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From Concession to Joint Venture Agreement: Restructuring Mineral Agreements – A Case Study from Ghana

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INTRODUCTION

That the present world economic system or, as it is more frequently called these days, the present international economic order is considered by the developing countries to be inequitable is now a hackneyed truism. What is of interest is how the amelioration of the lot of the third world in the international economic order is to be achieved. The strategy adopted within the United Nations system has been a strategy of negotiation. But more radical voices have been heard in the third world which have called for confrontation with international capitalism and disengagement from it.

The authors of this article consider that the negotiation option should be studied to see its limits and its potentialities. Is it really possible for third world countries to bargain themselves out of dependency and if not what can be achieved through negotiation? With a view to throwing some light on these general issues, the authors mean to examine in detail one particular series of negotiations. Although these negotiations are not a part of the state-to-state UNCTAD series of negotiations, they are seen as an inevitable part of the package of negotiations entailed by the adoption of the negotiation option implicit in the U.N. policies and activities aimed at the establishment of a New International Economic Order. The series of negotiations to be studied in this article pertain to the restructuring of the contractual relations of a transnational corporation with a host developing country. What is to be assessed is the extent to which adoption of the negotiation option and of the particular negotiation strategies and tactics aided or caused detriment to the national interest of the host country concerned.

A. THE COLONIAL CONCESSION OF ASHANTI GOLDFIELD CORPORATION: FOUNDATION OF THE OLD ORDER.

As can be guessed from the former name of Ghana, the Gold Coast, goldmining is an ancient activity within the area now comprised in Ghana. The gold was produced principally from within the territory of the old Ashanti Kingdom, both by alluvial mining methods and underground mining techniques.[1] However, other areas of Ghana also produced gold. The rich gold ores of Obuasi and other areas in the old Denkyira Kingdom had been worked as far back as the Seventeenth Century.[2] But it was the Ashanti Goldfields Corporation (A.G.C.) which first applied western mining technology to these ancient workings.

The title on which A.G.C. based its right of access to the gold ores it mined from 1897 onwards predates the British assumption of sovereignty over Ashanti. British sovereignty over Ashanti was achieved by conquest in the Yaa Asantewa War of 1900 and was confirmed by an Order-in-Council of 26 September, 1901, which annexed the territory of Ashanti consequent upon its having "been conquered by His Majesty's forces."

The founder of Ashanti Goldfields Corporation, one Edwin A. Cade, bought the lease of the goldfields at Obuasi from their local Fanti owners, J.P. Brown, J.E. Ellis and J.E. Biney in August, 1895.[3] Cade had, prior to his departure from England to the Gold Coast in search of investment opportunities there, in 1895 formed the Côte D'or Mining Company in London.[4] In the agreement in which he bought the lease of the Obuasi goldfields from the three Fanti merchants, he acted for this Côte D'or Mining Company and so it was to that company that the concessions of the three Cape Coast merchants were transferred.[5] The role of these local merchants in these transactions is quite interesting. Recognizing the mineral wealth of the lands in question, they had ventured into the then independent Ashanti Kingdom to negotiate with the local chiefs of the area, "Yaw Boyskey[6] then King of Bekwai," according to one of the recitals of the 1897 A.G.C. lease, and "Kwaku Mkansa then King of Adansi." By an indenture dated 1st August, 1895 between the said Yaw Boyakey of Bekwai and J.E. Biney, J.E. Ellis and J.P. Brown, an earlier indenture executed by a prior "King of Bekwai" dated 3rd March, 1890 had been confirmed and modified and the land it dealt with had been leased to the three Cape Coast merchants for a term of 99 years from 3rd March, 1890 "at the early rent of £100 until the said premises should be sold or disposed of and after the lapse of one year from the time when the said premises should have been sold or disposed of at the yearly rent of £133."[7]

Commenting on the role of the three merchants, David Kimble remarks that "this seems to be a classic case where Africans had recognized economic opportunities, but lacked the capital and technique to develop them."[8] The three merchants also entered into an Agreement dated 15th August, 1895 with Kwaku Nkansa, "King of Adansi," which purported to confirm the Indenture executed by Yaw Boyakey, subject to the payment of a yearly rent of £66 to the King of Adansi.[9] The subject matter of these agreements was land about one hundred square miles in dimensions situated in the Obuasi area. The three Fanti concessionaires were associated with "the Ashanti Exploration Company."[10] The concessionaires are said to have commenced mining operations on this land, but presumably using traditional techniques. The reason why the concessionaires had to seek title from both the Adanshene and Bekwaehene was that, although Obuasi was part of Adansi, the Adansi had been defeated in 1886 and ever since the Bekwaihene had administered the Adansi lands, even though they still belonged to the Adansi community whose stool the Adansihene occupied. At the time the concessions were granted, the Adansihene was still in exile in the Gold Coast Colony, to the South of the independent Ashanti Kingdom.[11]

In spite of the initial working of the concessions by their original owners, the language of the provisio on rents quoted above would seem to suggest that they had contemplated resale of the lease right from the beginning. Speculation, therefore, seems to have been part of their design.

After the execution of the agreement transferring the interest of the Fanti concessionaires to the Côte D'or Company, Cade travelled in August 1895 to Bekwae to seek the consent of the Bekwaehene (Yaw Boakye) to the transfer. He succeeded in securing such approval not only from him, but also from the Adansehene Kwaku Nkansa.[12] Subsequently, in January 1896, the British Government sent troops into Ashanti. They met with no opposition and occupied Kumasi on 17th January, 1896. After this British occupation of Ashanti, the Secretary of State for the Colonies informed the Côte D'or Mining Company on 27th April, 1896 that the company's concession would be recognized as valid.[13] In 1897 Cade formed the Ashanti Goldfields Corporation.[14] The Côte D'or Company was subsequently liquidated and its assets taken over by the A.G.C.[15]

On 3rd June, 1897 an agreement was entered into by the Governor of the Gold Coast, the three original Cape Coast concessionaires, the Côte D'or Company Ltd. and the Ashanti Goldfields Corporation Ltd. This agreement, which has already been referred to several times in this article as the 1897 A.G.C. lease, formed the legal basis of A.G.C.'s gold mining operations at Obuasi till 1969.

This 1897 A.G.C. lease recited the previous lease acquired by the three Cape Coast concessionaires and the Agreement by which they transferred their interest to the Côte D'or Company Ltd. It further recited that the three Cape Coast concessionaires and the Côte D'or Company Ltd. had requested the Governor of the Gold Coast to enter into the Agreement with the Ashanti Goldfields Corporation Ltd. One of the recitals claimed that "the Territories of Bekwai and Adansi are now under the protection of Her Majesty, the Queen of Great Britain and Ireland, Empress of India, and are under the control of the Governor on behalf of Her Majesty."

But in June 1897, it was by no means clear whether Great Britain had acquired sovereignty over Ashanti. As Ivor Wilks writes,

> The decision of Agyeman Prempe's government in 1896 not to offer resistance to the British expeditionary force, had been in certain respects itself a finely calculated act of resistance in view of the gross disparity in the military resources of the two powers. As a result of the decision the British found themselves, although in military occupation of Ashanti, nonetheless without adequate legal standing there: having claims to legitimacy neither by treaty with the lawful government nor by right of conquest. The various agreements which the British signed with individual amanhene - often their own nominees - were of dubious legal validity, and one of the reasons for

> the decision to arrest and deport the Ashantehene and many of his senior officers was undoubtedly the fact that no restraint existed in international law upon their entering still into treaty relations with Britain's colonial rivals, France or Germany."[16]

In spite of this shaky foundation of the legal authority claimed by the Governor of the Gold Coast over the Obuasi lands, which is to be implied from the passage quoted above, the A.G.C. lease was cast in the form of a grant of authority by the Governor of the Gold Coast to A.G.C. "to occupy during the term of 90 years from the 1st day of January, 1897 for the purposes and subject to the conditions hereinafter mentioned," 64,000 acres of land in the Obuasi area.

As already mentioned above, the indenture under which the Ashanti Goldfields Corporation sought to obtain title to the Obuasi concessions was executed by the Governor of the Gold Coast at the request of Côte D'or Company and the three Cape Coast merchants. Presumably, then, the Côte D'or Company was seeking to transfer its title under the concessions to the Ashanti Goldfields Corporation and considered that the Governor's signature of the documents would assure Ashanti Goldfields Corporation a better title. The three last recitals were to the following effect:

> And whereas the Governor does not admit the validity of the Concessions or any of them but has in exercise of his authority agreed at the request of the said parties hereto of the second and third parts to authorise [Ashanti Goldfields Corporation] to occupy the said land as being part of the unoccupied lands of the said protectorate.
>
> And whereas for the purpose of settling all disputes or questions as to the validity of the Concessions or any of them it was agreed by the said parties hereto that the Concessions should be surrendered and delivered to the Governor and cancelled and that in lieu thereof the Company should accept such an Authority to occupy the said land as is hereinafter contained.
>
> And whereas in pursuance of such Agreement the Concessions have been surrendered and delivered to the Governor and have been cancelled.

These recitals raise very interesting issues as to the Governor's authority to grant what has subsequently come to be known as the Ashanti Goldfields Lease. The year of the lease was also the year of the Public Lands Bill and may explain the Governor's claim of authority to grant Ashanti Goldfields Corporation authority to occupy the land in question "as being part of the unoccupied lands" of Ashanti. The Public Lands Bill, however, never became law and it is to be doubted whether the Governor had any lawful authority to grant any rights of occupation of any unoccupied lands in Ashanti. In the Public Lands Bill, the colonial government made an abortive attempt to vest in itself all unoccupied lands in the Gold Coast. The attempt was vehemently opposed by the local peoples and had to be abandoned.

