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Negotiations in African Gold Mining Companies: a Case Study Done in Eritrean Bisha Gold Mining Company

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Abstract

This research deals with negotiation process and practices in African gold mining companies focusing in Eritrea: Bisha gold mining company. It has not been long since African nations got independence from their colonizers. The gold mining quest had been prone to corruption, struggle to cope with new and dynamic technological changes, mistrust among the official members, shortage of leadership experience, inefficient use of raw materials in the mining pit, difficulty in preparing the contract mining agreement and at the same time formulating mining laws and the complications go on and on. The solution for those problems would lie in successful negotiations. Negotiations not only does settle the matter of dispute but also guides the futuristic programs of the gold mining, considers welfare of the local households, maintains a healthy relationship between the host government and investing company or country. Thus in order to elucidate those problems mastering negotiations would be crucial. Based on this research's findings, Eritrea is one of the African countries who are thriving at their early stages of development using their gold mining resources. The statistics shows that Eritrea have more than 15 mining pits, by which most of them are engaged in an active gold mining activities. In addition, arranging the gold mining law starting from mining license, appropriate taxes, government revenue, and access to foreign currency, royalty payment and the autonomy to repatriate funds is vital. Furthermore, accessing the adverse effects of gold mining beginning from environmental degradation (water, soil and air pollution), deforestation, erosion, abusing human resources and their health is also decisive. Therefore, a mining contract in its final stage entails the macro-economic factors like political, economic, social, technological, environmental and legal issues.

Introduction

According to Roger Fisher et al (2006), negotiation is common and evident in businesses, non-profit organizations, legal proceedings, government branches, among nations, personal situations in everyday life. The word “negotiation” is from the Latin language, “negotiatus” which means, “to carry on business”. In addition, “negotium” means literally “not leisure”. The outcome of any negotiation is dependent on both the nature of the issue to be resolved and on the type of practices used by the parties to address it (Lewicki and Litterer, 1985). Negotiation provides an excellent vantage point for examining inter organizational relationships since its rich tradition addresses important antecedent conditions, communication techniques, and power structures affecting exchange partners who must divide benefits and burdens, resolve conflicts, plan, and exercise power (Dwyer, 1987). Negotiation is a dialogue intended to resolve disputes, to produce an agreement upon courses of action, to bargain for individual or collective advantage. Over the last decades, negotiation has been an important field of study within organizational behavior and management science, mostly due to the importance of effective negotiation in a buyer-supplier relationship, looking at its potential to influence this relationship and thus the eventual outcomes (Saorín-Iborra and Cubillo, 2019). Hence, in definition at this context negotiation is a process in which parties exchange goods or services and attempt to agree upon the exchange rate for them (Saee, 2000).

On a wider perspective, negotiation is not just about price rather about managing and improving total organizational performance. An underutilized, yet critical business skill lies dormant within most organizations. There needs to be a broader approach around supplier performance, including measurable criteria such as accurate and timely deliveries, high quality, and strong customer support, reduced supply chain risk, great communication and cost management. Aspects of negotiation in the process of purchasing rise from the nature of material being purchased including: Quality specifications, price of the material, delivery period, quantity of supply, discounts, terms and conditions of purchase. Dependent on the nature of purchase, other specific issues such as warranty period and installation, in case of a capital purchase, may arise (Leenders, 2006). It has to be noted that negotiations are subject to continuous update.

Africa, a developing continent, is rich in minerals, oil, gas, and other natural resources that had been exploited for the past whole century by colonial powers starting back from the “Scramble for Africa” period. Even after the end of colonial periods, African nations struggle to effectively and efficiently utilize these natural resources. The reason might be war (caused by border conflict, ideological difference, religious tensions, and tribal or cultural issues), corruption and mostly the interventions of foreign forces in domestic issues. Nonetheless, Africa looks like as it is putting those days behind, as the major obstacle remaining is the internal management. On the bottom line, the mineral policies of African countries have tended to encourage the growth and operation of large scale mining operations to boost royalties and tax revenues while either marginalizing or ignoring artisanal and small scale mining operations (Walser, 2006; Hilson, 2006).

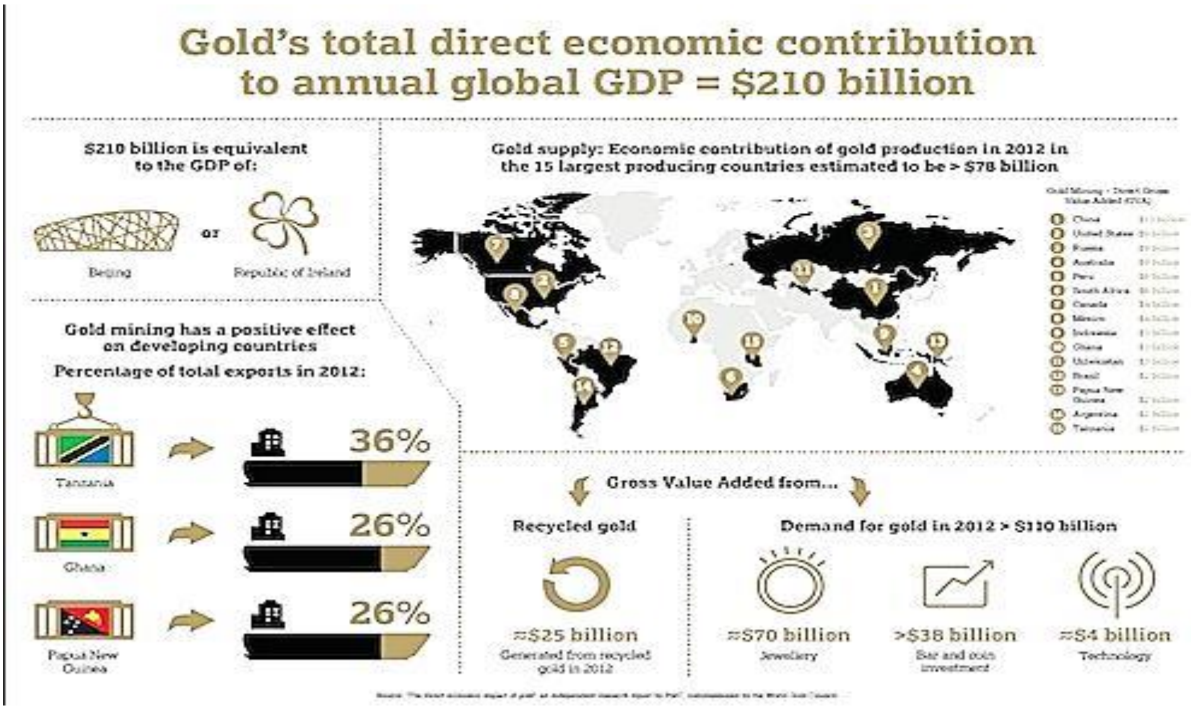

Figure 1.1 Source: Heyman-fotos (2020)

As the above diagram illustrates, how much gold could contribute to the overall African nation's GDP, the need for an impeccable negotiation strategy comes into light. African countries have been through hard times and it is absurd observing them being put at disadvantage on making negotiations in mining contracts. Conferring to Louis, "with the emerging of nationalism, these negotiations have become increasingly frustrating; sometimes misunderstandings have been so great that they have led to a breakdown in negotiations that both parties would have liked to bring to a successful conclusion" (Louis, 1997).
Mining industries have been in the limelight much of the publicity about negotiations between developed countries companies and governments in developing countries. In mining contract, negotiations are complicated than other businesses as the issue of trust is at the center based on different assumptions posing a major challenge for Africa. In the 2013 "Africa Progress Report," Kofi Annan, the former United Nations (UN) secretary general, says "poorly negotiated contracts are partly responsible for countries not benefiting from their mineral wealth" (World Bank Group, 2022). A study conducted by African Progress Report compared the selling price for five mining assets in the Democratic Republic of Congo with an independent assessment of their value, and found the difference to be over $1 billion. "Mining contracts that are negotiated in a fair and transparent fashion are more sustainable in the long-term for all the stakeholders involved and they better reflect the country's best interests," said Paulo de Sa, practice manager of the energy and extractives global practice of the world bank group (World Bank Group, 2022).
The below diagram displays top 10 biggest gold mines in Africa with their respective output of 2020 and 2019.

