibid*

<sup>82</sup> The OSP Report (no 68) 40-42, 45

<sup>83</sup> The OSP Report (no 68) 40

propose suitable amendments. Shortly after publishing this report, the SP offered his letter of resignation citing “political interference in the performance of functions of [his] Office.”<sup>84</sup> He accused the President of attempting to “politicize and down-play the seriousness of the professional analysis of the risk of corruption and anti-corruption assessment reported by [the] Office [of the Special Prosecutor]”.<sup>85</sup> Although the now former SP has in the past been criticised for his inability to prosecute corrupt officials, he has regularly attributed this to a lack of cooperation and even political interference from MPs and members of the Executive.<sup>86</sup> Public figures like the SP in Ghana are necessary for the anti-corruption fight as they can command the public’s trust in the government’s commitment to anti-corruption. The success of such initiatives depends on the ways in which a number of systemic variables can impact their independence and effectiveness. In the case of Ghana, it appears as though a major consideration going forward would be the adaption and implementation of policies that govern the relationship between the OSP and the senior branches of government.

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<sup>84</sup> ‘Resignation of Appointment as Special Prosecutor’ (no 69) 2

<sup>85</sup> *ibid*

<sup>86</sup> Kojo Emanuel, ‘Martin Amidu reveals why he can't prosecute and now a 'toothless bulldog’ *Pulse Ghana* (September 2019) <<https://www.pulse.com.gh/news/politics/martin-amidu-reveals-why-he-cant-prosecute-and-now-a-toothless-bulldog/kxyh94j>> Accessed 18 February 2021

## 5. CONCLUSION

This Insight sought to examine the GoG's controversial financing arrangements and the possible responsive governance implications therein. This brief exploration of the inception, features and goals of Agyapa Ltd has produced more questions than answers. Why was this arrangement required in the first place? Why was due process circumvented at almost every turn? Why were key stakeholders not consulted? Why are the key players so closely linked to the President? What is the hurry? The main conclusion that can be drawn from the analysis in this Insight is that there is very little evidence to support the GoG's publicly declared perspective of the Agyapa plan. In actuality, many features of the plan demonstrate that its architects have created an environment which is conducive to corruption and the facilitation of illicit financial flows. The highly partisan nature of the governing boards of the entities associated with Agyapa Ltd, along with the relationships between most of the parties involved calls into question the motives behind the transaction. The exclusion of CSOs and other stakeholders prior to parliamentary approval, whether intentionally or negligently, raised the risk of corruption and reduced the GoG's capacity for accountable, equitable and responsive governance of the country's gold royalties.

Agyapa Ltd's journey began in September 2018, when Parliament approved the Bill which allowed for the creation of the SPV. The GoG, however, accelerated their efforts in the second half of 2020, aiming to float Agyapa Ltd by the end of the year. This rush was reflected in the miniscule amount of time it took the Executive, the Finance Committee and Parliament itself to examine and approve the numerous documents related to the transaction. It is also notable that every publicly available independent financial analysis of the proposed IPO concluded that Agyapa Ltd had been undervalued. Thus, perhaps with the exception of the minority of MPs that walked out in protest, the people's representatives also failed to discharge their duties and effectively scrutinise the deal. Furthermore, the incorporation of this vehicle, which seeks to manage an enormous share of Ghana's resources, in a tax haven fundamentally inhibited the exercise of responsive governance by allowing for more secretive ownership of the company.

A fair conclusion can be drawn that if the relevant institutions had adhered to Ghana's own due process laws and transparency standards, then this controversy may have been avoided. The introduction of complex financial agreements that affect the people should

involve the people and their representatives from the beginning. It has been suggested that Ghana's recently elected hung parliament may offer new opportunities to increase good governance, especially where "egregiously problematic government projects and policies are concerned."<sup>87</sup> Undoubtedly, the comprehensive investigations undertaken by the CSOs and the SP showed great potential in holding the government accountable and delaying the widely criticised IPO. Their advocacy brought national and international attention to the otherwise secretive deal, and even resulted in the public withdrawal of Databank. Despite the controversy, the NPP, was re-elected in December 2020 and the Minister of Finance was reappointed to his position in the Cabinet. Now that various Ghanaian CSOs have the Agyapa transaction in their sights, it is likely that they will continue to scrutinise any further developments and publish analyses. This will only be possible if the GoG fulfils its corresponding duty to facilitate their work by making key information such as the financial models used for valuations available to the public.

Resource-rich developing nations in need of a funding stimulation *can* benefit from unconventional thinking, especially in these unprecedented times. However, there is much to be learned from the Agyapa controversy, which showed that the key challenges surround the enforcement of accountability and transparency norms. Governments should host stakeholder consultations throughout the research and planning process with a view to creating solutions that reflect the needs of the citizens. By holding open and transparent bidding for contracts, it becomes more likely that truly independent parties will be involved in lieu of friends and relatives that can further insulate processes from outside scrutiny. The parliamentary approval failures described in section 4.2 can be mitigated by the executive branch of government's commitment to enabling access to information. A legislative body that is informed of proposed financial structures and is afforded the time and training required to review the information, is in a favourable position to discharge their duties to their constituents and hold the executive to account. Lastly, there is great potential in the institutionalisation of independent gatekeepers that have the mandate to investigate procurements and prosecute offenders. This involves funding and training organs such as Ghana's OSP and granting the necessary time and resources needed to investigate transactions with a high risk of corruption. The relationship of such an institution to the various branches of government should be well-defined and informed by an overarching commitment to upholding the independence of the institution.

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<sup>87</sup> Franklin Cudjoe, 'Ghana Elections: A hung parliament could haunt Nana Akufo-Addo' (*IMANI Centre for Policy and Education*, 21 December 2020) <<https://imaniafrica.org/2020/12/21/ghana-elections-a-hung-parliament-could-haunt-nana-akufo-addo/>> accessed 22 January 2021

Ghana's 'Alliance of CSOs working on Extractives, Anti-Corruption and Good Governance' was comprised of an array of organisations including the Africa Centre for Energy Policy (ACEP), the Citizen's Movement Against Corruption (CMAC), Publish What You Pay (PWYP), the Centre for Public Interest Law (CEPIL) and IMANI Ghana and Women. In the past, this Alliance's involvement in national consultations with the government has yielded positive results such as the establishment of the Public Interest and Accountability Committee. This demonstrates that the cooperation between like-minded organisations can support their institutional strengthening capabilities in terms of mobilising a diverse array of citizens to promote participation in political processes, while also contributing to policy through dialogue and advocacy. CSO alliances could also benefit from establishing knowledge-sharing networks to promote the exploration of diverse and innovative approaches to citizen participation.

By aiming to maintain a culture of transparency at all stages of wealth planning, forward-thinking resource-rich nations can dodge fiscally innovative bullets like Agyapa Royalties Ltd.