Whatever rights the Ashanti Goldfields Corporation received could be no more than those vested in the Côte D'or Company. But the mode of transfer of those rights poses problems, because the Côte D'or Company did not purport to transfer its rights to A.G.C. Rather, the concessions had been delivered up to the Governor and cancelled. In strict analysis, upon such cancellation, title in the concessions should revert to the Bekwai and Adansi stools. It is difficult to see why such cancellation should result in the Governor obtaining title to the lands in question.

Perhaps a plausible way of finding some legal basis for A.G.C.'s operations at Obuasi pursuant to the Governor's lease is to argue that since the three Cape Coast merchants, as well as the Côte D'or Company, joined in the indenture which purported to grant A.G.C. a lease of the Obuasi lands, and since it was the intention of all the parties that the mining rights in the land be transferred to A.G.C., the sense of the document must be taken to be a transfer of title to the Governor, who in turn transferred his title to A.G.C. But if this was the only purpose of the document, then one is hard put to see the point in this circuitous transaction, since the Governor's title would not be any better than that of his transferors.

This agreement then demonstrates the problem of concessionaires which was solved under the subsequent Concessions Ordinance. Under the Concessions Ordinance, after an inquiry by the High Court, if a certificate of validity is given, then the concessionaire obtains a guaranteed title. The A.G.C. lease was such an attempt by a foreign concessionaire to obtain a guaranteed title. It is doubtful whether, as a matter of strict law, such a guaranteed title was achieved. But, no doubt, a political guarantee was achieved. The Governor, being a signatory to the so-called lease, could be expected to safeguard the concessionaire from any interference. Indeed, this so-called lease was never questioned by even the post-independence governments.

Whatever was the legal basis of the Governor's authority so to do, he did purport, as already indicated, to grant to A.G.C. authority to occupy for a term of 90 years from 1st January, 1897 the present area of operation of the A.G.C. containing some 64,000 acres of land. The said land was to be held on the following conditions. A.G.C. was to make the following payments to the Colonial Treasurer of the Gold Coast:

a) a commuted royalty of £500 per annum during the first five years of the agreement;
b) a royalty of 5% on the gross value of all gold and other metal, precious stones and mineral oil won from the land with effect from 1st January, 1903; [this royalty could be commuted for any one or more years for such an annual sum as was agreed on between the Governor and A.G.C.] and such commuted royalty was to be paid half-yearly in advance. In any year in which no such commutation had been done the agreement provided that if the royalty amounted to less than £250, then £250 was to be paid in lieu of the royalty.

c) a sum of £133 per annum which was to be received by the Colonial Treasurer on behalf of the person recognized by the Governor as the "Head-Chief or King of Bekwai" and
d) a sum of £66 per annum to be received by the Colonial Treasurer on behalf of the person recognized by the Governor as the "Head-Chief or King of Adansi."

A.G.C.'s use of the land comprised in the lease was not to be limited to mining operations, but was to extend also to "trading, cultivation of rubber or agricultural produce or for any other purposes which may from time to time have previously been expressly sanctioned in writing by the Governor." For these purposes, A.G.C. could

> make roads and bridges, lay out townships in connection with any mining or agricultural operations and erect buildings and machinery and cut and fell timber [but without destroying rubber trees or other valuable timber] and use any waters but this Agreement is to be subject in every respect to the existing rights of any native or natives in respect of the said land or any part thereof and accordingly every operation hereby authorised must be conducted so as in no way to affect or interfere with any (such) rights.[17]

This 1897 concession to A.G.C. was thus an archetypal concession under which an investor from the colonial metropole gained access to the natural resources of a colonial people on very unfair terms. Recent writers have laid bare[18] the exploitative nature of many such classical concession agreements. The sanguine view of such agreements by earlier writers such as Carlston are not shared by many lawyers from the third world. Carlston wrote:

> A concession agreement reflects one aspect of the process of foreign investment. It is an instrument of coordination whereby a state and a foreign investor establish a complementary system of relationships in the conduct of an enterprise for a defined period. It includes the grant by the state to the concessionaire of the privilege to enter into the system of economic relationships defined by the instrument. Its essential character, however, is that of co-ordination and the grant of privilege by the state is but an incident of the co-ordinated activity contemplated by the agreement. It may more appropriately be termed an international economic development contract. It is characteristically found to be a means for the development of the mineral resources of the state.[19]

Why is this conception of the concession as an instrument of coordination in aid of economic development increasingly challenged by third world scholars? The objection is to the distorting effect of such concession agreements, which typically established enclaves within the local economy with not much impact on the general development of the local economy. The natural resources of the colony were subjected to the ownership and control of foreign enterprise in whose equity capital there was usually no local participation, public or private.[20] This old emphasis on the co-ordination role of the concession concealed the very real conflicts of interest between foreign concessionaires and host countries. The foreign ownership of the companies meant the repatriation abroad of the super-profits made from the extractive industries.

Returning to the Ashanti Goldfields Corporation lease of 1897, one needs to stress the fact that the land leased was already known to bear gold ores. This was not the case of land being given out for prospecting and risk capital being committed to that endeavour. What was required of A.G.C. was merely the organization of production from the gold ores to which access was granted them by the lease. The reward for organizing that production was to be undisturbed possession of some of the richest gold ores in the world for a guaranteed period of 90 years. There was thus to be a siphoning off of the profits of gold production to the metropole for that inordinately long period, with no provision made for reinvesting any part of such profits in the local economy. The annual payments to be made by A.G.C. under the lease, which have been set out above, were derisive in the light of the income to A.G.C. from its operation.

In spite of the exploitative nature of the A.G.C. lease and the doubtful authority of the Governor to grant it, it remained in force until April 1969. It survived the vesting of all mineral rights in Ghana in the state which was achieved by the Minerals Act, 1962.[21] Although the Minerals Act declared all minerals in Ghana "vested in the President on behalf of the Republic of Ghana in trust for the people of Ghana," it did not seek to expropriate acquired rights and so existing concessions were not terminated by it.[22] But the regime established by the 1897 lease cried out aloud for restructuring. The first attempt to effect such restructuring was in 1969 and it is discussed in the next section.

THE 1969 RESTRUCTURING EXERCISE: FEELING TOWARDS A NEW ORDER

Up to 1969, then, gold production at Obuasi was controlled by a small transnational corporation.[23] It was not surprising that this profitable business of A.G.C. became a prize in the process of amalgamations and takeovers which characterise the capitalist system. At the end of 1968, A.G.C. was taken over by the fast growing Lonrho, a bigger transnational corporation with interests in many African countries. The acquisition of A.G.C. was a significant event in the corporate history of Lonrho.

The Lonrho takeover bid was made as a result of consultations between it and the Ghana Government. Earlier in 1968, the Ghana Government had tried to secure a modest restructuring of the 1897 agreement directly with A.G.C., but A.G.C. would only offer the government 10% of its equity in exchange for the abolition of royalties and mineral duties. It further wanted taxation of its profits limited to 50% and a management fee of £150,000 a year. The government of that period, even though quite conciliatory to transnational corporations, refused to accept these terms. Meanwhile, at the government's request Lonrho had been doing a survey of the government's gold mines. After the failure of the A.G.C. talks, Lonrho showed interest in the Obuasi mine and discussions with them eventually led to an understanding with the Ghana Government, on the basis of which they made their takeover bid for A.G.C. After Lonrho had successfully taken over A.G.C., the new management of A.G.C. concluded with the Ghana Government the agreement which became the foundation of the 1969 restructuring. A.G.C. was a desirable prize for Lonrho because of A.G.C.'s strong cash position. At the time of the takeover, A.G.C. had cash reserves worth some £2 million. Lonrho's takeover technique was to gain access to this cash, using its shares and convertible debentures. Lonrho paid no cash in the takeover. Over 90% of A.G.C.'s shareholders accepted Lonrho's offer to exchange Lonrho shares and 7 1/2% convertible loan stock for their A.G.C. shares. Consequently, pursuant to s.209(1) of the U.K. Companies Act 1948, Lonrho was able to buy out the remaining shareholders and to make A.G.C. a wholly owned subsidiary of Lonrho.

The provisions of the 1969 agreement must now be examined. In the agreement signed on 15th April, 1969, the Ghana Government for the first time acquired an ownership interest in the Obuasi mine. The government was given 20% of shares in A.G.C. in exchange for the grant by government of a new lease for 50 years from 1 January, 1969 at a yearly rent of £30,000 in respect of land at Obuasi comprising approximately 100 square miles. The government was given an option of acquiring a further 20% of the shares in A.G.C. for cash payable in sterling in Londo. Thus, while Lonrho had not paid cash for its shares in A.G.C., the government was required to pay cash, if it wanted to increase its shareholding to 40%. In the original April agreement, there was not even any provision made for the government to nominate any members of the A.G.C. board, but a supplemental Agreement of 2 September, 1969 took care of this glaring deficiency by giving the government the right to nominate four members of the board of twelve. Although during the discussions, the idea had been canvassed of establishing a Ghanaian company to take over the assets of A.G.C., in the final Agreement, A.G.C. was allowed to remain a U.K. company with headquarters in London.

