

Fall 2010

Ghana Journey: Private Investment, Public Funding, and Domestic Reform

Ronald C. Griffin

Florida A & M University College of Law, ronald.griffin@famu.edu

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Recommended Citation

Ronald C. Griffin, Ghana Journey: Private Investment, Public Funding, and Domestic Reform, 6 Fla. A & M U. L. Rev. 109 (2010)

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GHANA JOURNEY: PRIVATE INVESTMENT, PUBLIC FUNDING, AND DOMESTIC REFORM

Ronald C. Griffin
Professor of Law
Washburn University
Topeka, Kansas
U.S.A.

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I. INTRODUCTION

Some folks are good.¹ But man is evil.² He is driven by impulses, avarice, reason, scholarship, and barbarism.³ There are

1. David Keyt, *The Good Man and the Upright Citizen in Aristotle's Ethics and Politics*, SOC. POL'Y & POL'Y FOUND. 220, 220 (2007). See JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 351-352 (Oxford University Press 1980) (1980). United States healthcare reform is an illustration. President Obama shouldered the cause of thirty two million Americans under hostile circumstances. The undertaking did not benefit him or his friends. The goal was to stem debt driving sick people into bankruptcy. When others came to his aid he won. See *generally* Associated Press, *A Historic Look at Health Care Legislation*, <http://www.google.com/hostednews/ap/article/ALeqM5iSWiwfSuX4I3hlcX-FO2APkhh8r> (last visited Oct. 1, 2010).

2. Keyt, *supra* note 1, at 238. Scholars and people of good will should read the Nuremberg War Trials: The Ministries Cases (The Nazi Judges Cases), available at <http://www.law.umkc.edu/faculty/projects/ftrials/nuremberg/Alstoetter.htm> (knowing that something was wrong folk in authority acceded to the demands of a faulty reality to promote law and order).

3. SIGMUND FREUD, *CIVILIZATION AND ITS DISCONTENTS* 23-26, 59, 68-69 (James Strachey ed., W. W. Norton 1961) (1930).

pregnant pauses in man's history when souls, armed with skepticism and idealism, cut the knots of ignorance, fear, and superstition. They tackle privation - giving chits to help the sick, elderly and weak. They confront crime, predation and corruption. They put people's lives into the hands of the market and its apologists who, extolling competition, sweep away useless un-innovative vagrants.⁴

American industry churns out everyday widgets for everybody's use. Sophisticated businessmen - some unsavory - stem production to maximize profits.⁵ Small businessmen cope with rivals, normal competition, oligopolies, and the wiles of monopolists.⁶ Relying upon banks for the bulk of their investment, there is little dough (because of the interest charged by banks) for small businesses to spend on lobbying efforts and manipulation of consumer demand.⁷

Ghana's history affirms some of the social and philosophical claims about man and evil.⁸ A scholarly narrative about American economic life, trenched in Ghana like an overlay, will unveil bits about big businesses, small businesses, and doing business in Ghana.

II. SKETCH

America is an affluent society.⁹ Ghana is the opposite.¹⁰ Competition levels everybody in the United States. Nature performs that function in Ghana. Most have a formal education in the United States.¹¹ One can't say that about Ghana.¹² The tax regime is sophisti-

4. JOHN KENNETH GALBRAITH, *THE AFFLUENT SOCIETY* [hereinafter *Affluent*] 69, 100 (Houghton Mifflin 2007) (1958). Cf. JOHN KENNETH GALBRAITH, *THE NEW INDUSTRIAL STATE* 59-60 (Princeton University Press 2007) (1958).

5. *AFFLUENT*, *supra* note 4, at 66.

6. JOHN KENNETH GALBRAITH, *ECONOMICS AND THE PUBLIC PURPOSE* 173-74 (Houghton Mifflin, 1973) (1973).

7. *Id.* at 44-45.

8. DAVID KIMBLE, *THE POLITICAL HISTORY OF GHANA: 1850-1923* 1-3 (Oxford University Press 1963) (1963); see E. Gyimah Boadi, *The Search for Economic Development and Democracy in Ghana: From Limann to Rawlings*, in *GHANA UNDER THE PNDC* DC 10 (1993); M. Quaye, *Law Justice and Revolution*, in *GHANA UNDER THE PNDC* 154-59; see also K. SHILLINGTON, *GHANA AND THE RAWLING'S FACTOR* 132-33 (1992).

9. *AFFLUENT*, *supra* note 4, at xxvi.

10. KORSI ASHONG & DAVID RIDER SMITH, *LIVELIHOODS OF THE POOR IN GHANA: A CONTEXTUAL REVIEW OF GHANA-WIDE DEFINITIONS AND TRENDS OF POVERTY AND THE POOR WITH THOSE OF THE PERI-URBAN KUMASI* 5-8 (2001), http://www.ucl.ac.uk/dpu-projects/drivers_urb_change/urb_society/pdf_liveli_vulnera/DFID_Ashong_livelihoods_urban_transition_Kumasi_Ghana.pdf

11. *Id.*

12. *Id.* at 18.

cated in the United States.¹³ The tax regime is unsophisticated in Ghana.¹⁴

Few go without in the United States.¹⁵ Too many are poor and hungry in Ghana.¹⁶ Poverty crops up in pockets in the United States.¹⁷ It's all around in Ghana.¹⁸ America is a post-industrial society.¹⁹ Ghana, by contrast, is not.²⁰ There are other institutional comparisons (e.g. foreign grants of aid, exports taxes, excise taxes, energy concerns, and inflation issues) that surfaced on a bus trip from Kumasi.

III. KUMASI

A.

I am on the road from Kumasi. A bus is taking me home. It's misty outside. Storms are brewing. I feel like a youngster holding a candle against the dark. Gloom and menace lurk in the shadows. Uncertainty and absurdities assault the senses. Smells boggle the mind. Finding words to describe the turmoil fomented by visual obscenities challenge every fiber in my body. You see, it's coming to terms with a nation, so different from my own, that's troubling.