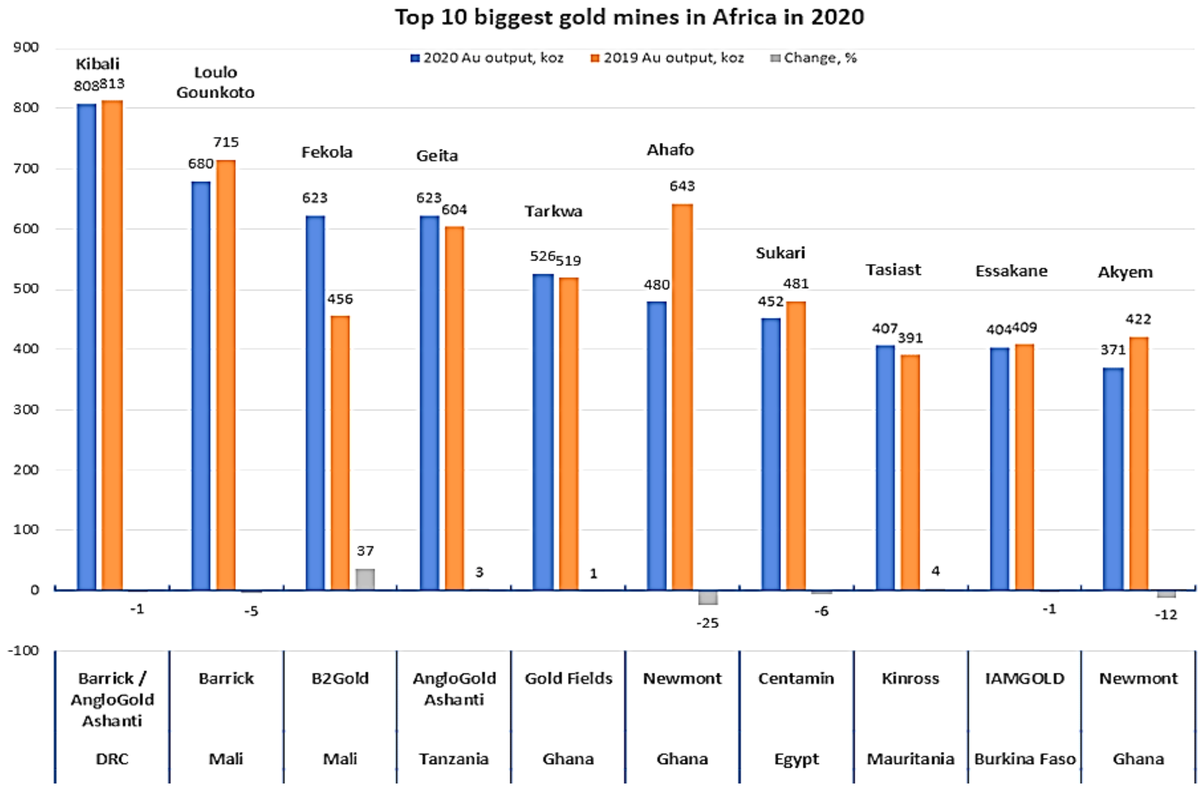

Figure 1.2 Source: Kitco News Report (2021)

Large numbers of American and European managers making big promises have entered negotiations with government officials in Asia, Africa, and Latin America. A study made by Oxfam revealed, "Revenue from extractive industries accounts for one-third of the total tax taken in Africa (Oxfam, 2016). In Burkina Faso, a successful '1% campaign' by civil society demanding that the country's new mining law require one percent of gross mining revenues be allocated to a community development fund has resulted in potentially US$15 million a year for local development projects. As this example demonstrates, better contracts and revenue sharing can be negotiated with strong citizen oversight. Sadly, there are also plenty of bad examples. The Africa Progress Panel found that the Democratic Republic of the Congo undervalued five deals with extractive companies by US$1.4 billion over just two years, selling mining concessions for far less than their market price, only for them to be sold on for a much higher price soon afterwards. The fall in commodity prices will affect this trend, but the revenue from Africa's natural resources will remain important for many years to come. Securing as much of this as possible for progressive social spending is a top priority" (Oxfam, 2016). Accordingly, in what manner does negotiations work in African gold mining companies especially considering the revenue and tax proportion, the negotiators team chosen, strategies to cast-off in making the contract between the parties.
Eritrea a small African nation, located in the northeast of the continent, had had a troubled colonial and post-colonial history. Initially subsumed into Ethiopia, it finally achieved self-determination (through referendum) after decades of struggle in 1993. Even though colonial powers coveted its mineral deposits and deep-water access to the sea; paradoxically, the deposits remained essentially untouched for 70 years of colonization. However, the trends had been changing in those past three decades as the continuation of Eritrea's resilient development on the health, education, transportation, infrastructure and communication

sectors parallel with those segments mining sector has also displayed a significant improvement (Pateman, 2012).

Mining is one of Eritrea's fastest growing industries. The Operator of mining company in Eritrea focused on development of the Bisha Mine, a high-grade copper, gold, silver and zinc mine in western Eritrea. According to Blair (2017) the Bisha gold mine alone has reportedly contributed US$800 million to the Eritrean economy since it first started production in 2011, and the government hoped to have four additional mines in operation to produce gold, copper, zinc, and potash in 2018. Other minerals that may be contained in Eritrean soil include oil, natural gas, gypsum, granite, marble, limestone, and iron ore (Blair 2017). Presently, it is reported that around 16 mining companies currently operate in Eritrea, collectively operating around 34 explorations and mining projects (Tesfa News 2011). Recent exploration activities have proved that gold resources are widespread across the country. Below is the entire concession map of all the Eritrean mining companies.

Canada's Nevsun Resources extended the life of its flagship copper-zinc Bisha mine in Eritrea to the end of 2022, which is 18 months later than the initial plan of operations announced by the company. The open-pit extension would add 3.3 million tons of high-grade ore to the mill, resulting in additional production of 470 million pounds of zinc and 52 million pounds of copper, the company said. The expansion also will give Nevsun time to advance assessment of the Asheli and Harena underground deposits at Bisha, and to consider further open-pit extensions (Nevsun resources, 2018). Jamasmie demonstrated that the Bisha mine started operations as a gold-silver producer in 2010; Nevsun Resources owning 60% of Bisha while the remaining 40% by the Eritrean government. The operation has 28 million tons of measured and indicated resources with about 31 million tons of inferred inside 20 km of the existing mill (Jamasmie, 2018). The Bisha mine has been the Eritrean government's primary source of income and growth driver since the start of commercial production in 2011.