The combined effect of the two agreements of 1969 was to create a joint venture between Lonrho and the Ghana Government. The Ghana Government was the minority shareholder and in a British company at that. The Ghana Government did not thus acquire even the outward trappings of control, let alone its substance. One is thus left wondering at the objective of the Ghana Government in bringing about the 1969 restructuring. Was it to get more information about the operations of A.G.C. through the government's representation on its board? It must

have been for some reason other than the acquisition of control, because the minority representation on the board could hardly give the government any more influence than it already had. By exercising its legislative and executive powers as the government on whose territory A.G.C.'s mining activities were taking place, the government could probably exercise more influence on corporate policy then through a minority representation on the board of a British company.

The April 1969 Agreement contained the following clause:

> The Corporation shall within eighteen months of the date of this Agreement submit to the Governor for its approval a scheme for the training of Ghanaians recruited specially if necessary for the purpose. Such scheme shall be directed towards the training of Ghanaians for employment in the mining industry: (a) as tradesmen (b) in supervisory posts and (c) in senior professional and management grades.

While this concern for training mining manpower was commendable, it could hardly have been the motivation for the restructuring, since it could be achieved, perhaps better achieved, through administrative powers.

Was the Ghana Government's purpose in the 1969 exercise to improve its financial earnings from A.G.C.'s enterprise? If this was its purpose, it also failed in this regard. Under the 1897 Agreement, income to government from A.G.C.'s enterprise, besides tax income, was on the basis of the 5% royalty provided for in that Agreement. For this fixed income, the 1969 arrangement substituted a right to dividends on the government's 20% shareholding. Since there is no automatic entitlement to dividends every year, the declaration of dividends being the discretionary prerogative of the Board, over which the government had no control, the government sought to safeguard its interest by a provision in the 1969 agreement[24] to the effect that if the dividends declared on the government's shares in a particular year were less than 5% of the "gross value" of the minerals sold by A.G.C. in that year (i.e. what the government would have been entitled to under the old 5% royalty formula), then A.G.C. was to pay the government an amount equal to the "deficiency." This retention of the royalty element was even taken to the length (beneficial to A.G.C.), of providing that dividends paid to the Government to the extent that they did not exceed the 5% gross value (and any deficiency payments) were to be made deductible against profits for income tax purposes and credited against mineral duties to the government. These points about tax deductibility and the ability to credit against minerals duty were specifically adverted to and agreed on in the Supplemental Agreement of September, 1969. This Agreement provided that until 31 December, 1983, payments to be made by Lonrho or A.G.C. by way of dividends on the government's 20% shareholding or in respect of any deficiency between such dividends and the 5% royalty previously payable were to be allowable deductions in the computation of tax. From 1 January, 1984, however, these allowable deductions were to be limited to the deficiency payments. It was also agreed that until 31 December, 1993, there was to be deducted from the minerals duty payable by A.G.C. a sum equal to the royalty which would have been paid had the

1897 agreement continued in force. From 1st January, 1994, however, this privilege was to be limited to the net deficiency payments.

The annual rental of £30,000 was also tax deductible; this meant, in effect, that the Government paid 55% of it. But this is only one aspect of the incredible ignoring of the tax consequences of the financial package involved in the 1969 restructuring. As a result of these tax consequences, in fact, the Ghana Government incurred losses by reason of having accepted the 20% allotment of shares. Under the Income Tax Decree, 1966,[25] "qualified expenditures" are capital expenditures incurred in connection with the acquisition of a mineral deposit of a wasting nature. Such qualified expenditures are given an initial capital allowance of 20% and subsequent annual allowances of 15%. A consultant hired by the Ghana Government subsequently estimated that as a result of these depletion allowances that A.G.C. lay claim to and was granted, Ghana lost 55% of £2,060,120 which would otherwise be payable as tax to the Ghana Government and an uncalculated amount in mineral duties. This tax consequence flowed from the shares being allotted to the Ghana Government by A.G.C. If, on the other hand, Lonrho as shareholder, and not A.G.C. had transferred the 20% shares to the government, this loss could have been averted, since the expenditure would not have been incurred by A.G.C. The argument A.G.C. made in claiming the capital allowances was to value the 3,745,674 shares allotted to Government at £1 each. They then claimed this value as a qualified expenditure under the Income Tax Decree. The losses incurred by the Ghana Government in tax revenues is an object lesson in the need for competence and a careful assessment of the implications of all provisions agreed to in negotiations with transnational corporations. Thus the improvement of the negotiating skills of third world negotiators with transnational corporations is clearly a high priority. In the next series of negotiations with Lonrho, the Ghana Government displayed a much better negotiating capacity. It is to this next series of negotiations, that we next turn.

THE 1972-73 NEGOTIATIONS WITH LONRHO: CASESTUDY OF A HOST GOVERNMENT'S MAJORITY PARTICIPATION IN THE BUSINESS OF TRANSNATIONAL CORPORATION.

i) INTRODUCTION

In 1972, an event of considerable national significance took place in Ghana; the civilian government, which had succeeded the military regime that had negotiated the 1969 accord, was overthrown and the new military government, the National Redemption Council, which took office on 13 January, 1972, proclaimed a policy of self-reliance with consequences on its attitude to the role of transnational corporations in the extractive industries of Ghana. Its policy towards the extractive industries was made clear in a Government White Paper on State Participation in the Mining Industry issued in December 1972 to accompany a Decree by which the State compulsorily participated in mining enterprises. In part, the White Paper declared as follows:

> This policy of self-reliance is particularly relevant to the exploitation of the resources of the sub-soil, which are clearly vested in the State. The Government position, which is no different from the position of most countries, is that the major resources of the sub-soil are part of the public domain not only de jure but also de facto. The Government, therefore, has a duty and the right to assume effective control over the exploitation of these resources to ensure that the country realises maximum economic benefit from them. In consonance with recommendations of the United Nations Commission on Permanent Sovereignty over Natural Resources in 1961, the exploitation, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the people of Ghana freely consider to be necessary or desirable with regard to the authorisation, restriction or prohibition of such activities.
>
> It is well-known that by the virtue of the various rights and concessions granted under the former colonial administration in this country, the effective control of the mining industries, and indeed, of the entire extractive industries in this country, is in the hands of foreign companies. Foreign control of this vital sector of our economy must necessarily limit our capacity to be self-reliant. The N.R.C. cannot accept any economic arrangements which deny the state effective participation in the exploitation of the country's mineral resources as well as in the ownership of the productive facilities in connection therewith. Foreign control of such a vital sector of our economy must simply give way to State control. That way lies self-reliance and economic independence.

It is appropriate now to examine the negotiation strategies that the Ghana Government adopted with a view to acquiring such state control and with what success. The materials in this section throw some light on the issue to what extent a third world country can bargain itself out of dependency on transnational corporations.

ii) ANATOMY OF THE NEGOTIATIONS

Given the National Redemption Council's aspirations, as described above, it is not surprising that soon after assuming power, it set up an interdisciplinary committee of lawyers, tax experts, geologists etc. to help in formulating a policy and strategy for participation in the mining industry. On the whole, the N.R.C.'s dealings with Lonrho were to be characterised by careful committee work. It was on the advice of this preparatory committee that the government began negotiations in July, 1972 with a view to acquiring majority shareownership of A.G.C.

The government negotiating team was lead by Dr. S.K.B. Asante, co-author of this article, then Solicitor-General of Ghana, and it included the Commissioner of Income Tax, a private practising lawyer, a geologist teaching at the University of Ghana and two other geologists in government service. Tiny Rowland, the Managing-Director of Lonrho, led the Lonrho team himself and his team included the Managing-Director of A.G.C. and other employees of A.G.C. two of whom were Ghanaians.

The government negotiating team's tactic at the initial meeting was to state its negotiating position and then demand accounts and other financial data from Lonrho for their scrutiny. Therefore, after the initial meeting, there was a recess to enable these figures to be produced to the Government team for their study. The negotiations resumed in mid-August, 1972.

Meanwhile the Lonrho team had also done their homework and at the resumption of negotiations produced a set of counter-proposals. One of these counter-proposals was that Lonrho was willing to participate in a joint venture company in which the Ghana Government would own 55% of the shares and Lonrho 45% of the shares. However, the assets to be taken over by the joint venture company should include not only those of A.G.C., but also those of the state Gold Mining Corporation. This corporation had been established in 1961 to take over the gold mines of various British companies which were contemplating shutting down because their operations were no longer profitable. At the time that Lonrho made this counter-offer, the State Gold Mining Corporation was also making losses and therefore their offer was at first sight strange. But it has to be remembered that Lonrho had been commissioned by the previous military government, the National Liberation Council, to do a study of the gold mines of the S.G.M.C. and that they were optimistic about the future of those mines. Lonrho's counter-offer was therefore a shrewd attempt to achieve a denationalisation of the gold mines in the state sector. They in effect hoped to control all the gold mines in Ghana because in spite of government ownership of the majority shares in the joint venture company, management and hence actual control would be vested in Lonrho. Lonrho sweetened this counter-offer by saying that they would not demand any cash compensation from the government, if this arrangement were acceded to. They further argued that this arrangement would avert the dispute over the mode of valuation of Lonrho's shares in A.G.C. which had already arisen.

As has already been noted, this proposal was very shrewd in view of the fact that the state mines had been incurring losses. This fact disposed some members of the negotiating team towards accepting the counter-offer so that the state mines could be returned to profitability with the better management they thought Lonrho has capable of producing. Other members of the negotiating team thought the counter-proposal totally unacceptable on political grounds. There would be a bad political loss of face for the government to announce its resolve to negotiate to capture the commanding heights of the economy only to report back to the nation that the outcome of these negotiations had been the handing over to a transnational corporation of assets which previously were wholly state owned. The government team's response was thus to tell the Lonrho team that they had no mandate to discuss this new proposal of

theirs and that the proposal would be referred back to their principal.