Today, like other days, I am trying to figure out who and what I am in Ghana. I am swamped by images of major automobile accidents everywhere; street children roaming the streets of Accra late at night; men defecating in the streets; people relieving themselves in the open; garbage piled high on the byways; poor people begging at street lights;

13. See Deborah Paul, *The Source of Tax Complexity: How Much Simplicity Can Fundamental Tax Reform Achieve*, 76 N.C. L. REV. 151 (1997).

14. See GhanaWeb, *Growing Ghana Through Own Resources: An Effective Tax System* (July 22, 2006), <http://ghanaweb.com/GhanaHomePage/features/artikel.php?ID=107719> (last visited Oct. 4, 2010); see also GhanaWeb, *Who Pays Taxes in Ghana* (Dec. 10, 2006), <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=115320> (last visited Oct. 4, 2010).

15. AFFLUENT, *supra* note 4, at 134.

16. KORSI, *supra* note 10, at 5-6.

17. AFFLUENT, *supra* note 4, at 252.

18. KORSI, *supra* note 10, at 8.

19. See DAVID BELL, *THE COMING OF POST-INDUSTRIAL SOCIETY: A VENTURE IN SOCIAL FORECASTING* (Basic Books 1976) (1973); see also Judith Grant, *Lawyers as Super Heroes: The Firm, The Client, and The Pelican Brief*, 30 U.S.F. L. REV. 1111, 1113 (1996).

20. Post-industrial society is defined as “[o]f or relating to a period in the development of an economy or nation in which the relative importance of manufacturing lessens and that of services, information, and research grows” available at <http://www.answers.com/topic/post-industrial-society> (last visited Oct. 4, 2010); See also *Post-Industrial Society: from Manufacturing to Services*, <http://www.tcnj.edu/~kan2/ada288/project2/>; Cf. KORSI, *supra* note 10, at 7.

and, in the midst of these images, there are gorgeous ocean vistas beckoning folk; picturesque country sides dotted with villages; beautiful women clad in stunning dress with babies on their backs; and strong, gentle and determined men doing their best to get through the day.

Making sense of this is a tremendous challenge. I'd hoped that a trustworthy scheme (dividing the nation into known social and economic parts) would help me. With narratives and counter-narratives about Ghanaian society, and tales about how folk treat others economically, I thought that I could eke out something worthwhile.

Alas the results are unsatisfactory: the debris left behind by colonialism,²¹ mercantilism,²² neo-colonialism,²³ and laissez-faire capitalism²⁴ foul the ground. Ethnic strife, enmity between tribal chiefs, volatile village life, city and town activities, co-modifications of human beings, child slavery²⁵ (lower levels of energy and intellect dedicated to education, agriculture, and engineering) make ordinary excavation and analysis worthless.

B.

Let me begin at the beginning. I am an American²⁶ and the United States is my home.²⁷ It is a middle-aged country bound by checks and balances, a bill of rights and un-enumerated powers. It is a secular society.²⁸ Individuals have the option to practice their religion up to a line drawn by the establishment clause.²⁹ It is a plural society. People draw circles around their neighbors' aspirations and do their best to stay on their side of their neighbors' lines.³⁰

21. KWAME ARHIN, *THE LIFE AND WORK OF KWAME NKRUMAH* 280 (Kwame Arhin ed., Africa World Press 1993) (1992); WALTER RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA* 140 (Howard University Press 1982) (1974); ERIC WILLIAMS, *CAPITALISM AND SLAVERY* 40 (The University of North Carolina Press 1994) (1944)

22. Joseph Inikori, *Slavery and the Development of Industrial Capitalism in England*, in *BRITISH CAPITALISM AND CARIBBEAN SLAVERY* 79, 93-94 (1988); see WILLIAMS, *supra* note 21, at 30-37.

23. See RODNEY, *supra* note 21, at 158-59.

24. See WILLIAMS, *supra* note 21, at 135-45.

25. Robert Kwame Ameh, *Reconciling Human Rights and Traditional Practices: The Anti-Trokosi Campaign in Ghana*, 2 *CAN. J. L. & SOC'Y* at 52, 53 (2004).

26. DERRICK BELL, *FACES FROM THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* 155 (Basic Books 1992) (1992).

27. *Id.* at 152.

28. See *Lynch v. Donnelly*, 465 U.S. 668 (1984).

29. *County of Allegheny v. A.C.L.U.*, 492 U.S. 573 (1989).

30. See *Sherbert v. Verner*, 374 U.S. 398 (1963).

Americans believe people are equal.³¹ They think citizens have human rights³² and fight those who diminish their neighbor's lives and, in the worst cases, steal identities to improve their lot in life.³³ Educated Americans face each other on an equal footing. They bargain with others, celebrate their differences, and deal with strangers on the basis of outward manifestations, transparency, and expressions of consent.

I have used these notions around the world and gotten use out of them. Ghana is the first place where these notions felt out of place.

C.

The United States is an odd country. It is organized around people united by the belief that they have rights against their government.³⁴ Too many people bully neighbors and get away with it. But none can impose their will on others indefinitely: rip another's swatch of the American dream³⁵ without paying for it; or take - indeed keep - the mental spaces allotted to everybody to vent their displeasure with their neighbors and government.

Most Americans work for others and fight others to establish self worth and differences. They obsess about autonomy, privacy (the full body scanners in airport use these days), personal security, freedom (going hither and yon unmolested), freedom from persecution and totalitarianism (surrendering one's personality and privacy to the state), yet submit to corporate authoritarianism at every turn.

They believe that the individual is the center of society; that morality is a legacy inherited from family members to cope with day-to-day challenges.³⁶ They believe that ethics are shared values about how folk conduct themselves in public places; that government is (in the end) a gadget individuals use to protect their stuff.

31. RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 227 (Harvard University Press 1991) (1978).

32. *See* JAMES GRIFFIN, *WELL-BEING: ITS MEANING, MEASUREMENT, AND MORAL IMPORTANCE* 226 (Oxford University Press 1989) (1989).

33. *See* CARLOS SANTIAGO NINO, *THE ETHICS OF HUMAN RIGHTS* 149 (Oxford University Press 1991) (1991).

34. STEPHEN BREYER, *ACTIVE LIBERTY: INTERPRETING OUR DEMOCRATIC CONSTITUTION* 32-33 (First Vintage Books 2006) (2005).

35. *See* *U.S. v. Wong Kim Ark*, 169 U.S. 649 (1898).

36. JURGEN HABERMAS, *BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY* 280 (1996).

America is a commercial bazaar *par excellence*. Goods produced and sold for a profit are stored in the private sector.³⁷ Other things, equally important, occupy space in the public sector (e.g. education, streets, bridges, highways, national defense, police protection, public health, sanitation, clean water and fire protection).³⁸ They are bound by the admonition that funding for them is catch as catch can (taxes).³⁹

D.

By contrast religion⁴⁰ and group ethics trump conventional morality in Ghana.⁴¹ They are rooted in families, clans, communities, village dynamics, tribes and chiefdoms strewn across the landscape. Local communities make individuals moral agents. They behave properly because communities provide personal security, safety, stability, individual recognition, historic memory and the staples of life.

In Ghana, equality amounts to the equal distribution of whatever the community prizes, made available to everybody, strait away, by whatever means officials have at hand. Society is both liberal⁴² and communitarian.⁴³ Liberals are rugged individualists. They demand impartiality in public life. They sketch their position in terms of personal experiences, statistical evidence, statutes, legal cases, and human rights. They make acquaintances and deals with strangers that sustain beneficial life plans. They build cocoa farms, palm oil plantations, small businesses, elaborate compounds, and mental cages (autonomy) to keep the moochers and tricksters away.

Ghanaian communitarians by contrast are malleable folk. They are less autonomy minded.⁴⁴ They are smitten by the comforts of communal life.⁴⁵ Group ethics rule the roost. Communitarians seek connections between daily problems and communal life. They use chiefs, influential personages, their age, gender, status, tribe, personality, character (what a person is like in a crisis), life experiences, temperament, reputation and property to give their life meaning.

37. AFFLUENT, *supra* note 4, at 124-25.

38. *Id.* at 126.

39. *Id.* at 205-206.

40. KWAME GYEKYE, AFRICAN CULTURAL VALUES 17 (Sankofa Publishing Company 1996) (1996).

41. *Id.* at 59.

42. NINO, *supra* note 33, at 124.

43. *Id.* at 84.

44. GYEKYE, *supra* note 40, at 36.

45. *Id.* at 46.

Members have rights. They come to the fore when group claims are too weak to block what communitarians want for themselves.

Public rudeness, cruelty and treachery mark community boundaries. There is an unspoken understanding between Ghanaian liberals and communitarians that representatives for each group will confer to avoid rows.

IV. GHANAIAN SOCIETY

A.

Now, there are richer sketches about Ghana, and some are bolder than others. Every nation has a core.⁴⁶ Myths, rituals, religion, religious rites and tribal ceremonies bind folk. Laws and ethics normalize community behavior, standardize everybody's expectations and draw lines beyond which personal behavior cannot go. Perhaps comity between Ghanaian tribes (old fashioned diplomacy), entrepreneurship (to reward work), religion (to take the sting out of daily disappointment), and cutting edge economic policies (to capture western innovation) bind Ghana.

On the surface Ghana looks like an open society. Underneath, personal expression is muzzled by local pressures, neighborly acquaintances, community relationships, village life, ethics, and social expectations.⁴⁷ Hunger, subsistence farming,⁴⁸ petty enterprise,⁴⁹ gold mining,⁵⁰ oil⁵¹ and corporate farming (palm oil, cocoa, and pineapple) drive the economy.⁵² To date, few assets are suitable for lending.

46. HABERMAS, *supra* note 36, at 20.

47. See Martin Redish and Gary Lippman, *Freedom of Expression and Civic Republican Revival in Constitutional Theory: The Ominous Implications*, 79 CALIF. L. REV. 267, 269-71 (1991). In Ghana the public good trumps private interests. Quite naturally, from issue to issue, the public good undergoes changes. Civic republicans (that is, community oriented members) use deliberations to find them.

48. K. NKANSA-KYEREMATENG, *THE AKANS OF GHANA: THEIR CUSTOMS, HISTORY AND INSTITUTIONS* 7 (Sebewie Publishers 2004).

49. ROBIN LUCKMAN, ET AL, *THE MIDDLE CLASS AND THEIR ROLE IN NATIONAL DEVELOPMENT*, GHANA CENTER FOR DEMOCRATIC DEVELOPMENT, CDD/ODI POLICY BRIEF NO. 3, 4 (2005), <http://www.odi.org.uk/resources/download/1324.pdf>.

50. KWAME NKURUMAH, *NEO-COLONIALISM: THE LAST STAGE OF IMPERIALISM* 89, 237-38 (Thomas Nelson & Sons, Ltd 1965) (1965); see *The Gold Rush and Its Hidden Costs*, THE AFRICA REPORT, Feb. – Mar. 2010, at 53.

51. TODD MOSS & LAUREN YOUNG, *SAVING GHANA FROM ITS OIL: THE CASE FOR DIRECT CASH DISTRIBUTION*, CENTER FOR GLOBAL DEVELOPMENT WORKING PAPER 186 (2009), available at <http://www.cgdev.org/content/publications/detail/1422981>.