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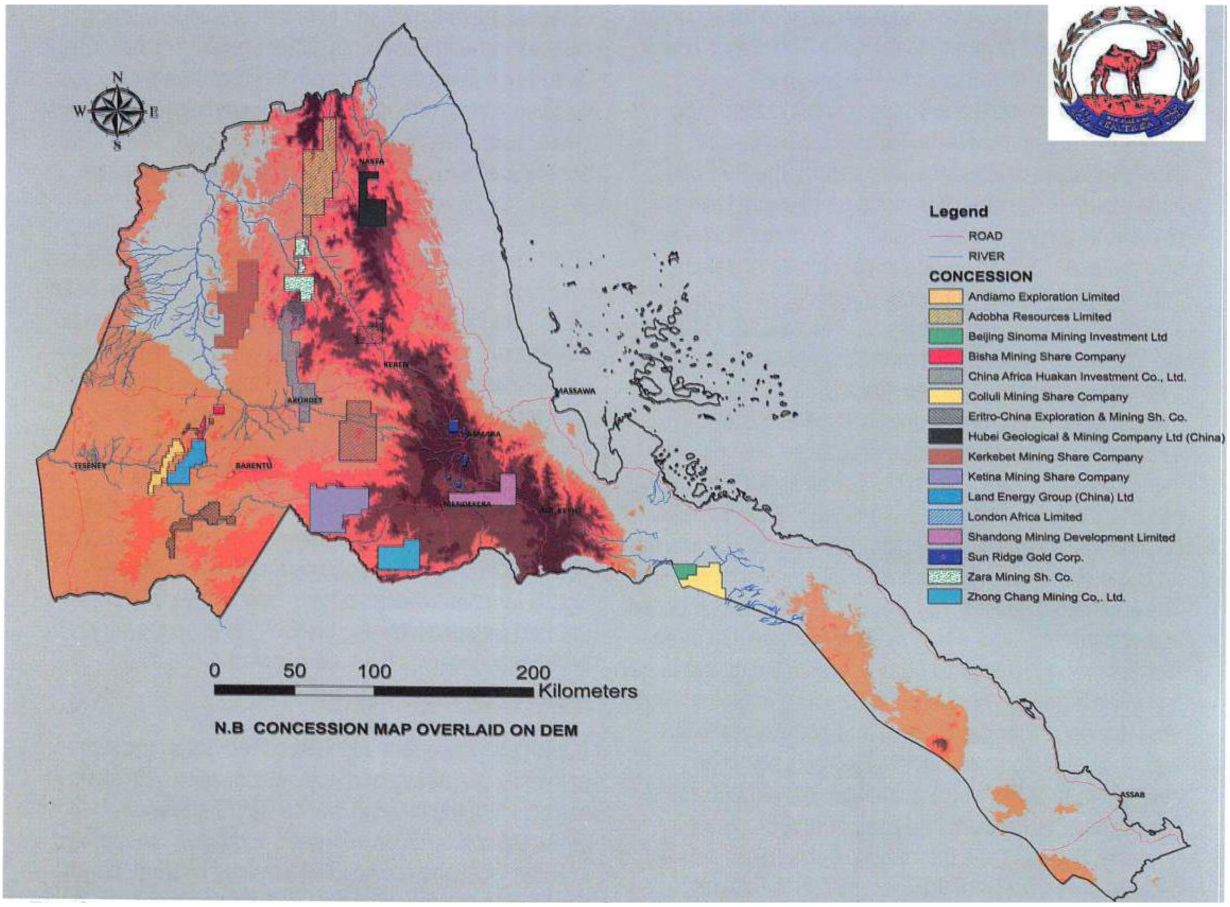

Figure 1.3 Concession map of Eritrea (source Eritrean mining Journal, 2014).

The operator of Eritrea's largest copper-zinc mine at Bisha in western Eritrea, Nevsun Resources, had agreed to a buyout by a Chinese company (Zijin Mining) for US$1.41 billion. The takeover process began on September 15 2018 and was completed on December 28 on the same year. In addition, Chinese interest in Africa's mineral wealth is underpinned by China's hunger for commodities and concurrent need to export finished goods. Hence, we expect additional investment from China into Eritrea's mining and infrastructure development, particularly port development (Economist Intelligence Unit, 2018). Therefore, this study follow its inquires on what grounds were the negotiation deals and contract mining agreement between Eritrea and China been made. The principles of tax rates paid by the company on extracting gold compared with the government revenue rates, the essential points which were included in the contract gold mining agreement together with the mining law which the Eritrean government provided.

Statement of the Problem

The effect of negotiation strategies or skills on the relationships on mining contracts in Africa has been largely unexamined. The process of negotiating these transactions can have satisfactory or dissatisfactory effect on the relationship of negotiating parties. However, this is different from dealing shopkeeper or market retailors. This is something grander with greater stake as the agreements will have repercussions overall country implicating monetary policy, Gross Domestic Product (GDP), and notably living standards of the people. Several managers participating in these kinds of negotiations fall short of the skills needed to arrive at satisfactory agreements to cover the operation of new plants or to deal with requests from governments for changes in the terms of projects already in place. Negotiating mining contracts is an extremely complex exertion that requires a clear set of objectives expressed by leadership; a variety of technical skills in law, engineering, economics, finance, and coordination across relevant government entities and the ability to pursue a consistent course over time.

Research Objectives

General objective: the general objective of the study is to find the main negotiation schemes that lead to an efficacious agreement between African gold mining companies and foreign investing companies or countries.
Specific objectives

The specific objectives for this research paper are

1. To determine the negotiation strategies needed, that has a subsequent influence on the negotiation between African gold mining companies and the foreign investing parties.
2. To define the negotiation team of the host government selection process and on what grounds were the deals made with the investing organization.
3. To conclude the essential points, that must be included in the contract gold mining agreement regarding the mining law.

Research Questions

The research questions for this paper are as follows

1. What are the needed negotiation strategies that have a subsequent influence on the negotiation between African gold mining companies and the foreign investing parties?
2. How the negotiation team of the host government was selected and on what grounds were the deals made with the investing organization?
3. What are the essential points, which must be included in the contract gold mining agreement regarding the mining law?

Literature Review

Concepts of Negotiation

Many scholars have tried to define the word negotiation: Lysons (2006) defined negotiation as a "dialogue between two or more parties, intended to reach an understanding, resolve point of difference, or gain advantage in outcome of dialogue, to produce an agreement upon courses of action, to bargain for individual or collective advantage, to craft outcomes to satisfy various interests of two people/parties involved in negotiation process." An occasion where one or more representatives of two or more parties interact in an explicit attempt to reach a jointly acceptable position or divisive issues which they would like to agree. Again, it is a form of verbal communication in which the participants seek to exploit the relative competitive advantage and need to achieve explicit or implicit objectives within the overall purpose of seeking to resolve problems that are barriers to agreement.
Moreover, Ghauri (2008) stated that negotiation takes place in the context in which the participants use their comparative competitive advantage and the perceived needs of the party to influence the outcome of the negotiation process. Each participant has implicit as well as explicit objectives that determine the strategy. A supplier will explicitly wish to obtain

the best price but implicitly will be seeking a contribution to fixed overheads and endeavoring to keep the plant and workforce employed. Negotiations can take different styles like aggressive, assertive or submissive, or may be dominated by a manipulative as opposed to an assertive phased approach. It is not easy to state definitely the best way to negotiate or the best style much will depend on existing relationship and objectives. It is, however, a purely short-term manipulative approach to negotiations based on I win you lose leads to long term problems. These days, particularly with the view of long-term negotiation objectives, one finds a move towards more of a win-win approach based on trading wants and using phase approach to reach a settlement more satisfactory (Johnson, 2009).
Chaundhry (2011) demonstrated that negotiation is an interactive communicative process that potentially takes place whenever you want something from someone else or someone else wants something from you. It is process of interaction by which two or more parties who consider they need to be jointly involved in an outcome, but who initially have different objectives, seek by the use of argument and persuasion to resolve their differences in order to achieve a mutually acceptable solution. Negotiation is a non-binding procedure in which discussions between the parties are initiated without the intervention of any third party to arriving at a negotiated settlement of the dispute. He also validated that negotiation represents the primary, universal route to decision and action in the social world. The core features of negotiation are found in widely different contexts, ranging from the unconscious routines of everyday life to the formalized, set-piece exchanges of international conferences. These fundamental features remain constant whether the issue is contentious or a focus of extreme conflict. Thus, negotiation as a mode of decision-making spans everyday interaction and the more complex, stressful exchanges encountered in the context of disagreement and dispute.