An alternative counter-proposal which the Lonrho team put forward was that their interest in A.G.C. should be completely taken over by the government. They preferred being bought out completely to the government proposal to acquire majority shares in their enterprise. The Lonrho team invited the government to take over their 80% shareholding in A.G.C. at the price at which Lonrho had acquired them on the London Stock Exchange during their 1968 takeover bid. The total cost to Lonrho had been £15,182,696 and the team indicated that Lonrho was prepared to accept £14 million for its 80% shareholding to be paid for in cash over a period of seven years at 6% interest on the reducing balances. It will be recalled that Lonrho itself had not paid cash for those shares. Further, Lonrho "volunteered" to take charge of the technical and administrative management of A.G.C. at no fee during this seven year period of repayment. Their only demand would be for reimbursement of direct expenses.

This counter-proposal was also referred back to the government, which in turn gave a directive to the negotiating team to discuss only the proposal relating to government majority participation in the business of A.G.C. on the basis of 55% equity to the government and 45% equity to Lonrho. Following this directive, negotiations resumed in November on the government's proposals. To forestall a testy instant rejection of this proposal, the team asked the Lonrho team to take another recess and to submit their response to the government proposals in writing after due and careful consideration of the government's offer. After the recess, the Lonrho team indicated that they accepted the 55% government participation in principle and they now concentrated their negotiating efforts on securing acceptable terms on the basis of which such participation should take place.

Much of the ensuing negotiations revolved around the question of the quantum of compensation to be paid to Lonrho. The basic disagreement was about the mode of computing the value of Lonrho's interest in A.G.C. The government team put forward a formula that would take account of only the value of the fixed and current assets of A.G.C. including bullion, in transit, but excluding any valuation of the 1969 A.G.C. new lease. The team argued that A.G.C. was not entitled to compensation in respect of the mining rights embodied in the lease, since the mineral ores were inalienably vested in the government and the government could not be made to buy back such ores. This position was flatly rejected by Lonrho. They argued that the 1969 agreements had given them an expectation interest which they sought to quantify by reference to the value they had given for A.G.C.'s shares in 1969. There was a complete impasse on this issue.

Another issue on which there was disagreement at the resumed negotiations was that of the composition of the board of the joint venture company envisaged. Lonrho rejected the government team's proposal that the government should nominate a majority of the directors. Lonrho insisted on a board majority of 6 to 5, coupled however with a provision that two of its directors should be Ghanaians approved by the government. Lonrho emphasized that it needed majority

control of the board in order to ensure effective management of the mine without undue interference in technical matters by the board and also to enable the consolidation of the accounts of the new joint venture with the accounts of Lonrho generally. As was to be expected, the government team was not persuaded by these considerations and insisted on a majority control of the board as the natural corollary of the government's majority shareholding.

The third area of basic disagreement which emerged in the negotiations was on the rate of royalty to be paid by the joint venture company. The government team had proposed 5%. But the Lonrho team considered that any rate above 3% would be excessive and therefore unacceptable.

Although there were other areas of disagreement, the three issues indicated above were those on which the talks foundered, although agreement had been reached on some other issues. For instance, Lonrho had agreed to the term of the 1969 lease being reduced from 50 years to 35 years and to assuming an obligation to ensure a progressive training of Ghanaians to man all levels of technical and administrative management of the contemplated joint venture. Lonrho had also agreed to payment of compensation to them out of the dividends to accrue from the joint venture, but had insisted on an amortisation period of seven years, instead of the eight years suggested by the government team. It, however, demanded an interest rate of 6% on the reducing balances, which the government team would not accept.

The Lonrho team, particularly the Managing Director, throughout the negotiations made it clear that they were not interested in a joint venture that Lonrho would not control. For this reason, in spite of their having been told that a hundred percent takeover was not within the purview of the mandate given to the government negotiating team, they reintroduced their proposals in this direction. Their proposal was that the government should acquire the 80% interest of Lonrho in A.G.C. at the net cost to Lonrho of acquiring that interest. Lonrho computed the total cost to them of A.G.C. on the basis of the offer documents used in the 1968 takeover bid at £1 per share and added £200,000 costs. They computed this total cost at £15,182,696. The team indicated that for their 80% interest they would accept £14 million with payment over 7 years at 6% interest on the reducing balances. During this period of repayment, Lonrho would provide technical and administrative management at no fee, except the reimbursement of its direct expenses.

The government team considered that agreement with Lonrho was not possible and therefore broke off negotiations and submitted a lengthy report to government on the course of the negotiations thus far, the options open to government and the negotiating team's own preferred option. The strategy of free negotiations had failed and the next stage in the negotiating process was to see more coercion applied by the government.

The government negotiating team in their report back to government took the view that there were three possible courses of action open to the government following on the breakdown of the negotiations. First,

the government could nationalise A.G.C. outright; secondly, the government could issue a Decree imposing its terms for a 55% participation in the business of A.G.C; and thirdly, the government could reopen negotiations with Lonrho, fully aware that the outcome of those negotiations would be less favourable than the minimum terms that the government had thus far considered acceptable.

The arguments for and against each of these options were canvassed before the team indicated its own preference for the second option, namely compulsory participation by government in the business of A.G.C. on terms to be set out in a Decree. On the option of outright nationalisation, the team saw its advantages in its beneficial public relations impact in evidencing the government's uncompromising resolve to capture the commanding heights of the economy. This would increase the regime's domestic popularity. This option would also eliminate the need to agree on several of the issues that needed to be resolved in the joint venture negotiations. The main issue that would have to be negotiated under this option would be that of compensation. On the debit side, the team considered that an outright nationalisation was likely to strain further the relations between the N.R.C. and Western Governments which were already strained because of the N.R.C.'s unilateral repudiation and rescheduling of certain debts owed to western creditors. At the same time as the Lonrho negotiations were going on, proposals had been submitted by these western creditors for the amicable settlement of this external debt issue which were more concessionary that any they had ever put forward and the negotiating team thought that a nationalisation at that particular point in time might harden the attitudes of the western countries and make agreement more difficult to reach on the debt issue. Also the team considered outright nationalisation a socialist expedient, whilst from their analysis of government statements, they were of the view that the government was not socialist. The team also feared that outright nationalisation would adversely affect the investment climate in Ghana and, in particular, effect the chances of financing a bauxite-alumina project which was then under active consideration. If negotiations on the issue of compensation were to break down, the team was apprehensive that this might lead to confrontation with the British Government and the consequent likelihood of the suspension of World Bank lending to Ghana during the period of such confrontation with Britain. Finally, the team considered that outright nationalisation of A.G.C. might lead to a disruption of production since there might be a mass exodus of expatriate technicians, whilst the government's own recruitment of staff would not yet have been organised. As regards the option of resuming negotiations with Lonrho, the team considered that its adoption would lead to the government accepting less favourable terms than it had hoped for and possibly undermining the government's policy of capturing the commanding heights of the economy. It was likely to lead to public disillusionment and the dimunition of the government's bargaining power in future negotiations with foreign enterprises. But on the plus side, an adoption of this option would avoid confrontation with Lonrho and hence ultimately with the United Kingdom Government. This option would also not adversely affect the investment climate.

But the preferred option of the negotiating team which came to be adopted by the Government was the option of compulsory participation in

the business of A.G.C. This option involved imposing a joint venture arrangement by Decree on Lonrho and thus achieving by Decree what the previous course of negotiation had been unable to achieve. Obviously, this was merely a kind of bargaining step, since a joint venture arrangement must need to be a consensual framework within which partners work and nobody can be a partner against his will. Recognising that even this imposed joint venture arrangement would not work without the consent of Lonrho, the government team recommended a total takeover of the business of A.G.C. if they should refuse to cooperate on the terms of the imposed joint venture arrangements. The net effect of this option thus was to coerce Lonrho into accepting the government's terms for majority participation in their business. Since this option involved continued cooperation between Lonrho and the government, the adoption of this option did not mean the end of negotiation. Rather, the passing of the Decree imposing the government's terms on Lonrho opened another phrase in the negotiating process between the two partners.

THE MINING OPERATIONS (GOVERNMENT PARTICIPATION) DECREE 1972 AND SUBSEQUENT NEGOTIATIONS

Having accepted the preferred option of its negotiating team, the Government on 6 December, 1972 passed the Mining Operations (Government Participation) Decree 1972.[26] The Decree dealt with both the business of A.G.C. and of the Consolidated African Selection Trust Ltd. (C.A.S.T.), the latter being a diamond - mining company with whom negotiations had been going on simultaneously with the Lonrho negotiations. With regard to A.G.C. the Decree provided as follows:

A new company to be called Ashanti Goldfields Corporation (Ghana) Ltd. was to be deemed registered under the Companies Code 1963 and this company was to take over and carry on the business, objects and functions in Ghana of the Ashanti Goldfields Corporation. 55% of the equity capital of A.G.C. (Ghana) was to be held by the Ghana Government and 45% by Lonrho Limited. A.G.C. (Ghana) was to have a governing Board comprising eleven members with six appointed by the government and five by Lonrho. The Chairman of the Board was to be appointed by the government. With effect from 1st October, 1972, all assets in Ghana of A.G.C. were to be deemed transferred to A.G.C. (Ghana).