52. ARHIN, *supra* note 21, at 308.

Money lenders and local traders, as opposed to big banks, play significant roles in people's everyday lives.⁵³

In Ghana, nobody owns real estate.⁵⁴ Fee simple is a foreign concept.⁵⁵ Vast stretches of land are soaked with spiritual and religious properties.⁵⁶ A bunch belongs to the President of the Republic.⁵⁷ The rest belongs to national tribes. Uncultivated and unoccupied land belongs to stools (tribal trusts managed by chiefs). Strangers can hold stool land and cultivate some, provided they pay the chiefs one third of their harvested crop.⁵⁸ When stool land is used for farming and the resident homesteads are large and profitable, farmers pay a sum per load of harvested crops in cedi, the local currency, to hired workers.⁵⁹

Like other places, there are rows about land. A resident alien's intestacy triggers some of them. In Ghana, a resident alien's offspring cannot use the intestate's place of birth (e.g. the law of a neighboring country) to grab stool land.⁶⁰ Ghanaian tribal law is useless when proponents proffer shaky witnesses and hearsay evidence.⁶¹ In the end, the residency of the intestate and the location of the land determine the law for an estate's case.⁶² Where there is an assertion that the deceased made a common law gift (an English concept accommodated under Ghanaian law), and there's evidence for this, the grantee gets the land.⁶³

At present land is the womb for all spirits.⁶⁴ Users get life estates.⁶⁵ Usufructs are alienable.⁶⁶ Holders can use gifts, wills, sales and pledges to convey them.⁶⁷ Long time occupation of stool land pro-

53. G.A. CORNISH, ET AL, INFORMAL IRRIGATION IN THE PERI-URBAN ZONE OF KUMASI, GHANA: AN ANALYSIS OF FARMER ACTIVITY AND PRODUCTIVITY, UK DEPARTMENT FOR INTERNATIONAL DEVELOPMENT, REPORT OD/TN 103 (2001), http://books.hrwallingford.co.uk/acatalog/od_downloads/odtn103.pdf.

54. Joseph Blocher, *Building on Custom: Land Tenure Policy and Economic Development in Ghana*, 9 YALE HUM. RTS. & DEV. L.J. 166, 179-183 (2006).

55. *Id.* at 179-180.

56. Samuel K.B. Asante, *Interest in Land in the Customary Laws of Ghana-A New Approach to Appraisal*, 74 YALE L.J. 848, 852 (1965); see Gyekye, *supra* note 40, at 6-7; W.E.F. WARD, MY AFRICA 40-41 (Ghana Universities Press 1991) (1991).

57. See Blocher, *supra* note 54, at 186-8; Cf. Asante, *supra* note 56, at 180-185.

58. KIMBLE, *supra* note 8, at 19-120.

59. *Id.* at 40.

60. *Omane v. Poku*, [1972] 1 G.L.R. 295, 297.

61. *Id.* at 305-306.

62. *Id.* at 312.

63. *Id.* at 314-316.

64. Asante, *supra* note 56, at 852.

65. *Id.* at 854-855.

66. *Id.* at 855.

67. *Id.*

duces something like a freehold interest.⁶⁸ If one pays authorities a fee and ritualistically pacifies the land's spirits with a drink a holder can acquire something like a freehold estate.⁶⁹

B.

Sadly, man's climb to civility in Ghana has left trails of tears. The sheep (back country people) are prey. The wolves (people with money) are in control. Agriculture accounts for 5% or less of all foreign investment.⁷⁰ Seventy percent is sunk into mining.⁷¹ Government has granted too many mining concessions; plucking, in the end, too many of them from regions where folks scratch the earth to make a living.⁷²

Purging the land of its farmers and basic nutrients for a one time economic gain is a bad policy. It leaves too little for domestic cultivation of staples. Aside from lower food production, social dislocation, crime⁷³ and vagrancy,⁷⁴ Ghana can become, if a halt isn't put to this trend, a net importer of food.⁷⁵

Then, like now, wealthy outsiders (multi-nationals) dig holes in the ground, cutting ugly ditches, from the hinterland to sea, to move the nation's resources to foreign places for processing.⁷⁶ Foreigners then, like now, put in railroads, railroad spurs, roads, road upgrades and sea ports in places to smooth transit.

Big banks then, like now, deal with everybody but Africans.⁷⁷ Because Ghanaian farmers have few assets to pledge to commercial lenders, or suitable ones, crafty money changers and farm traders (mostly women) snatch peoples' harvests for a pittance.⁷⁸

Insurance companies then, like now, deal with whites, their surrogates, foreign mining interests, corporate farmers, oil firms and

68. *Id.* at 865-866.

69. Asante, *supra* note 56, at 860; *see also* Blocher, *supra* note 54, at 181-182.

70. Selorm Amevor, allAfrica.com, Ghana: Mining is Killing Agricultural Sector Says Wacam, Public Agenda (June 6, 2008), <http://www.allafrica.com/stories/200806060743.html>.

71. *Id.*

72. *Id.*

73. Ghanaian Chronicle, Modern Ghana, Governments and power of Eminent Domain: An infringement of people's rights (Aug. 13, 2009), <http://www.modernghana.com/blogs/232694/31/govts-and-power-of-eminent-domain-an-infringement-.html>.

74. *Id.*; *see also* Michael Boateng, allAfrica.com, Ghana: Monitoring Activities of Mining Companies (Aug. 27, 2009), <http://www.allafrica.com/stories/200908270940.html>.

75. Amevor, *supra* note 70, at 1-2.

76. *Id.* at 2.

77. CORNISH, *supra* note 53, at 30; *see* The Economist, Country Profile Ghana (2008) *on file with the author*.

78. CORNISH, *supra* note 53, at 5.

trading companies.⁷⁹ Too much stuff is flowing out of the country and too little is entering.

C.