Contract Mining Agreements
Mining contracts in developing countries is complicated and rigid. Contract mining agreement is a method by which a party who has the right to mine from a particular tract of land (owner) engages with another to perform a service on that land as an independent contractor (Gage et al., 1984). One could imagine the macro-economic factors (political, social, legal, environmental, technological and economic factors) are inter-related, which even make it more complex. When going away to an exploration or mining company with potential for an investment, a major question that should be asked is: "What is the legal framework of that country?" a political issue, and, more importantly, "How secure will mineral venture be under that country’s legal framework?" a legal issue. Many African governments have had to re-negotiate mining agreements that had already been signed after realizing that the initial deals are unfair. Which is why, before any negotiations begin, both the investor and the government will do research on one another, with the investors seeking to comprehend the goals and backgrounds of the governmental negotiators and information about the country while the government study the nature of potential investor and its negotiators.
Andrew (2012) revealed that there must be consistent issues to be considered when evaluating the sanctuary of a mineral project from a legal point of view. One of the issues he asserted was to analyze "regulatory documents" that already existed in the country in question, and decide on those to be drafted mostly like mining agreements for the intended venture. A comparative assessment should be undertaken between the strength of the published documents that are applicable to every investor, and the documents still to be drafted. Moreover, the needs to determine which issues are negotiable, and which issues are

not being also very essential. Finally, since much in mining rests on the good will of the host country's government, an attempt should be made to assess the government's current position as well as to extrapolate it into the future. Governments generally in developing countries with young mining sectors are still negotiating contracts with companies and still heavily rely on them to establish a company's rights and obligations for a specific project. Therefore, in this article, a mining contract agreement refers to a deal, contract, or other legal instrument which is negotiated between a commercial entity (private company or an independent one) and a self-determining government.

Mining Law

The mining law of a country contains the subset of laws and codes that regulate exploration and production of minerals. As with most investment laws, the clauses in the mining laws specify rights and obligations of the private company (appropriate taxes, autonomy to repatriate funds, access to foreign currency and other issues), interests and obligations of the state. The latest generation of mining codes in many African countries was explicitly designed to ensure that the interests of foreign investors in the sector were taken into account (Akabzaa and Butler, 2003; World Bank, 1992). It is then the most important document as far as mining contract is concerned.

So the mining law doesn't only consider the contract numbers or figures. It also possesses several aspects; taking a good example from the Eritrean mining journal (2014) the key issues upon which the mining law is based are:

- ✓ "All mineral resources in Eritrea are public property. The state has a duty to ensure the conservation and sustainable development of these resources for the benefit of the people."
- ✓ The necessity for formulating regulations which ensure protection of the natural environment, together with sustainable development of the country's mineral resources, in accordance with sound principles of resource management and land use; the Eritrean mining law is up-to-date, attractive and competitive, as it provides considerable benefits and incentives to investors. For example, the law provides for:
    1. The right to exploit any commercial discoveries made pursuant to a valid exploration license;
    2. The right to sell locally or export, free of all duties and taxes and without being required to obtain any other authorization or permission from any other government agency, all minerals produced pursuant to a mining license.
- ✓ The intention is to create a favorable atmosphere for foreign investment in the mining sector. Due recognition is made of the significant role that foreign investment and skills can play in the development of this sector and the capital intensive, long term and risky nature of mining investments.
- ✓ A simple and fair taxation system which recognizes the risky nature of mining investments, and hence allows accelerated depreciation (straight line method over 4years) of all capital pre-production costs, write-offs of exploration expenditure incurred anywhere in the country, the carrying forward of losses.
- ✓ A generous reinvestment deduction (5% of gross income), no dividend tax, a nominal rate of import duty (0.5%) on all inputs necessary for mining operations, normal royalty rates as well as an option for the reduction, suspension or waiver of the royalty

in appropriate circumstances, equitable foreign exchange regulations permitting, free and unrestricted repatriation of earnings.

- ✓ Retention of a portion of foreign currency earnings abroad in external accounts, maintenance of foreign currency accounts in banks in Eritrea and a simple "one-stop" licensing system enabling all the formalities for all types of licenses for mining operations to be completed by a single government agency, the Ministry of Energy and Mines.

Legal articles set the margins of the agreement, the method of dealing with disputes, and define a range of other aspects of the relationship between both parties to an agreement. Legal advice will be crucial in shaping an agreement that works well for the community of the host government. The legal framework governing the conduct of all mining and related operations within the territory of Eritrea is embodied in a mining law encompassing of minerals proclamation No. 68/1995, mineral proclamation 165/1995 and regulations on mining operations legal notice No. 19/1995. Below here, the mining licensing system of Eritrea is presented; it describes the types of licenses permitted in the mining law of the Eritrean government, (Eritrean journal, and 2014).

Table 2.2

License Type	**License fee (Per license) US$ (approx.)**	**Annual Rentals (Per Km2) US$ (approx.)**	**Initial period (Years)**	**Renewal**	**Maximum Area (Km2)**
Prospecting	80	**8**	1	None	100
Exploration	240	32	3	2 (1+1)	50
Mining	960	96	20	10+10+10	10

Source: Eritrean mining journal, 2014.

All of these are exlusives and grant their holders an automatic right to obtain an exploration from within a prospecting license and a mining license from an esploration licenses, subject to the fulfillment of the oligations under the preceding license. In exploration a 25% reduction of the original area has to be made at each renewal year. Applications for any of these licenses may be made by individuals or legal entities of any nationality.

The Negotiation Team

Even if a gold mining company be acquainted with the mining laws and forms of the contract mining agreement it should not take for granted that the deal will be prosperous, and this is where the negotiation team come into the picture. According to Fabien Nkot, a former senior advisor to the Prime minister of Cameroon, "setting up a negotiating team is important; this team will usually consist of a political committee and a technical panel, which will generally include all the different stakeholders in the project (Nkot, 2020). It might also include a conflict resolution and communication team. What is more is it has to be ensured that the different arms of the negotiation team are co-ordinated and that there is a constant dialogue between them. There can be a huge pressure on negotiators and the community's political leadership to ratify a draft agreement that is recommended by both negotiating teams. It is imperative that the local community has a say in the negotiations. Adding members of parliament or the mayors of the mining locality into the negotiating team can ensure this."

Therefore, the local representatives will have advantage of better mastery of the geography, social history and the aspirations of the inhabitants of the area. They will consequently be able to provide to the rest of the team insights on how best to ensure collaboration from the local community concerned, as well as how to meet their interests. These local representatives will also be able to help the team to overcome language barriers, especially when it comes to communicating with the local inhabitants and authorities. The negotiators are the core team that will actually engage in the negotiating process. Not every department will be represented, but the negotiators' responsibility is to represent the government as a whole, not just one ministry, as it is the government that assumes all of the rights and obligations, not an individual minister. Disappointment, frustration and even anger may arise because expectations are not met or even discussed. Host government's negotiators should consider the local communities. Local communities should benefit from opportunities which arise through extractive projects such as employment, provision of services and supplies, access to infrastructure, and other community development outcomes.