Technical management of A.G.C. (Ghana), however, was placed in the hands of Lonrho by the Decree.[27] Such technical management was to be provided upon such terms and conditions as were to be agreed with the government. Moreover, all persons employed by A.G.C. in respect of their operations in Ghana were to be transferred to the employment of A.G.C. (Ghana) and they were to enjoy terms and conditions of service no less favourable than those applicable to them immediately before the transfer.[28]

The Decree also cancelled with effect from 1st October, 1972 all leases, concessions and other mining rights held by A.G.C., but gave authority for a new mining right to be granted to A.G.C. (Ghana). Fending such new grant, A.G.C. (Ghana) was authorised to conduct mining

operations in the same area in which it operated immediately before 1st October, 1972.[29] Provision was made for the payment of an annual royalty by A.G.C. (Ghana).[30] Such royalty was to be prescribed by the Commissioner responsible for Finance by executive instrument, and it was not to exceed six percent of the market value of the minerals produced by A.G.C. (Ghana). This royalty was to be in addition to any income tax or minerals duty or any other tax or duty payable by the Company. The royalty was however to be an allowable deduction for the purposes of ascertaining the income of A.G.C. (Ghana) for income tax purposes.

On the controversial issue of compensation, the Decree provided as follows: The government was to pay fair compensation for the equity capital it was acquiring. It was to pay Lonrho 35% of the total value of the assets of A.G.C. The value of these assets was to be "calculated on the basis of their net written down value for income tax purposes on the books of A.G.C."[31] as of 1st October, 1972. However, the value of stores calculated in this manner was to be subject to adjustment in accordance with a technical valuation.

This Decree set the framework for the next stage of the negotiating process between the Ghana Government and Lonrho. The Ghanian team to the next round of the negotiations was under the chairmanship of Mr. Beecham, then Deputy Secretary to the National Redemption Council. Formally, the chairman remained Dr. S.K.B. Asante, but as he was involved with other negotiations with other mining companies, the effective leader of the Ghanaian team became Mr. Beecham. Other members of the team were a private chartered accountants, a senior official of the Bank of Ghana, a Principal State Attorney, the Commissioner of Income Tax, a private practising lawyer, the Executive Secretary of the Aluminum Industries Commission (a geologist), with a Principal Commercial Officer from the Ministry of Trade as the Secretary.

This new Committee's mandate was to hold further negotiations with Lonrho (and C.A.S.T.) on issues arising out of the Mining Operations (Government Participation) Decree 1972. Negotiating sessions took place with a Lonrho team between January 22, 1973 and 6 February, 1973 The Lonrho team was led by F. A. Butcher, Financial Director of Lonrho. The other members of the team were the Managing Director of A.G.C. and other employees of A.G.C. (including some Ghanaians) as well as an accountant from Lonrho.

The main issues for negotiation in this round were the issues of compensation and of the terms and scope of the technical management to be provided by Lonrho. The proposed Memorandum and Articles of Association (in Ghana called "the Regulations") of A.G.C. also had to be discussed.

The most heated discussion related to the issue of compensation. The Ghanaian team adopted the position that the provisions of the Mining Operations (Government Participation) Decree were not negotiable, except where these provisions themselves allowed for negotiation. Therefore on the issue of compensation, the Ghanaian team saw its task as implementing the compensation criterion embodied in section 4 of the Decree. They therefore saw their task as determining the quantum of compensation according to the book value criterion and negotating the method, period

and currency of payment. Section 4 of the Decree reads in full as follows:

> 1. The Government shall in accordance with this section pay to Lonrho and C.A.S.T. respectively fair compensation in respect of the equity capital held by the Government by virtue of this Decree.
> 2. In respect of A.G.C. (Ghana) the Government shall pay to Lonrho a sum equal to fifty-five per centum of the total value of the assets described in subsection (4) of section 2 of this Decree minus the value at the commencement of this Decree of twenty per centum of the total assets of A.G.C. within Ghana and outside Ghana (including gold bullion in transit) representing the value of the twenty per centum equity capital held by the Government in A.G.C. immediately before the commencement of this Decree.
> 3. The value of the assets referred to in subsection (4) of section 3 shall be calculated on the basis of their net written down value for income tax purposes on the books of A.G.C. and C.A.S.T. respectively as at the commencement of this Decree, except that the value of stores as so calculated shall be subject to adjustment in accordance with a technical valuation.

At the initial meeting, the Lonrho team argued that section 4(1), set out above, implied that compensation should be agreed between the parties and not imposed upon one party by the other party. In other words, compensation could not be fair, if its mode of assessment was unilaterally determined. They therefore further argued that s.4(1) of the Decree was inconsistent with the principle of fair compensation laid down in s.4(1). The Lonrho team also drew attention to the fact that section 4 referred to only the assets of A.G.C., without mentioning its liabilities. They therefore contended that the valuation should be based on only the assets of A.G.C. and that A.G.C.'s liabilities should be taken over by A.G.C. (Ghana). In other words, given the Government team's insistence on the non-negotiability of the provisions on the Decree, the Lonrho team seemed to have adopted a tactic of using the language of that same Decree to further their negotiating objectives.

In response to these points, the Ghana team maintained the position that the word "compensation" in s.4(1) of the Decree merely meant the "price" and that s.4(1) was quite consistent with s.4(4) because s.4(4) provided a fair basis of valuation. On the issue of the Decree's omission of reference to A.G.C.'s liabilities, the team argued that the assets of A.G.C. should be interpreted to mean net assets; in other words, total assets less liabilities. They further contended that if the valuation was to be based on assets minus liabilities, then A.G.C. (Ghana) should take over the liabilities of A.G.C. If, however, the Lonrho's teams interpretation was to be accepted and the valuation was based on only the assets of A.G.C., then Lonrho should be responsible for A.G.C.'s liabilities. The Ghana team considered this issue of

liabilities to be one of statutory interpretation and therefore referred it to the Attorney-General's Department for clarification. The requested clarification was given in a letter to the team by the Chief Parliamentary Draftsman who said among other things:

> The Decree does not mention the payment of liabilities....I am of the view that, for assessment of compensation, only the value of the assets has to be taken into account, since it is the assets valued as above stated which are taken over by the new companies and 55% of which is in effect taken over by the Government. The respective liabilities are to continue to be borne by A.G.C. and C.A.S.T. as the case may be.

The Ghana team considered itself bound by this view, but Lonrho totally rejected this position and so no agreement could be reached on this matter of liabilities.

On the matter of valuation, Lonrho also raised the point that there were some assets of A.G.C. such as plantations and gold in course of treatment which were not normally taken into account for income tax purposes. These assets, they complained, were ignored by the criterion of valuation laid down in s.4(4). To this point, the Ghana team responded that the value of A.G.C.'s assets for tax purposes could have been higher, if capital allowances were not permitted. Accordingly, they felt themselves unable to depart from the criterion laid down in s.4(4), although the Lonrho team were asked to submit for consideration a comprehensive list of all their assets exempted from taxation.

Lonrho again raised its point about having bought A.G.C. for £15 million and that this should be taken into account. Their team argued that the £15 million was paid in anticipation of profits and therefore that the basis of valuation should not exclude reference to future profits. They insisted that if the Government team insisted on the valuation criterion of s.4(4), they would have to refer the matter to the Lonrho board. However, agreement was reached that the accountants of the two sides should independently appraise Lonrho's figures within the provisions of the Decree and report back to the negotiating meeting. Ultimately, the Ghana side, basing themselves on the figures in the accounts submitted by Lonrho offered them £2.8 million (that is 35% of £8 million) whereas Lonrho asked for £6.1 million. There was complete impasse on this point.

As regards the currency of payment, the Lonrho team insisted upon payment in sterling, while the government team was equally insistent upon payment in cedis because A.G.C. operated in a cedi context. They argued that later permission could be granted for the transfer of the cedis in accordance with Ghana's Exchange Control Act. Lonrho accordingly sought a guarantee from the government team that permission would be given for the prompt transfer of the compensation in cedis, but the Ghana side refused to give any such guarantee, arguing that it would be undesirable for any government to bind its central bank in this fashion. The Committee could only recommend to government that it should use its good

offices to ensure that the cedi compensation paid to Lonrho was transferred as soon as practicable. The government team proposed a five-year payment period for the compensation. There was to be an initial payment of ten percent of the compensation due, and the remaining amount was to be paid in instalments with 2 1/2% tax free interest. These terms were rejected by Lonrho. Thus on the issue of compensation, its quantum, mode of payment and duration of payment, no agreement could be reached. Up to the time of the writing of this article in 1980, there was still no agreement. According to a member of the management of A.G.C. (Ghana) in 1980, the Government sent a cheque in cedis to Lonrho for the value of their assets in accordance with s.4(4) but the cheque was returned. Accordingly, A.G.C. (Ghana) has adopted the practice of showing on its Balance Sheet an item entitled "Capital Suspense," which a note to the Balance Sheet explains as representing the "Net Assets taken over by Ashanti Goldfields Corporation (Ghana) Limited from Ashanti Goldfields Corporation as at 1st October, 1932."[32]

As regards the agreement on management of A.G.C. (Ghana) by Lonrho, the negotiating technique adopted was for each side to submit its draft proposals. At the first meeting on this issue, however, Ghana's draft was used as the basis for negotiation and it was discussed paragraph by paragraph. At the next meeting, however, certain points raised in the Lonrho draft but not raised in the Ghana draft were discussed. These points related to the Government of Ghana ensuring that exchange control permission was given for sterling to be made available to Lonrho in respect of payments under the management agreement for staff remittances, stores purchases and also for dividends. Lonrho also wanted the payments of interest on sums advanced by the Lonrho group to A.G.C. (Ghana) for stores and other items. Furthermore, it wanted dividends and interest due it to be exempt from Ghana tax and dividends payable to it to be remitted promptly to London. Its draft also provided that the formation expenses of the new company should be borne by the Ghana Government and that the regulations of the new company should contain adequate protection for the minority. Lonrho also sought exemption from balancing charges, stamp duty and all other forms of taxes in respect of the transfer of assets in accordance with the participation Decree.