The country is divided among politicians, subsistence farmers, urban dwellers and elites. The economy is anchored to agriculture, mining, energy, fishing, light industry and consumerism (e.g. kiosks furnishing telephone cards, household tools, implements, food, fruit, clothing and accessories).⁸⁰

People with personal property are pitted against people without property - with room in the middle for brutes to act out. Elites fight over political and economic spoils, patronage, tribal issues and so-called human interest issues of the day. Military coups (too many of them) and corruption disrupt life, alienating business and managerial types, leaving vacuums filled by folk unskilled to do anything.⁸¹

One point eight percent of the population is professionals.⁸² 2.6% of the population is business related.⁸³ 3.5% of the population is teachers.⁸⁴ 2.6% of the population claim high income status (roughly \$145 per month at a 2002 American exchange rate).⁸⁵ The poverty rate is 28.5%.⁸⁶ 22% of all businesses export stuff.⁸⁷ Minerals, staples, goods and services lead the parade.⁸⁸

79. See Paul Comeaux & N. Stephan Kinsella, *Reducing Political Risk in Developing Countries: Bilateral Investment Treaties, Stabilization Clauses, and MIGA and OPIC Investment Insurance*, 15 N.Y.L. SCH. J. INT'L & COMP. L. 1, 16-24 (1994), <http://www.kinsellalaw.com/wp-content/uploads/publications/polrisk.pdf>; Mahama Emmanuel Baba, *Challenges of Regulating Life Insurance Companies in Ghana*, Management Day 2008 at the University of Ghana Business School, <http://www.ugbs.edu.gh/site/newsevents/newsdetails.php?id=84>.

80. U.S. Department of State: Diplomacy in Action, Background Note: Ghana (Sept. 17, 2010), <http://www.state.gov/r/pa/ei/bgn/2860.htm>; see generally Ghana: Country Profile, *supra* note 77, at 16-18; Ghana News Agency, ModernGhana.Com, *Improving the fishing industry in Ghana*, (Apr. 1, 2005), <http://www.modernghana.com/news/116539/50/improving-the-fishing-industry-in-ghana.html>; PricewaterhouseCoopers, *Energy, Utilities & Mining*, <http://www.pwc.com/gh/en/industries/energy-utilities-mining.jhtml>.

81. See SHILLINGTON, *supra* note 8, at 89.

82. See LUCKMAN, *supra* note 49.

83. *Id.*

84. *Id.*

85. *Id.*

86. See U.S. Department of State, *supra* note 80; see KORSI, *supra* note 10, at 8.

87. Paul Robson & Mark Freel, *Small firm exporters in a developing economy context: evidence from Ghana*, 20 ENTREPRENEURSHIP & REGIONAL DEVELOPMENT: AN INTERNATIONAL JOURNAL (ISSUE 5) 431, 447 (2008).

88. *Id.* at 432-434.

Ghana's manufacturing, wholesale and retail businesses are tied to West African trade (ECOWAS).⁸⁹ Natural factors - like the business owner's age, gender, trade experience, formal education, firm size, skilled workers, modern machines, innovative processes and government inputs - fuel trade.⁹⁰

Nagging hunger and subsistent farming hold the country together. People scratch the earth to make a living. Staple traders in yam, chicken, and fish and local money lenders capitalize upon their desperation.

V. ENTREPRENEURIAL STUFF

If these mini capitalists (staple traders and money lenders) at the village level pooled their resources and borrowed money from commercial banks, they could organize local farmers, grow piles of crops, improve the lot of participants, create business certainty for everybody, make money for the banks, spread the wealth and make profits for themselves.

Let's assume the folk borrowed \$2000 at 8% interest from a commercial bank to make this work. *Illustration A* sketches the revenue stream, operating costs, taxes, discount rates and present value of future earnings.⁹¹

This assumes the banks will impose liens upon the borrowers' equipment, accounts, futures contracts and growing crops to minimize the risk of non-payment. If the loan is repayable after five years the questions presented are: what is the present value of future earnings over the life of the loan?; what is the investment risk?; and when will the investment produce profits?

A scheme for calculating the discount rate (*Illustration A*) discloses the present value of future earnings or yield. Operating expenses and income tax are made-up figures. They provide the grist to make the common economic indicators go. When \$2000 is sunk into the project it grows \$4,320 worth of value.

89. *Id.* at 437.

90. *Id.* at 441-443.

91. Steve Parish, Senior Petroleum Economist, Oil and Gas Asset Valuation: Fundamentals of Discounted Cash Flow Analysis, Presentation for the Association of International Petroleum Negotiators Workshop, Houston, Texas, November 9, 2009.

COMMON ECONOMIC INDICATORS:
NET PRESENT VALUE -EXAMPLE CALCULATION

| Time | 1 | 2 | 3 | 4 | 5 | 6 | Total |
|--------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------|
| Revenue (\$) | | 1,000 | 2,000 | 3,000 | 4,000 | 5,000 | 15,000 |
| Capital Expenditure (\$) | 2,000 | | | | | | 2,000 |
| Operating Expenses (\$) | | 300 | 400 | 500 | 600 | 700 | 2,500 |
| Income Tax (\$) | | 80 | 440 | 800 | 1,160 | 1,720 | 4,200 |
| Cash Flow (\$) | | 620 | 1,160 | 1,700 | 2,240 | 2,580 | 6,300 |
| Discount Rate | 8% | 8% | 8% | 8% | 8% | 8% | |
| Discount Factor | $1/(1.08)^0$ | $1/(1.08)^1$ | $1/(1.08)^2$ | $1/(1.08)^3$ | $1/(1.08)^4$ | $1/(1.08)^5$ | |
| Discount Factor | 1.0000 | 0.9259 | 0.8573 | 0.7938 | 0.7350 | 0.6806 | |
| Present Value | -2,000 | 574 | 995 | 1,350 | 1,646 | 1,756 | 4,320 |
| Net Present Value | | | | | | | 4,320 |

Discount Rate = 8%

Discount Factor = $1 / (1 + \text{Discount Rate} / 100) ^ (\text{Time}_1 - \text{Time}_2)$
 $= 1 / (1.08)_0, 1 / (1.08)_1, 1 / (1.08)_2, \dots 1 / (1.08)_6$

PRESENT VALUE (\$) = Cash Flow * Discount Factor

NET PRESENT VALUE @ 8 % = Total of Present Values = \$4,320

Illustration A

Another gadget (*Illustration B*) determines the profitability of the investment.⁹² Total operating expenses and income taxes in this illustration appear in *Illustration A*. When total revenue minus total operating expenses minus total tax is divided by sunk cost (\$2000) the quotient tells us that the decision to lend is profitable. In other words: the larger the quotient (4.14) the better the gamble.