The negotiating team should not be making policy for the government, but implementing the policies already made. The preparation process is where policies that need further development must be identified and addressed. The negotiating team translates the policy into action. Even if the negotiation team is best at its negotiation and business communication it doesn't mean that they will reach an agreement with the host government as other important issues arise like political and social matters by which one is not complete without the other one. Presidents, Ministers and other political officials must be on board with this approach and ensure that potential investors don't get a second back channel directly to them in order to override the negotiating team (Howard, 2015).

Common challenge posed during negotiating is when a community has to come up to rush on a tremendous amount of technical information in a very short time. Moreover, people can feel excluded because they don't understand the technical language that is used to describe the mining process and its potential impacts. Another challenge is people may not have the capacity to cover all the issues that need to be reviewed. Plus, the schedules that are created often force decisions on people, and they feel they have no power to change the timeframes for decision-making. There is usually a difference between the timeframe that communities need to make informed decisions, and that of the developer and regulator. In addition to those challenges, often information is brought to people without allowing for informed decisions to be made, so that when a developer consults on a proposed development, they may negotiate the tonnage but not the principle of whether there ought to be a project or not (IBA community, 2014).

How the political dimension of a negotiation is handled, including interaction with the negotiating team is a critical issue? Louis T. Wells, Jr. made a clear statement about this topic, in his exact words "the government negotiator is almost always concerned with more than financial flow. He makes political calculations too. Eager to avoid political difficulties for himself and his government, he tries to arrange terms that appear to be at least as favorable for the country as the terms for similar projects in other countries so that the opposition cannot easily turn the agreement into a political issue. Obviously, the economic and political criteria may place different constraints on the negotiator. As long as the political calculation allows him to give more to the foreign investor than does the economic calculation, an agreement is likely, even though the bargaining may be long. When the political constraints are severe, it is possible that no agreement can be satisfactory to both parties. However, if the negotiators ignore the political limitations, the resulting agreement is unlikely to last. In fact, the political goal is a real constraint on many governments. Although negotiators recognize that a potentially high rate of return may be required to attract an investor to a risky project, every politician knows that his opposition will not make a very sophisticated comparison of projects. Terms that appear as favorable to the investor make perfectly satisfactory political target" (Louis, 1977).

So there are roles the negotiation team on both sides plays. However our main concern now is the negotiation team with the host government to play the role; back up the political leaders and the communal in dealing with the company and government, organize the negotiations through arranging meetings and managing correspondence, carefully analyze offers from the company, stepping in to support staff and negotiators if the company attacks them, do hard talking when needed, deal with the bosses in the company and the government, prepare for after the agreement is signed, Make concise briefings for the Aboriginal communities about offers, comparing these offers to other agreements and help monitor the agreement to make sure things are happening as they should (Howard, 2015).

Government Revenues and Tax Policy

Foreign multinational companies have majority stake in most of African gold mines. As a result, the main techniques through which African countries benefit from the mineral revenues is through government tax revenues. The effectiveness of this mechanism depends in turn on the fairness of mining concessions signed between mining companies and African governments. Most of the time those issues will be included in the mining agreement contract. Often, mining companies have negotiated tax exemptions far above the provisions specified in the relevant mining code (Curtis et al., 2009).

Government negotiators are usually economists or lawyers; as a result, they rarely understand in any profundity of technical words such as depreciation, the differences between cash flow and profits, and the particulars of foreign tax credit systems. Beyond obtaining revenues and getting a fair share of the financial benefits to secure a reward for ownership of resources, host governments pursue multi-layered objectives aimed to secure broader benefits to support the achievement of development priorities for the national economy (OXFAM, 2017).

A modern land privilege treaty usually sets out a specific formula for revenue sharing tied to government revenues receipts, ranging from 7.5 per cent to 50 per cent. For example as Jamasmie demonstrated, the Bisha mine started operations as a gold-silver producer in 2010 and Canada's Nevsun Resources had owned 60% of Bisha while the other 40% belongs to companies run by the Eritrean government (Jamasmie, 2018). The gold mining sector is an imperative source of tax revenues and foreign exchanges which are vital to Africa's economic performance. The nature of the expenditures of revenues determines to which extent higher mineral revenues can contribute to development. A major problem in some resourceful countries is the lack of transparency both in how concession agreements or mining license are issued and how payments received by the government are spent. To ensure the credibility and consistency of the profit coming to the host government the negotiation team must include all the experts needed to make the flow steady. The experts might include accountants, lawyers, financial managers, economists, project managers, business managers and other professionals required in the negotiation team.

So both the host government and the investing company must agree on terms of tax payments, percentage of the revenue to share and definitely the corporate social responsibility (CSR) for community issues. When negotiations are at certain critical stages, there may be concerns about information sharing outside a relatively small group. However, that group should ensure that it has a full understanding of the tax implications of the decisions being considered. The best way to ensure this is to include a tax representative within that group; failing that, having a consultation with the tax representative and fully explaining what is being proposed is the next best approach (Extractive Industries Taxation, 2017).

Negotiation Strategies

In the business world, there are five negotiation strategies which are used in the process of negotiating. Despite this fact, most of business negotiators use only one or two negotiation strategies. It is an effective skill to adapt the strategies to the elements of negotiation. The most common division of negotiation strategy is: competing, accommodating, collaborating, avoiding and compromising (Lum, 2010).

i. Collaborative negotiations (I win – you win): Collaboration involves exploring individual and mutual interests in an effort to satisfy everyone's needs. This negotiation style usually results in I win – You win. There are also some assumptions which must be met to be an effective collaborative negotiator. These are: an effort to build trust and to satisfy the needs of both parties, searching for creative solutions that make both parties winners, listening to the other person's ideas and others. Collaboration is very often the best choice but it should not be used with a competitive negotiator. Another disadvantage of the style is the condition that the negotiators must be aware that they share information at the same level. If not, one side can be exploited and the other side can be advantageous (Rogerfisher, 2007).

ii. Accommodating (I Lose – You Win): This style of negotiation is all about the relationship and is the polar opposite of the Competing style. Accommodating negotiators believe that the only way to ultimately get what they want is to satisfy all the demands of the other party, hoping maybe in time the other party will do the same. Accommodators are sensitive to the emotional states, body language, and verbal signals of the other parties. They can, however, feel taken advantage of in situations when the other party places little emphasis on the relationship (ACE group, 2015).

iii. Compromising negotiations (I lose and win some – you lose and win some): Compromising is a partial-win, partial-lose proposition, where something what is achieved but not everything, and likewise for the other party. Compromise is based on fairness, mutually sufficient solutions and rationality. The compromising negotiation style is usually confused with the definition of negotiation but in fact, compromising is just bargaining. The most important fact in the compromising is to realize that the negotiator wins something but also loses something. It is difficult to be aware that he lost what he intended. According to the negotiation instructors, the compromising style requires the best quality of negotiation training (Lum, 2010).