Agreement was reached on the management arrangements and an agreement on management services was eventually executed on 11 April, 1974. The agreement was between the Government of Ghana and Lonrho and it provided as follows: Lonrho undertook, subject to the overall control and direction of the Board of A.G.C. (Ghana) to provide, at the expense of A.G.C. (Ghana), the technical management of A.G.C. (Ghana). Such technical management was defined to comprise a list of activities listed in a schedule to the agreement. The list included proper operation of the mine in accordance with the Mining Regulations; preparation and execution of annual and long term programmes for mining, mine development, diamond drilling, shaft sinking and exploration; preparation of annual working cost budgets and control of expenditure relative to the budgets set; preparation of detailed programmes for engineering construction and control of their execution, etc. There were thirty-seven items on this list of activities comprising the management services to be rendered by Lonrho.

The management contract stipulated that the Board of A.G.C. was not to involve itself in the day-to-day running of A.G.C. (Ghana), but was to limit itself to:

> (i) matters of policy such as approving annual and long-term programmes for mining, mine development, drilling and exploration, approval of annual budget, approval of capital expenditure, determination of sales policy; and
> (ii) giving general guidelines for the operation of A.G.C. (Ghana).

Lonrho was to nominate a suitable person for appointment by the Board as managing-director, while the Government was to do the same for appointment as the deputy managing-director. The managing director or, in his absence, the deputy managing director was to be responsible for the day to day operations of A.G.C.

In agreeing to this demarcation of functions between the Board and the management of A.G.C. (Ghana), the government's negotiating team said that their aim was "to ensure efficiency and profitability." In their report to the government on the course of the negotiations, they stated:

> To this end, we were prepared, within reasonable limits, to give the technical managers a free hand in the discharge of their management functions. We considered it desirable to guard against undue interference by the Board of Directors in the day-to-day management of the companies. In all this, however, we tried to avoid any dimunition of the prerogatives of the Board of Directors in policy decisions and in the general control and supervision of the companies. All vital decisions affecting the companies would have to be approved by the Boards of Directors.

During the negotiations, the principle was accepted that no fee was to be payable for the provision of the technical management services. However, it was agreed that certain special services that A.G.C. depended on Lonrho for were not to be included in the management agreement. Rather, they should be the subject of a different agreement to be concluded between A.G.C. (Ghana) and Lonrho, and not between the Government and Lonrho. The reason for leaving this agreement in negotiation between Lonrho and A.G.C. (Ghana) was stated as follows by the government negotiating team in their report to government:

> We thought the Board of Directors of the companies would be in a more favourable position than we were to determine, in relation to the companies' resources and comparable rates elsewhere, the type of specialist services they would require and the terms under which CAST and Lonrho, should be engaged to provide such services.

Accordingly, the management agreement contained the following clauses:

> (6) Except where Lonrho is unable to provide any particular service, A.G.C. (Ghana) shall use exclusively the special services provided by Lonrho that it may require. To this end, A.G.C. (Ghana) and Lonrho shall agree on the services to be provided, including payment for them. Such an Agreement shall be reviewed at not more than five yearly intervals.
> (7) Apart from payments that may be made by A.G.C. (Ghana) for the services provided by Lonrho under clause 6 above, no fee shall be payable to Lonrho for assuming the Technical Management of A.G.C. (Ghana).

The management agreement was to remain in force at least five years from 1st October, 1972. After five years it could be terminated by either party by 12 months' written notice. After three years it was to be open for review, but any agreed alterations were not to become effective until the end of the first five-year period. However, for as long as any compensation due to Lonrho in respect of the acquisition by the Government of the 35% extra interest in A.G.C. remained unpaid, the Government was to have no right to terminate the agreement. It was further provided that:

> If during the course of the period when compensation is payable there is an unreconcilable difference in a review of the terms of the Agreement, then the matter shall be referred to arbitration in accordance with paragraph 14 hereunder.

This paragraph 14 provides for the reference of disputes arising out of the Agreement to the International Centre for Settlement of Investment Disputes of the World Bank.

As requested by Lonrho during the negotiations, the Government undertook to ensure that A.G.C. (Ghana) was exempted from balancing charges, balancing allowances, stamp duty and all other forms of taxes, charges, duties or fees in respect of the transfer of assets in accordance with the Mining Operations (Government Participation) Decree 1972. But the other tax concessions sought by Lonrho were not allowed.

On training, Lonrho undertook to advise the Board of A.G.C. (Ghana) and also to implement, at the expense of A.G.C. (Ghana), an approved training scheme for the Ghanaian staff of A.G.C. (Ghana) to enable Ghanaians to replace expatriate employees within a stated reasonable period.

The agreement for the provision of special services by Lonrho to A.G.C. (Ghana) was duly concluded on 20 December, 1974. The agreement was given retrospective effect to 1 October, 1972 and it was to remain in force for 5 years at least. After the 5 years it could be terminated by 12 months written notice by either party. Like the management agreement, it could be reviewed after the end of the third year, but any agreed modifications were not to be implemented before the end of the five year

period. Again, like the management agreement, it could not be terminated by the Government while any compensation remained due to Lonrho in respect of the Government's participation in A.G.C. The agreement contained a provision identical with the one already noted in connection with the management agreement for a reference to the ICSID of any unreconcilable difference in a review of the terms of the Agreement.

The services that Lonrho undertook to provide were:

(a) The secondment of the Managing Director.
(b) The provision of such consultancy and other special services as may be required by A.G.C. (Ghana).
(c) The technical inspection and approval of all goods ordered through London.
(d) The selection of such expatriate staff as may be recruited for the mine and the general administration of expatriate staff and their dependents when not in Ghana.

These services were to be provided in exchange for an annual fee of £200,000 payable quarterly in advance to London. This fee was exclusive of air fares and other travelling and incidental expenses reasonably incurred by consultants and other staff of Lonrho to perform their duties for A.G.C. (Ghana). Such expenses were to be borne by A.G.C. (Ghana). The services agreement contained the provision on interest payment that had first been put forward by Lonrho in the negotiation for the management agreement. The provision read:

> Where expenditure is made by Lonrho on behalf of A.G.C. (Ghana) in respect of advances to staff or other approved outgoings, interest shall be payable to Lonrho from the date of such expenditure to date of refund at the current overdraft rate payable by Lonrho in London.

The dispute settlement clause in the agreement read as follows:

> In the event of any irreconcilable disagreement between the parties as to the interpretation or operation of this Agreement then A.G.C. (Ghana) and Lonrho will each appoint an arbiter to give a decision on the matter in dispute. Should the arbiters fail to agree they shall refer the matter to the International Centre for Settlement of Investment Disputes of Washington, D.C. whose decision shall be final and binding on both parties.

Finally, the remaining main issue that was discussed in this final phase of the negotiations between Lonrho and the Ghana Government was the regulations of A.G.C. (Ghana). This was not a very contentious issue and broad agreement was reached on most of the provisions. The main matter calling for negotiation was the issue of minority protection. Lonrho feared that government control of the Board might be used to make A.G.C.

(Ghana) pursue objectives other than commercial profitability, which was Lonrho's objective. Lonrho therefore requested minority protection on the following matters:

(i) The expenditure by the Company of any commitments in respect of any expansion of an existing mining operation or facility, or the making of any expenditure, contribution, disbursement, contract or commitment in any business or undertaking which may be considered by the "A" directors or the "B" directors to be outside the ordinary course of its business;
(ii) the issue of additional "A" or "B" Ordinary Shares or the creation or issue of any other class of shares, or of securities convertible into shares or the borrowing of any funds whether by the issue of bonds, or otherwise;
(iii) the determination of appropriations and the accounting procedures to be adopted for the determination of profits and dividends under the Regulations;
(iv) the exercise or modification of any of the powers of the directors to borrow money or grant guarantees or create any charge on any assets of the Company;
(v) the making of any loan to, or any guarantee of a liability of, any person or company, or the making of any investment or the sale of any shares in a subsidiary;
(vi) the sale of any products:
  (a) other than for cash; or
  (b) at a price or conditions other than those in general application and use in the relevant market; and
(vii) any act, dealing, arrangement or transaction that is not entered into for the benefit of the commercial operations of the Company and for the benefit of its shareholders as a whole.

In response to this request the Government side expressed itself opposed to the general idea of express provisions on minority protection. They argued that when the Government held 20% shares in A.G.C. it was given no minority protection. The government team further argued that Ghana's Companies Code contained adequate provisions on the protection of minority shareholders. They therefore insisted that the general rule of decisions by majority should apply to Board decisions. The team considered that accepting Lonrho's proposals on minority protection would rob the government of the incidents of its majority shareholding. Accordingly, the team refused to accept most of Lonrho's proposals on this score. But the team did make a concession to the Lonrho side on some matters that it considered innocuous. This concession is now contained in paragraph 68 of A.G.C. (Ghana)'s regulations and it reads as follows:

In addition to any other applicable requirements of law, the following actions and recommendations therefore to the members will require the affirmative vote of a majority of 8 directors:

(i) Any disposal of all or of any substantial part of the assets of the Company or the assignment or grant of any of its mining or other rights to others;
(ii) the creation or acquisition of any subsidiary of the company or the transfer of any cash or other assets to any such subsidiary;
(iii) the making of any purchase at a price or on conditions less favourable than those applicable in the relevant market;
(iv) the appointment of any committee or local board or attorney whose powers include the doing of any of the acts specified in this Regulation;
(v) the appointment of the Auditors of the Company.