92. Id.

COMMON ECONOMIC INDICATORS:
PROFIT/INVESTMENT RATIO -EXAMPLE CALCULATION

| Time | 1 | 2 | 3 | 4 | 5 | 6 | Total |
|--------------------------|-------|-------|-------|-------|-------|-------|--------|
| Revenue (\$) | | 1,000 | 2,000 | 3,000 | 4,000 | 5,000 | 15,000 |
| Capital Expenditure (\$) | 2,000 | | | | | | 2,000 |
| Operating Expenses (\$) | | 300 | 400 | 500 | 600 | 700 | 2,500 |
| Income Tax (\$) | | 80 | 440 | 800 | 1,160 | 1,720 | 4,200 |
| Cash Flow (\$) | | 620 | 1,160 | 1,700 | 2,240 | 2,580 | 6,300 |
| P/I Numerator | | | | | | | 8,300 |
| P/I Denominator | | | | | | | 2,000 |
| Profitability Index | | | | | | | 4.15 |

P/I Numerator = Total Revenue - Total Opex - Total Tax
15,00 - 2,500 - 4,200= 8,300

P/I Denominator = Total Capex 2,000

Profitability Index P/I Numerator / P/I denominator
= 8,300 / 2,000
= 4.15

Illustration B

A third scheme (*Illustration C*) fixes the date when the project turns a profit.⁹³ As in all transactions, there are verities about the undertaking (uncertainties) and possibilities (values) influencing the project. If the organizers borrowed more money, let's say \$5000 at 8 percent, the numbers change. With usufructs as collateral, banks can impose security interests to recover on them. The calculation under *Illustration C* is the first whole year of positive cash flow (4) minus one (1) plus 220 divided by 1700. The result is 3.13 years.

93. *Id.*

COMMON ECONOMIC INDICATORS:
PROFIT/INVESTMENT RATIO -EXAMPLE CALCULATION

| Time | 1 | 2 | 3 | 4 | 5 | 6 | Total |
|---------------------------|--------|--------|-------|-------|-------|-------|--------|
| Negative Cash Flows (\$) | -2,000 | | | | | | -2,000 |
| Positive Cash Flows (\$) | | 620 | 1,160 | 1,700 | 2,240 | 2,580 | 8,300 |
| Net Cash Flow (\$) | -2,000 | 620 | 1,160 | 1,700 | 2,240 | 2,580 | 6,300 |
| Cumulative Cash Flow (\$) | -2,000 | -1,380 | -220 | 1,480 | 3,720 | 6,300 | |

Cumulative Cash flow is negative up to and including Year 3 and positive in Year 4, therefore Payout occurs sometime during the 4th Year of the project (i.e. 3 and a bit years after the project starts). Payout is normally represented in years as follows:

Payout (years)= (1ST whole year of positive Cumulative Cash Flow - 1)
+ (ABS Cumulative Cash Flow from previous year / Cash Flow in payout year)

Payout (years)= (4 - 1) + (220 / 1,700)

NOTE: ABS = Absolute value (i.e. Ignores negative sign)

Illustration C

Modern Ghana is a complex society. It accommodates two worlds; one burdened with poverty and inhumanity (i.e. without doctors, engineers, and administrators)⁹⁴ and the other, slightly better, due to concessions made to westerners.⁹⁵

There are pockets of wealth bordered by underdevelopment. Folks living in the hinterland, bound by tribal tradition, break their bond with violence. Wiley intellectuals mimic westerners to secure gains and palaver with their own to keep them. Political parties and what goes for modernity set-up shop in towns and cities. Too many youngsters are idle. They need schools, schooling, and work to occupy their time.

Industrial agriculture demands protection and the option to exploit workers. There is no modernization, development plans worthy of discussion or initiatives, because initiative implies risk. Too many people suffer from privations,⁹⁶ inflation⁹⁷ and unemployment in Ghana.⁹⁸

94. KORSI, *supra* note 10, at 15-17; see FRANTZ FANON, *THE WRETCHED OF THE EARTH* 4 (Francois Maspero ed., Grove Press 1963) (1961).

95. See FANON, *supra* note 94, at 55.

96. KORSI, *supra* note 10, at 5-12.

97. *Id.* at 12; see *More Pressure On Cedi*, AFRICA CONFIDENTIAL, VOL. 49, No. 4, Dec. 12, 2008, at 2; see generally M. LABONTE & G.E. MAKINEN, INFLATION: CAUSES, COSTS AND CURRENT STATUS, C.R.S. REPORT (May 6, 2008).

The government is pouring money into the economy to cope with the many social and economic problems plaguing Ghana. Vendors tweak their prices daily to hold their profit line. Bankers - who have pitched their interest too low - are losing money. Too few are healthy or getting healthy in the economy.

Foreign land grabs to service western needs⁹⁹ and nature's inevitable push-back are changing the country in unappealing ways.¹⁰⁰ Social dislocation, crime, corruption, teenage idleness, urban sprawl, drug use, and pollution have prompted the government to do something with foreign infusions of money.