iv. Competitive negotiations (I win – you lose): Competitive negotiation is a method for negotiating the pricing and terms surrounding a particular transaction. This method of negotiation is based around the concept that negotiations are a zero-sum game; meaning that one party must win the negotiation while the other party loses. The result of a competitive negotiation often results in one party feeling as though he or she received everything possible out of the negotiations, while the other party feels as though he or she has lost out on the negotiation (Leenders, 2006). In a competitive negotiation, the only factors that are a concern are the pricing, terms, and overall value created through the negotiations. The relationships between the negotiating parties tend to be irrelevant in this type of negotiation. Although negotiators might leave a negotiation with a feeling of success and triumph, the competitive nature of the process may cause them to alienate themselves from the other party. Ultimately, business success relies in part on good relationships, and organizations that regularly negotiate based on zero-sum principles may find that this practice has long-term negative effects (Robert, 2008).

v. Avoiding (I Lose – You Lose): Individuals who do not like or wish to negotiate often resort to this style. They don't negotiate unless warranted. When negotiating, avoiders tend to defer and dodge the confrontational aspects of negotiating; however, they may be perceived as tactful and diplomatic. Avoiding is the strongest position of all; the other side has to make concessions just to get the process started. They do not immediately pursue their own concerns or the other parties nor do they ever address the conflict. This style could be a vengeful style and while the adopters of this style won't address the conflict they will seek ways of retribution. When this occurs, the avoiding style can be difficult to spot as it can go under cover for a time; it escalates to a 'passive aggressive style'. This style is usually in response to a highly competitive style. The avoider will shut down communication and contact and will seemingly disappear off the radar. While this is in play, mutual resentment builds and cracks to total breakdown of the relationship may occur, leading to a lose-lose scenario (ACE group, 2015).

Effects of gold mining agreements on the households of the host government

Many enquires have shown that gold mining and processing can significantly degrade natural environments and even by reducing the quality of soil sediments, water, and air in other words putting human health and livelihoods in danger. Those researches made it clear that a gold mining company if it is not operating in a proper way it will definitely consume both the environment and the human lives. Accordingly, as there are remarkable benefits from gold mining, there are also some undesirable effects of this sector on the livelihood of the people in the host government. Like many other industries, gold is associated with environmental degradation and pollution, which have severe health implications. Pollution mainly occurs during gold extraction and processing, which includes carbon-in-leach, heap leaching with cyanide, and biological oxidation and roasting (Hilson, 2002). Environmental degradation is expressed through effects on the land and land use, the spread of gold ore-related heavy metals such as arsenic and lead to nature, the discharge of cyanide to nature, and the spread of mercury from artisanal mining or air pollution, (Von der Goltz and Barnwal, 2014).

The extraction of gold is environmentally hazardous at virtually all stages. The construction and exploitation usually involves the clearing of land given that most modern gold mines in Africa are open-cast. In many countries, this has led to significant deforestation, diversion of water streams and erosion. When the ore is extracted, the process of separating gold from other materials involves significant use of highly hazardous chemicals, which can lead to harmful soil and groundwater contamination. The negative environmental impacts hardly stop with mine closure. Improper mine closure can lead to leakage of previously used toxic materials. In the absence of clear preservation of top soil material, reclamation of the mine site to a state close to its original condition becomes impossible, which can lead to irreversible environmental degradation (Naicher et al., 2003).

Several studies in developing countries mainly in Africa have examined the presence of pollutants and heavy metals near gold mines; they found that the mining sector to be a major cause of high concentrations of hazardous substance in several African countries. Moreover, Bebbington et al. (2008) identified two main characteristics that define the mining sector: contention and ambiguity. Contentious because mining has significant adverse effects on the social, environmental and economic sphere but offer limited benefits for few. It is also ambiguous because of the logic carried by local communities that mining could do more. Furthermore, different approaches were used to establish toxicological profiles, including examining samples of soil, drinking water, air and food, as well as satellite images. Developing countries (mostly African) have been the setting for evaluation studies on soil samples (Saleem, 2006).

Conceptual Framework's Discussion

This study is organized into four convincing process factors that can affect the subject conceptual framework (successful negotiations) holistically.

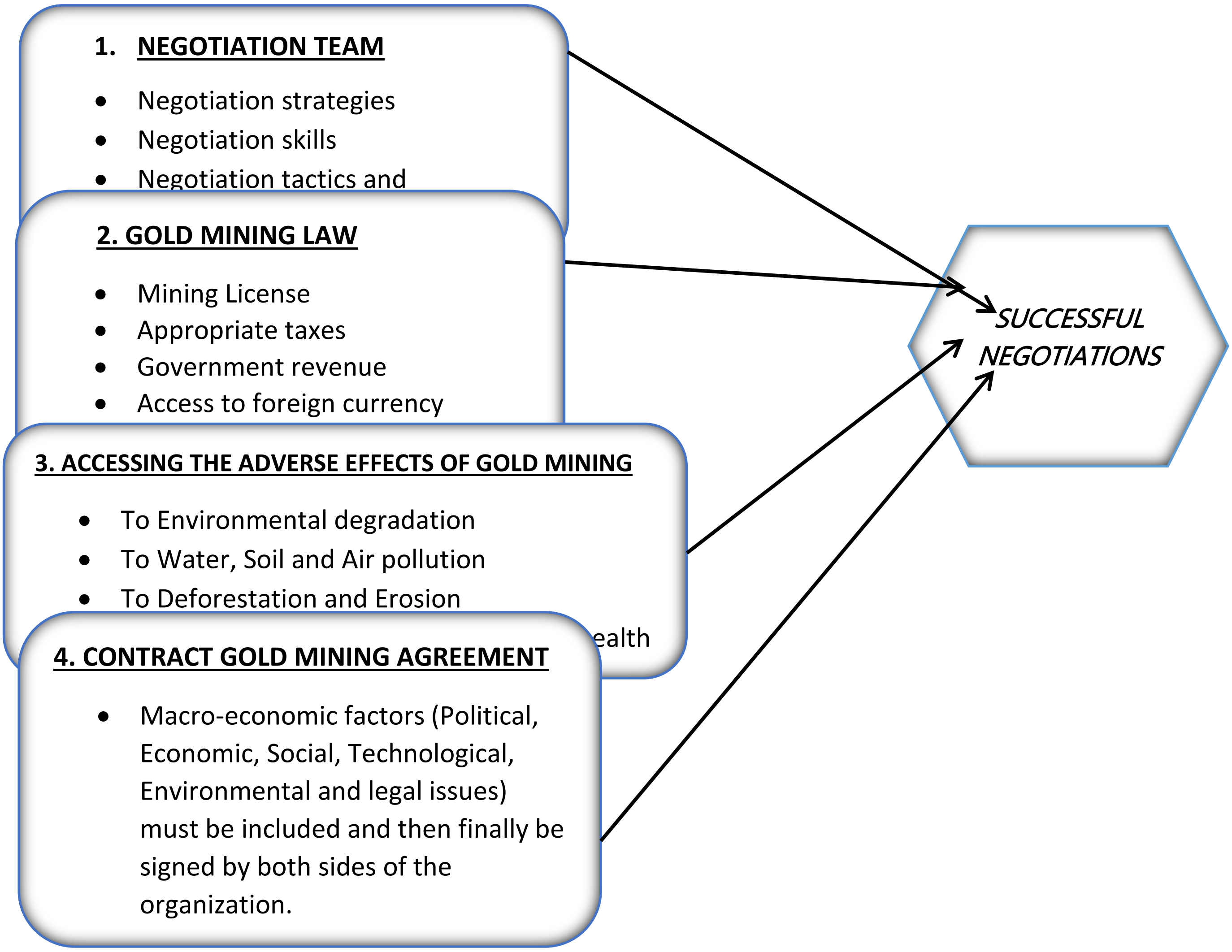

Figure 3.1 Conceptual Framework

The first step is preparing the negotiation team; most probably the driver of a successful negotiation, as good conviction negotiations requires both sides to talk together in a way that is agreed to from the start so organizing a remarkable negotiation team will definitely change everything. Thus we do have the negotiation strategies, skills, tactics and terms with in the negotiation team because if the host country contemplates on negotiating it must be competent on those positions.