As regards the composition of the Board, agreement was reached that there were not to be more than eleven directors. Of these, the holders of "A" shares were to appoint not more than six and the holders of "B" shares were to appoint not more than five. The Chairman of the Board was to be appointed by the holders of the majority of "A" shares and the Vice-Chairman by the holders of the majority of "B" shares. In the absence of the Chairman, one of the "A" directors was to be appointed to act as Chairman. As can be deducted from the above references to "A" and "B" shares, there was a division of the shares into classes. The regulations provided that the shares of the company were to consist of "A" shares of no par value and "B" shares of no par value in the proportion of 55 "A" shares for every 45 "B" shares. These "A" and "B" shares are to rank pari passu in all respects, except where the Regulations specifically provided to the contrary. The company was registered with 5.5 million A shares of no par value subscribed by the Government and 4.5 million B shares subscribed by Lonrho. Of these, up to 1980 only 550 A shares and 450 B shares had been issued with a total cash consideration of £41,000.

The Regulations also contain a provision requiring mandatory payments of dividends out of the consolidated net profits of A.G.C. subject only to certain specified deductions. The provision is in the following terms:

(35a) Subject to Regulation 36, an amount equal to the consolidated net profits of the company and its subsidiaries (if any) as shown in the audited accounts of the Company after deduction therefrom only of appropriations in respect of capital expenditure in excess of the depreciation charged and expenditure for exploration and prospecting and mine development and of reserves for necessary working capital having

> regard to market conditions and short term liquidity requirements of the Company as may in each case be approved by the directors and, subject to an affirmative vote of eight of the directors, any other appropriations for the accounting period of the Company ending on 30th September, 1973, and each subsequent accounting period, shall be paid as dividends. The "consolidated net profits" shall mean the consolidated net profits of the company and its subsidiaries after taxation is disclosed in the consolidated profit and loss account, or if the company has no subsidiary or subsidiaries, the profit and loss account, determined in accordance with the accounting principles and procedures (including a provision for depreciation) determined by the directors and so that any appropriation deducted as aforesaid in earlier years and considered by the directors to be no longer required shall be added to the sums available for dividends...."

Regulation 36 in turn provides:

> (a) the company will, after such payment, be able to pay its debts as they fall due;
> (b) the amount of such payment does not exceed the amount of the Company's income surplus immediately prior to the making of such payment.

IMPLEMENTATION OF THE RESTRUCTURED ARRANGEMENTS

Pursuant to its creation by the Mining Operations (Government Participation) Decree 1972, A.G.C. (Ghana) took over the business of A.G.C. with effect from 1 October, 1972 and began operations even before its Regulations had been agreed upon and registered and before the conclusion of the management and special services agreements. The Ghanaian Head of State inaugurated the new company on 26 January, 1973. In spite of the failure to reach agreement on compensation and in spite of the intransigence of Lonrho earlier in the negotiations, the parties to the joint venture arrangements seem to have evolved a harmonious working relationship. In the review by the Chairman of the Board of the new company's first year of operations, he said:

> The new Company started functioning without finalised regulations or formal agreements covering the management and technical services to be provided by LONRHO LIMITED. The question of compensation had not been settled. Under NRCD 132, however, the Company is deemed to have been registered under the Companies Code 1963, as from 1st October, 1972.
>
> Despite these outstanding issues, a remarkable degree of harmony has existed on the Board, and no difficulties have been experienced.

Interviews held with the Managing Director of AGC (Ghana) in 1979 confirmed the existence of these harmonious working relations between the shareholders. In the view of the Managing Director, the new joint venture arrangements had not adversely affected the running of the mine. The problems facing the company had not been caused by the government participation but rather by the deteriorating balance of payments position of Ghana. The company had in recent years encountered difficulties in obtaining adequate foreign exchange to buy stores and spares. This had affected the production of the company. He considered the Lonrho connection very useful in these recent years since even before the company could establish letters of credit for its stores, Lonrho had often shipped these stores to the company on credit. The balance of payments problems had also put the company two years in arrears in its payments to Lonrho for its special services. Dividends also could not be transferred.

As regards the government's financial take from A.G.C. (Ghana), this has been high. In accordance with the Mining Operations (Government Participation) Decree 1972, the company pays royalty in addition to income tax and minerals duty. Minerals duty is levied pursuant to the Minerals Duty Decree 1975 (N.R.C.D. 346) as amended by the Minerals Duty (Amendment) Decree 1976 (S.M.C.D. 48). The rates of the duty in 1979 were as specified in the latter Decree as follows:

FIELD RATIO[33]	RATE OF DUTY
Over 0 and up to 25%	5% of the value of minerals won.
Over 25 and up to 45%	10% of the value of minerals won.
Over 45 and up to 60%	15% of the value of minerals won.
Over 60 and up to 75%	20% of the value of minerals won.
Over 75 and up to 100%	25% of the value of minerals won.

Yield in relation to A.G.C. (Ghana) is the gross proceeds of its bullion sales, less production costs. Minerals duty is levied, not on this yield, but rather on the relation of this yield to the value of the minerals (or the gross proceeds of the bullion sold) expressed as a percentage. This mode of levying tax on mineral production enables account to be taken of profitability. It is not a tax on production simpliciter. But the royalty levied pursuant to the Mining Operations (Government Participation) Decree 1972 is a tax on production simpliciter. In an interview, the relevant tax official in Ghana indicated that the yield ratio of A.G.C. (Ghana) is usually between 30

and 45 per cent with a consequent rate of duty of 10 per cent. He revealed that in the year ended June 1978, however, the yield ratio was nil since the operational cost exceeded the gross proceeds of sales of bullion.

In addition to minerals duty and royalty, A.G.C. (Ghana) has to pay income tax. The basic income tax statute in 1979 when the research for the article was done was the Income Tax Decree 1975 (S.M.C.D. 5). According to the Fifth Schedule to this Decree, mining companies were to pay income tax at the rate of 55%. The Income Tax (Amendment) Decree 1977 (S.M.C.D. 120) however had reduced this rate to 50%.

Table A below is a table of the revenue and other income derived from A.G.C. (Ghana) by the Ghana Government. The figures do not include revenue derived from the Special Export Levy on Gold Decree 1972, since these figures were not specified in the Annual Reports of A.G.C. (Ghana).[34] This decree imposed a special export levy at the rate of $2.50 per fine ounce troy in respect of each ounce of gold exported from Ghana by any person after the first 100,000 fine ounces troy of gold exported.

In his review of operations for the year ended 30th September, 1976 the Chairman of A.G.C. complained of the cumulative effect of these taxes, particularly those on production. He said:

> No review of the past year's results would be complete without reference to mining taxation. A large proportion of total tax paid is assessed directly on gross value of mineral won and not on profitability. Thus, as profitability falls, an increasing percentage of working profit is taken as tax. A point is reached when payments in respect of tax exceed working profit. In the case of Ashanti Goldfields, although charges in respect of Minerals Duty, Royalty, Export Levy and Company Tax decreased from 30,391,311 in 1975 to 13,159,510 in 1976, the percentage of working profit represented by those figures rose from 73% to 84%. In the current year the percentage has risen to 85%. The effect will be to leave the Company short of working capital and unless some action is taken, the long-term results could be very serious indeed.[35]

CONCLUDING REMARKS

There is little doubt that the 1973-74 negotiations with Lonrho enabled the Ghana Government to effect a transformation of its relations with the transnational corporation that had been exploiting the Obuasi gold deposits. It can be said that the negotiations were a financial success, from the point of view of the Ghana Government. The negotiations were unable to break the control of the transnational corporation on the mining activity at Obuasi. These negotiations thus illustrate how difficult it is for a third world host government to

TABLE A

TABLE OF GOVERNMENT'S INCOME FROM ASHANTI GOLDFIELDS CORPORATION (GHANA) LTD.

YEAR ENDED SEPTEMBER	GROSS PROCEEDS OF BULLION PRODUCED	MINERALS DUTY	ROYALTY	INCOME TAX	DIVIDEND TO GOVERNMENT	TOTAL OF GOVERNMENT INCOME	PROFITS OF AGC (BEFORE INCOME TAX)	GOVERNMENT INCOME EXPRESSED AS PERCENTAGE OF AGC'S PROFIT	PERCENTAGE OF GOVERNMENT "TAKE" OF GROSS PROCEEDS OF BULLION SALES
1973	54,902,731	8,235,410	3,294,164	11,000,000	5,100,000	27,629,574	24,998,566	110.52	50.32
1974	72,918,862	14,583,772	4,375,132	15,500,000	5,100,000	39,558,904	28,012,848	141.21	54.25
1975	74,898,074	11,234,711	4,493,885	13,800,000	4,080,000	33,608,596	25,002,133	134.42	44.87
1976	54,685,249	5,468,525	3,281,115	3,600,000	-	12,349,646	6,177,474	199.91	22.58
1977	58,477,581	2,923,879	3,508,655	5,150,000	-	11,582,534	9,996,248	115.86	19.80
1978	67,490,217	3,374.511	4,049,413	7,000,000	3,825,000	18,248,924	13,546,121	134.71	27.03

SOURCES: Compiled and calculated from the Annual Reports and Accounts of the Directors of AGC (Ghana) Submitted to Annual General Meetings 1973 - 1978.

bargain itself out of dependency on a transnational corporation that has controlled a particular sector of its mining industry. Through the device of management contracts, technical services agreements and other such agreements such transnational corporations are able to retain control of their enterprise, even after losing ownership control. Third world countries continue to negotiate for and accept such management and technical services agreements because of deficiencies in their technological, technical and managerial capacities. The continued exercise of control by transnational corporations through such agreements is thus a reflection of the technological dependency from which most third world countries have found it difficult to emerge.