VI. EVIL

There is an evil abroad. If it's spreading at the behest of power, the cost is pain, grief and death. The World Bank, for example, dumped 110 million dollars on Ghana. Under the guise of upgrading Ghana's poor electrical sources and water purification systems, the government promised to: 1) raise fees for these commodities to levels the average Ghanaian is unable to pay, and 2) privatize the industries so that public services would be run by private multi-national corporations.¹⁰¹

Today, twenty-four million people live in Ghana; sixty-six percent of those live in rural settings.¹⁰² Though poverty has fallen in recent years, 30% of the Ghanaian population live on less than \$1.25 a day.¹⁰³ Ten percent remains malnourished.¹⁰⁴ Changing things on the energy and water front abruptly will, in the end, make survival more difficult.

There are remote places in Ghana, to this day, with legal vacuums and residents without legal consciousness.¹⁰⁵ With men flocking to urban centers to raise money for village families, illiterate women

98. KORSI, *supra* note 10, at 12.

99. Avemor, *supra* note 70; see Ghanaian Chronicle, *supra* note 73, at 4.

100. Avemor, *supra* note 70; see Boeteng, *supra* note 74.

101. 22 SARA GRUSKY, PRIVATIZATION TIDAL WAVE: IMF/WORLD BANK WATER POLICIES AND THE PRICE PAID BY THE POOR 1, (No. 9, 2001), available at <http://multinationalmonitor.org/mm2001/01september/sep01corp2.html>.

102. Lisa Pruitt, *Migration, Development, and the Promise of CEDAW for Rural Women*, 30 MICH. J. INT'L L. 707, 736 (2009).

103. Peter Allum, *Ghana Gets \$602 Million IMF Loan, Readies Oil Production*, IMF SURVEY MAGAZINE, July 16, 2009, available at <http://www.imf.org/external/pubs/ft/survey/so/2009/CAR071609B.htm>

104. *Id.*

105. Paul Serguis Koku, *Market Forces and the Rule of Law as a Means of Improving the Quality of Life in Sub-saharan Africa: Ghana, a Case of Critical Analysis*, 10 U. MIAMI INT'L & COMP. L. REV. 23, 30 (2005).

are left behind to rule the roost.¹⁰⁶ With limited social standing, limited access to land and little grasp for complex legal rules, they are in a weak position to respond to government fees for water and electricity.¹⁰⁷ Dropping the hammer on them creates a dreary situation. It is a death sentence for too many in the hinterland.

VII. FINANCE

A.

Ghana needs money to fuel projects that would produce projects which would be subject to tax revenue before repatriation. A favorable business climate enhances the prospect that money will be generated. Today's leaders develop a property rights regime that accommodates private ownership.¹⁰⁸ Leaders must build a legal regime that works.¹⁰⁹ They must produce high quality financial information so lenders can assess the activities of their clients and determine when a client has shouldered too much risk.¹¹⁰ Leaders must punish fellow leaders when they sell the state or pieces of it to get rich.¹¹¹ Business leaders must foster good corporate governance to influence corporate managers to act in the stockholders' best interest.¹¹²

Political, economic, and legal figures must trench prudent regulations and seasoned supervisors who can manage the banking system to minimize poor lending practices.¹¹³ Folk must allow foreign financial institutions to run a business in Ghana to fuel competition, drive-up quality and drive out vagrants.¹¹⁴ Leaders must open the country to imported consumer goods to gin-up domestic competition and drive down prices.¹¹⁵

Natural suspicion must give way to cooperation to make things better. Softening the borrowing language is a first step. The words *lenders* and *borrowers* should be abandoned for *grantors* and *grantees*.

106. Pruitt, *supra* note 102, at 721.

107. *Id.* at 747-752.

108. Frederic S. Mishkin, Governor, Remarks at the New Perspectives on Financial Globalization Conference: Globalization and Financial Development (June 23, 2007), available at <http://www.federalreserve.gov/newsevents/speech/mishkin20070426a.htm>

109. Mishkin, *supra* note 108.

110. *Id.* at 3.

111. *Id.* at 2.

112. *Id.* at 3.

113. *Id.*

114. *Id.* at 4.

115. *Id.* at 5.

It will facilitate conversation. Grantors must yield to the demands of the Lome IV Convention - an international instrument African Nations hammered out with the Europeans for doing business in Sub Sahara Africa.¹¹⁶

Grantors must respect grantee claims of sovereignty, independence, and domestic jurisdiction over funds furnished for development.¹¹⁷ Development projects should be compatible with the long range development plans of the grantee.¹¹⁸ Grantees must analyze their own problems at the outset and propose their own solutions.¹¹⁹ Foreign assistance should respond to social upsets, cultural concerns and negative environmental impacts.¹²⁰ Grants-in-aid should be suited for use under the economic model in use by the grantee state.¹²¹ Grantors must recognize and respect Grantee course corrections during performance for their wisdom.¹²² Money should be spent to do good. The parties should strive to do no harm.

B.

In Ghana foreign investment should pour through joint ventures.¹²³ The government should furnish sweat equity for all projects; some of their foreign reserves should be put up to cover risks and, by implication, create incentives that goad project managers to act properly. Securities should be floated for some undertakings to get public involvement. Taxes on profits should be hefty or a portion of the tax recycled for other projects.

The government should avoid *Volta Aluminum Company* contracts ("I'll pour dollars into Ghana to build an electric dam if you give me 70 percent of the electricity at the lowest rate possible for 30 years; the option to run a global smelting plant in perpetuity; and a low tax

116. Gillian White, *Structural Adjustment with a Human Face and Human Rights in Development: New Approaches in the Fourth Lome Convention*, in INTERNATIONAL LAW IN TRANSITION: ESSAYS IN MEMORY OF JUDGE NAGENDRA SINGH 33, 33-63 (R.S. Pathak & R.P. Dhokalia ed., 1992).

117. *Id.* at 49.