Then the gold mining law comes by, it’s not enough if the host country has the willing and the ability to negotiate without going through a further study on its own mining law, as the law is used to exercise the control mechanism to the foreign country or investing company. Within the mining law there must be the financial issues with the government tax, revenue, royalty payment, mining license and access to foreign currency. No matter what the investing company could be; be it small or gigantic, maximizing profitability is among the primary goals of theirs, certainly the companies would say “no, sustainability of our organization comes first!”, well I would rather say that sustainability comes from profitability that’s why government’s tax and revenue have to match with the company’s portfolio.

The third phase would be accessing the adverse effects of the gold mining on the households of the host government that could lead to a hazardous livelihood. After the negotiation teams of both sides agree with the phase of gold mining law and if the community negotiator does not get the community’s key issues on the table, or give them priority, the company won’t do so. Thus as most negotiators say that the key to a successful agreement for a community is to always be proactive that is playing offence rather than defense which is everyone should think about giving back to the community also known as corporate social responsibility (CSR).

The fourth and final step will be the signing of the contract gold mining agreement, mentioning everything that the company and the host government talked about in the contract mainly the macro-economic factors and sign both parties with a delighted shaking hand moment which would close the deal; after all who knows this might be the beginning of a new chapter for both parties. At last all the components together would create a flourishing negotiation. Therefore, a successful negotiation is one in which indigenous people get the things they really want by giving something precious to the world, from the society or community itself; be it land, human power, money or any other assets.

Methodology

This study is conducted based on relevant desk review. Data used in this study are secondary generated through wide-ranging literature review of related sources, including books, relevant publications and reports of international organizations as well as relevant national policy documents and academic journals. The secondary data are critically analyzed in line with the objectives and research questions of the study.

Case Analysis

Tittle: IISD Handbook on Mining Contract Negotiations for Developing Countries. Volume I: preparing for success.

Author: Howard Mann, IISD senior international law advisor, April 2015.

Summary of the Case

This *IISD Handbook on Mining Contract Negotiations for Developing Countries* gives a hand for self-reliant guidelines to developing countries through the manner of negotiating investment contracts with mining companies. In this book the author emphasized more on negotiations matter than any other aspects, especially to the government officials by preparing and encouraging them to identify their needs and goals.

This handbook, which was prepared by Howard Mann, is not necessarily limited to contract negotiations which made it even more special. Permitting, licensing and other sorts of legal processes relating to the commencement of mining projects all contain quite a lot of negotiated elements nowadays. Moreover, the negotiations made definitely must be suitable with the mining law of the state. Therefore, this case analysis is more concerned on the negotiation of the gold mining contracts.

Objective of this handbook is determined from a clear perseverance: the role mining can play in supporting and promoting sustainable development in a developing country context. Most of the developing countries, who are struggling to turn the welfares of gold mining to their own, are in Africa. Moreover, another objective could be to recognize the need for governments to maximize the value and value added of their resource base in overall terms, and seeks to provide support in doing this in the concrete context of a specific negotiation.

Background Information

Eritrea an East African nation is currently engaged in a dynamic mining activity. It is a young nation, sharing border with Sudan in north and west, with Ethiopia in south, with Djibouti in south east and with Red Sea in east. It has an estimated population of 4.5 million and a total land area 12.2 million hectares. There are nine ethnic groups and six administrative provinces. Eritrea got independence (through referendum) from Ethiopia in 1993 after 30 years of armed struggle.

The Eritrean government recognizes that mineral resources can greatly back up the nation's economy that aids in the contribution of the foreign exchange earnings. Eritrea currently has more than fifteen mining pits but the most significant ones are those which mine gold for this inquiry, although there are other companies that mine potash, zinc, copper, aluminum or extra additional minerals. To mention some of the gold mining pits for short background information here they follow (Eritrean mining Journal, 2014).

Bisha Mining Share Company (BMSC): is one of the highest gold mining pit producing in Africa and the world. The company was formed by a joint venture agreement between Eritrea's National Corporation (ENAMCO) and Canada's Nevsun Resources Ltd. However, it is now in the full hands of the Chinese company known as Zijin Mining, sold for US$1.41bn in 2018. The regional exploration program combines the key components used in massive sulphide exploration incorporating geology, geophysics and geochemistry to develop targets for drill testing in support of operations.

Zara Mining Share Company (ZMSC): is a developing Eritrea's next gold mine at the present fully activated in production. The Koka gold deposit which is located with in the Zara project area of northern Eritrea is being held and operated by ZMSC. Zara mining is a joint venture between ENAMCO and the SFECO group, a subsidiary of Shanghai Construction Group Company Ltd. SFECO acquired its 60% interest in the Zara project from Chalice gold mines in November 2012 for a sum of US$80 million; inclusive deferred payment of US$2 million on the first gold pour at the Koka gold mine. ZMSC have also contracted Huaken Company for exploration drilling purposes.

Sunridge Gold Corporation: is a company which has been exploring since the early 2003 for precious metal deposits in Eritrea. This company has successfully defined four deposits on the Asmara Project located outside of Asmara which contain significant amounts of copper, zinc, gold and silver. Sunridge and ENAMCO have executed a shareholder's agreement for Asmara Mining Share Company (AMSCo) the operating entity which will own and operate the Asmara Project. AMSCo is owned 60% by Sunridge and 40% by ENAMCO (30% participating and 10%

free carried interest). This deposit economically robust with a net present value (NPV) of US$692 million with a10% discount applied ($1.791 billion NPV with zero discounts) and the internal rate of return (IRR) is 34%. The study presented that the mining of all deposits will be in Emba Derho, Adi Nefas, Gupo gold and Debarwa.

Andiamo Exploration Ltd: is a private company based in London, UK exploring in Eritrea. It focuses more on copper, zinc and gold volcanic massive sulphide (VMS). It has a 232 km^2 Haykota exploration license which contains Yacob Dewar, Ber Gebey and Hoba deposits that raised US$11.6 million between 2009 and 2014. Work during 2013-2014 mainly focused on the 3 above mentioned deposits as well as Frataka VMS and Shambotai gold prospects. Haykota in its own is targeted as a multi-million-ounce gold deposit at surface.

Ketina Mining SC: is the first Eritrean-Russian joint venture between Global Resources Group (GPB) and Eritrean National Mining Corporation (ENAMCO). It is located south west of Asmara with an area of 1000 km^2 with an exploration license in Gash barka region (Molki sub region). Ketina mining SC is focused on the discovery of gold and base metals deposit in Eritrea. It started to fully operate in January 2013.

Land Energy Group (China) Ltd, Eritrea: this company started mineral exploration during 2009 in Tekawda-Gogne. Based on the exploration results, the geological investigation and sampling within surface pits discovered 21 new gold mineralized veins in the northern part of the area. The entire mineralization zone is about 9km long and nearby 1000m. It has been rooted that there are at least two principal types of deposits: volcanic massive sulphide-type (VMS) and poly metallic deposits.

Adobha Resources (Eritrea) Ltd: is a fully owned subsidiary of Gippsland Ltd grips two exploration licenses totaling to 2200 km^2 in the north-western part of Eritrea. The exploration started in June 2009 and cut a layer of gold mineralization by which is planning to search for gold potential areas.