The improved financial benefits to Ghana under the 1972-74 restructured arrangements, however, show what skilful negotiations can achieve for third world host governments. The conduct of Lonrho in accepting the imposition of terms by the Ghana Government is also instructive of the degree of give that transnational corporations may exhibit, if host states negotiate hard enough. In this Ghanaian case study, one observes the extraordinary phenomenon of a transnational corporation, part of whose assets have been expropriated, but, which nevertheless co-operates with the expropriating host state even though there is still no agreement on the compensation to be paid for the assets expropriated.

It is on the issue of control that the limits of what is achievable by negotiations begin to be exposed. Bargaining takes place on the basis of give and take and therefore necessarily reflects the relative bargaining strength of the negotiating parties. When commentators decry inept bargaining by third world countries, what they mean is that such countries do not often take stock of their true bargaining potential and realise that potential. But if, on the objective facts, one party is dependent upon the other for a vital resource, it is hardly possible to bargain himself out of that dependency, unless the other party is not a smart negotiator. Thus where there is a technological dependence by a host state on a transnational corporation, the technique of negotiation will not enable it to eliminate this dependency. There has to be an effort made to reduce the technological and technical dependence by appropriate manpower development as well as research and development policies. The bargaining potential of the host state will be much improved when it has the technical capacity to run the enterprise it wishes to control. But even though a host country cannot easily bargain itself out of technological dependency, the kinds of terms it negotiates for can facilitate or impede its development of technological self-sufficiency in a particular economic sector.

As regards gold-mining and even gold-refining, it is believed that the technical, technological and managerial capacities required to undertake them are not so complex as to be unattainable by Ghanaians reasonably soon. The 1972-74 restructured arrangements should have served merely as the basis on which the Ghanaian authorities should have planned and moved in the direction of Ghanaian management and exclusive ownership of the goldmine. Though the results of the negotiations were financially beneficial, they could not constitute the end of the negotiating trail. Unfortunately, however, there has been no change in

the joint-venture arrangements since the end of the negotiations in 1974. After the initial five-year period, the management and special services agreements were renewed without any change of terms. Before the renewal, there had been some discussion of replacing the Managing-Director with a Ghanaian Government nominee. But it would have been incongruous for the management agreement to have been renewed, whilst at the same time stipulating that the Managing-Director was to be a government nominee. The fact is that management powers are primarily vested in the Managing-Director and therefore whoever nominates the Managing-Director should be the one with responsibility for the management of the company.

The real discussion should therefore have centred on whether the agreements were to be renewed or not. As it turned out, they were renewed. It is doubtful whether the A.G.C. Board has implemented a sufficiently massive training programme such as to give Ghanaians the technical, managerial and technological capacity to take over the complete running of gold-mining at Obuasi and thus enable termination of the management and technical services agreements which have enabled Lonrho to remain in control at Obuasi.

FOOTNOTES

* Part of this article are in substance a reproduction of a report written by one of the authors for the U.N. Centre on Transnational Corporations.

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1. See I. Wilks, Asante in the 19th Century: The Structure and Evolution of a Political Order, 436 (1975).

2. See W. Ward, A History of Ghana, 396 (1963). See also I. Wilks, supra note 1, at 19-20.

3. I. Wilks, 646, citing as his source West African Lands Committee: Minutes of Evidence etc. Colonial Office, London, 1916: Question 4972. See also the recitals of what came to be known as the A.G.C. lease, discussed below. The text is in the possession of the authors.

4. I. Wilks, supra note 1, at 646.

5. See the recitals of the A.G.C. 1897 lease.

6. The modern spelling would be Boakye.

7. See the recitals on the 1897 A.G.C. lease.

8. See D. Kimble, A Political History of Ghana 1850-1928, 24, n.1 (1963).

9. These are all contained in the recitals to the 1897 A.G.C. lease.

10. See I. Wilks, supra note 1, at 645 and D. Kimble, supra note 8, at 24, n. 1.

11. See I. Wilks, supra note 1, at 646.

12. Id.

13. See I. Wilks, supra note 1, at 656-58.

14. See D. Kimble, supra note 8, at 24.

15. See I. Wilks, supra note 1, at 659.

16. Id. at 661.

17. See, e.g., Asante, Restructuring Transnational Mineral Agreements, 73 Am. J. Int'l L. 335, 337-39 (1979).

18. See text of the A.G.C. lease.

19. See Carlston, Concession Agreements and Nationalisation, 52 Am. J. Int'l L. 260 (1958).

20. Cf. Asante, supra note 17, at 338.

21. Act. No. 126, 1962.

22. The proviso to s.1 of the Act is in the following terms:

> Provided that nothing in this Act shall be deemed to effect:
>
> a) the validity of any prospecting, mining, dredging, water or ferry right, lawfully held by any person immediately before the commencement of this Act under any law (customary or otherwise) such person being hereinafter referred to as an "existing holder"; or
> b) any lawful rights or interests in the land in under or upon which the minerals are situated.
>
> The rights of interests referred to in paragraph (a) or paragraph (b) immediately preceding shall continue, subject to the provisions of any other enactment and to such conditions as may be prescribed.

23. That is, if one conceives of the transnational corporation as any business unit which owns or controls a means of production in a country other than its own. Cf. the definition of the Group of Eminent Persons appointed by the Secretary-General of the United Nations to study the role of multi-national corporations in their report: U.N. Department of Economic and Social Affairs, The Impact of Multinational Corporations on Development and on International Relations at 25, U.N. Doc. E/5500/Rev. 1/ST/ESA/6, U.N. Sales No. E.74.II.A.5 (1974), 25 Multinational corporations.

24. The full text of the provision is as follows:

> If in any financial year dividends before deduction of tax accruing on the twenty percent of the equity shares allotted to the Government under sub-clause (a) hereof yield to the Government a sum less than five percent of the gross value of all minerals sold for that year (being royalty

> currently paid by the corporation under the existing lease) then there shall be reimbursed to the Government an amount equivalent to the deficiency or if in any financial year no dividends are declared then the corporation shall pay or cause to be paid to the Government an amount equivalent to five percent of the gross value of all minerals sold or currently payable under the existing lease.

25. National Liberation Council Decree (N.L.C.D.) No. 78, para. 20, 3rd schedule.

26. National Redemption Council Decree (N.R.C.D.) 132.

27. Id. at Section 5.

28. Id. at Section 7.

29. Id. at Section 8.

30. Id. at Section 6.

31. Id at Section 4(4).

32. See, e.g., Ashanti Goldfields Corporation (Ghana) Ltd., Report and Accounts of the Directors to be submitted to the First Annual General Meeting 1973, at 12.

33. "Yield ration" is defined as follows:

> Yield ration means, in relation to any period, the ration, expressed as a percentage, which the yield, as reduced in accordance with para. 3 of this schedule, bears to the value of minerals for that period.

Yield is also defined in the following terms:

> Yield means, in the relation to minerals won in any period, the value of such minerals less the operational cost in relation to such period.

The concept of "operational cost" used in the definition of "yield" is also defined as follows in the schedule to the Decree:

"Operational cost" means in relation to any period:

> (i) current expenditures wholly and exclusively incurred by the person assessable and chargeable to duty in that period, on winning, transporting, proceeding or selling

minerals, the value of which is taken into as the value of minerals won for that period:

Provided that such current expenditure shall not include:

(a) any expert duty imposed under the Customs and Excise Decree 1972 (N.R.C.D. 114) other than such part of the export duty on diamonds as in certified by the Commissioner responsible for Finance to represent the cost of valuation and sale of diamonds;

(b) duty under this Decree;

(c) any income tax or other tax on profits, whether imposed in Ghana or elsewhere;

(d) any payment under an agreement between the Government of Ghana and any persons on the value of or receipts from minerals won;

(e) yearly interest on borrowed money;

(f) interest on borrowed money where the recipient of the interest is a person who controls, or is controlled by the person paying the interest, or where both the recipient and the payer of the interest are controlled by some other person;

(g) in the case of a company, any expenses incurred in the management and control of the company which in opinion of the Commissioner are not directly related to the aforesaid operations of winning, transporting, processing or selling; and

(ii) such sum as the Commission may determine as being just and reasonable in respect of any capital expenditure incurred by such person in, or in preparation for, such operations, upon assets used in the course of such operations and in respect of any depreciation suffered by such assets in the course of such operations; and in making any such determination the Commissioner shall have regard to the principles upon which deductions are allowable for capital

expenditure and depreciation under the Income Tax Decree 1966 (N.L.C.D. 78) and shall exclude any current expenditure allowable as aforesaid.

34. Export levy is included in the working cost of the mine and, therefore, independent figures of the levy itself were not indicated in the various Annual Reports of the Director of A.G.C. (Ghana).

35. See, Ashanti Goldfields Corporation (Ghana) Ltd., Report and Accounts of the Directors to be submitted to the Fourth Annual General Meeting 1976, at 8.