Moreover, other non-gold mining companies include South Boulder Mines Limited (ASX: STB, South Boulder), Beijing Sinoma mining investment Eritrea Ltd, Kerkebet Mining Share Company (KMSC) and Intertek Minerals company.

Discussions and Findings

In his handbook, Howard fruitfully presented that short term perspectives often lead governments to conclude that the completion of negotiations on a mining contract is the end point of their work; on the contrary it is the starting point to a new chapter for the government, investor and community in a long-term relationship. He also added that the government has the full right to know the financial capacity, experience in assessing and dealing with local issues, business history, leadership style and operational model of the investor as the government is entrusting the sustainable development of its natural resources to some private or public sector partners which is a huge responsibility for the welfares of the citizens. The political leaders play an important role as the serious portion in a negotiation is the ability to manage the political factor. So the President (Minister and other political officials) must recognize that the government has a bigger hand on this negotiation. Thus if an agreement is not reached, they may be prepared to walk away from the table and the resources will remain there for a future development; nothing lost.

At the same time the handbook explained that the government must also understand the negotiating demands of the investor thus the best solution would be moving toward a common goal and reach a mutual agreement. Another matter is the negotiation structure (place, language and time), negotiation scope and capacity should be in the minds of the government so it may prepare a negotiating agenda at first. "Discipline is the other side of the coin to leadership" is a very crucial point described; once the negotiation starts everyone must put energy into it and a sense of keeping your eye on the ball is needed. Finally, the negotiated contract has to be made public which will encourage for accountability of the negotiation members, community support, focusing on long-term goal and reducing opportunities for corruption.

Conclusion and Recommendation

Conclusion

This paper tried to analyze and assess the negotiation necessities African countries need in order to reach a successful deal. Thus we have to consider the negotiation team selected, structuring both the contract and law of gold mining and mostly be extra careful when assessing the environmental issues. As described in the above Eritrea is a young African nation struggling to stand on its feet gifted with a variety of mineral resource. If not all most of the developed countries don't need negotiations through mining contract agreements however, Eritrea and other African countries definitely need it, but why? The reason lies as African nations do not have a long history and track record in gold mining, the legislation forms like mining code, tax, labor, commercial, environmental and other issues that governs the gold mining is not yet completed it changes now and then which means the property right and rule of law is not valued. At last and the main issue: corruption. If government possesses non-corrupt officials, it really helps with the contract agreement but in the case of Africa it is still a concern.

To conclude, the research wants to underline one word: listening. Effective negotiators are good communicators, and the secret skill to possess is one huge ingredient: Listening. Listening is a crucial point, Richard and James described this in their famous book *how to become better negotiators*. The primary skill of negotiating is listening, they also added that a good listener hears, interprets, evaluates and reacts (James et al., 2008). One real fact in the book was that 45% of our times in communication are spent on listening apart from the other communication skills speaking, reading and writing; which in other words without listening, communication is hard difficult and arduous, yet listening is the least trained communication skill.

Recommendation

This inquiry wishes to add some recommendations and suggestions which are presented below.

- In the process of negotiation, African nations have to determine contents of the mining contract. It has to include: project area, permits, existing rights, feasibility study, environmental assessments, social assessments, finance plan, environmental acquiescence, closure plan, treatment of contractors, surface rents, royalties, income tax, value added tax, personal and property taxes, depreciation and amortization schedules, access to foreign currency and off shore banks, operating and work permits. And furthermore the obligations of the investing company or country must be primary the obedience with applicable regulation, performance on project, local employment and training, local sourcing vendors or suppliers and community contributions. Lastly, the host government has to keep in mind that other matters could arise such as grievance and dispute topics, confidentiality, surrender and assignment, dissolution by state and by the company, periodic review, and other legal temperaments.

References

ACE Group, LLC PDH Center and Online (2015).

Akabzaa, T., and Butler, P. (2003). "Factoring in Governance is not enough: Mining Codes in Africa, Policy Reforms and Corporate Responsibility" in *The Challenges of Development, Mining Does in Africa and Corporate Responsibility*, (eds) Bastida, Walde and Warden, The Hague.

Economic Intelligence Unit. (2018), *Chinese company to buy out Bisha mine,* http://www.facebook.com/pages/ the economist-intelligence-unit-eiu/6431878727.

Edmund Blair, Eritrea to Expand Mining Operations, Reuters. (2017), available at http://www.reuters.com/ article/us - eritrea-mining.

Extractive Industries Taxation: Attachment C – Negotiation. (2017). "Guidance note on the tax aspects of negotiation and renegotiation of contracts", prepared by the Subcommittee on Extractives Industries Taxation Issues for Developing Countries.

Fabien, N. (2020), 50 pieces of advice to an official who is engaged in the negotiation of mining contracts, a handbook of international mining for development center, University of Western Australia and Queensland.

Ghauri, P., and Usunier, J. (2008), International business negotiations, 2nd ed, Pergamon press.

Lum, G. (2010), The Negotiation Fieldbook: Simple Strategies to Help You Negotiate Everything, Second Edition

Hilson, G. (2002), The Environmental Impact of Small Scale Mining in Ghana. *Identifying problems and possible solutions.* The Geographical Journal, Vol., 168, pp. 55-72.

Howard, M. (2015), International institute for sustainable development handbook on mining contract negotiations for developing countries of Volume 1: Preparing for success.

IBA community toolkit. (2014), *Negotiation and Implementation of Impact and Benefit Agreements*; Section 4 Conducting Negotiations and Reaching Agreements.

Jamasmie, C. (2018), Base Metals Precious Metals Africa Europe Copper Gold Zinc.

Johnson, P. (2009), Purchasing Principles and Management 4th Edition. USA, New York: Prentice Publishers.

Leenders, M., Johnson, F., Flynn, A., Fearson, H. (2006), Purchasing and supply management: with 50 supply chain cases, McGraw Hill, Singapore.

Lewicki, R. J., and Litterer, J. A. (1985). Negotiations. Homewood, IL: Irwin.

Louis, T., Wells, Jr. (1977), Negotiating with Third World Governments: appeared in the issue of *Harvard Business Review,* from the Magazine.

Lysons, K., and Farrington, B. (2006), Purchasing and supply chain management, 7th ed Prentice Hall,Britain.

Ministry of energy and mines of Eritrea. (2014), "Mining Excellence for Driving Economic Growth", Eritrean mining journal in Asmara mining conference.

Oxfam Briefing Paper. (2017), From Aspiration to reality; Unpacking the African Mining vision.

Patman, R. (1990), Eritrea even the stones are burning, Trenton N.J: the Red sea press.

Richard, A. L., and James, G. P. (2008), how to become a better negotiator, 2nd edition American Management association.

Rogerfisher and William Ury (2007), The power of positive No, Penguin books: New york.

Saee, J. (2008). Best practice in global negotiation strategies for leaders and managers in the 21st century. Journal of Business Economics and Management, Vol. 9, Issue 4, 309-318.

Saleem A. (2006), Environmental Conflict Resolution, Golden opportunity in Ghana; a Negotiation case study and analysis, Sally Dickinson DeLeon.

Saorín-Iborra, M., and Cubillo, G. (2019). Supplier behavior and its impact on customer satisfaction: A new characterization of negotiation behavior, Journal of Purchasing and Supply Management, Vol. 25, Issue 1, 53-68.

Tesfanews. (2011). Exploration and Mining Companies Operating in Eritrea, https:// www. tesfanews. net/ exploration-and-mining-companies-operating-in-eritrea/.