118. *Id.* at 41.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. David Andreas Hesse, *Short Notes on the Legal System, Economy, and Recent Financial Laws of Ghana*, 48 CONSUMER FIN. L.Q. REP. 83, 85 (1994).

rate on the plants profits”¹²⁴ and, on a different front, it should take money from China.¹²⁵

It should sell its exportable wares to the People’s Republic of China.¹²⁶ It’s a way to generate foreign currency. For allocations of crude oil and natural gas China will make grants in aid and soft loans for domestic development projects.¹²⁷

Ghana must establish lines of credit with the China Development Bank.¹²⁸ The money is spent on Chinese firms doing construction work in Ghana.¹²⁹ The income generated by these projects should be taxed. Credit is repaid under generous terms (e.g. fourteen years).¹³⁰ The interest on the credit is below market rates.¹³¹

Lastly, the government should cultivate the world’s hedge funds and hedge funders to tackle domestic inflation. The funders will deputize recipients to spend their money in the private sector on the conditions that: (1) the remittances are spent on infrastructure projects and (2) the money is in fact doing the nation’s work.¹³² The goal (in the end) is to use foreign currency to do the work so sitting governments can retire domestic currency to a point where the supply equals the prevailing demand.

VIII. OIL

A.

Let’s put a fine point on this. Capital determines man’s reality, and innovation is the cost men pay for it. When the ice age ends and the sea swamps centers where men live, where will they go—what shapes will the continents take, where will men graze, what will they eat and what will they do to save the species?

124. Paul Kuruk, *Renegotiating Investment Agreements: Lessons for Developing Countries from Ghana-Valco Experience*, 13 MICH. J. INT’L L. 43, 46-50 (1991).

125. Uche Ofodile, *Trade, Empires and Subjects: China-Africa Trade - A New Fair Trade Arrangement or Third Scramble for Africa?*, 41 VAND. J. TRANSNAT’L L. 505, 560-564 (2008); see also Keenan, *Curse or Cure? China, Africa, and the Effects of Unconditioned Wealth*, 27 BERKELEY J. INT’L L. 84, 115 (2009).

126. Ofodile, *supra* note 125, at 545-567.

127. Keenan, *supra* note 125, at 89, 119; see also Ofodile, *supra* note 125, at 545, 567.

128. Keenan, *supra* note 125, at 119.

129. Ofodile, *supra* note 125, at 531-532, 561.

130. See Keenan, *supra* note 125, at 119.

131. *Id.* at 119.

132. See Michael Maiello, *The Business of Africa: A New Sort of Marshall Plan Could Lift a Continent out of Poverty*, FORBES, Oct.5, 2009 at 22-23 [hereinafter FORBES].

The demand for energy will remain the same. Though developed nations will demand less, because of advanced technology, developing nations will demand more. Will they husband their resources to service their needs, squander them, or sell them to others (setting aside domestic accounts from oil revenue for all citizens to promote domestic tranquility)? Vincent Tucker¹³³ and Dennis Danvers¹³⁴ provide the grist. Danvers wrote:

“In the eyes of the world, Mexico is cheap labor, cheap oil, cheap forests to grind up into toilet paper. The world gives Mexico lots of money for these things to a few cooperative men who mustn’t share the wealth or the game is up. It is a well know fact that the more prosperous a people become, the more likely democracy will take hold, and the people start making decisions for themselves. The next thing you know there goes the cheap labor, the cheap gas, the cheap toilet paper, and nobody has nothing.”¹³⁵

Though Mexico is the object of the author’s ire, the words could apply to Ghana. What should the country do?

B.

Ghanaian leaders should take the skeptic’s view about everything and suspend, for a while, Western organizing principles and ways to judge humankind.¹³⁶ They should study and take to heart Professor Ruth Gordon’s account of development and push-back against re-colonization efforts (e.g. people with money exploiting old divisions, ineptitudes, and moral lapses to get at the nation’s natural resources).¹³⁷

Leaders should establish money market accounts with Swiss Banks from oil revenue, annually paying out the accounts’ interest to all citizens, to give the folk a stake in the country. Ghana should develop an artisan, business, property class to create property rights, with the option to vote (to promote democracy), and civic rights (to feel safe). It should also afford opportunities to send youngsters to institutions of higher learning to produce professionals and leaders.

133. Vincent Tucker, *The Myth of Development: A Critique of a Eurocentric Discourse*, in CRITICAL DEVELOPMENT THEORY: CONTRIBUTIONS TO A NEW PARADIM 1 (Ronaldo Munck & Denis O’Hearn ed., 1999); see also Ruth E. Gordon & Jon H. Sylvester, *Deconstructing Development*, 22 WIS. INT’L L.J. 1, 72 (2004).

134. DENNIS DANVERS, *THE FOURTH WORLD* 23 (HarperCollins Publishing 2000) (2000).

135. *Id.* at 27.

136. Gordon, *supra* note 133, at 89-92.

137. *Id.* at 73-88.

They should provide everyone with an economic education – not mere candy doled out to some to be sucked, chewed and digested – but basic nutrients to strengthen all.¹³⁸ It must lower inflation,¹³⁹ so all can purchase items and, in the end, raise revenue from taxes on businesses so government can provide services and spread the wealth.

C.

On the energy front, when facing down multi-national corporations, Ghanaian leaders should use production sharing agreements (PSAs).¹⁴⁰ Under these arrangements, foreign oil companies (FOCs) are provisioned with the power to troll, find, and retrieve crude oil. FOCs shoulder the cost of the project. Ghana, through its nation oil company (NOC), reimburses the FOCs for their costs.

PSAs preserve national sovereignty, lift the cost of funding energy projects¹⁴¹ and, in the end, furnish the host country (Ghana) with the wherewithal (FOCs' expertise) to develop its own oil industry.¹⁴² Under PSAs, the Ghanaian government is close to the FOCs and their operations.¹⁴³ It gets firsthand experiences from them,¹⁴⁴ witnesses all and participates in some FOC decision making,¹⁴⁵ supervises all non-technical and non-fiscal provisions of the agreements,¹⁴⁶ and, through clauses added to the PSAs, promotes national interests (e.g. FOC obligations to train local personnel, transfer technology, use locally

138. See Koku, *supra* note 105, at 30-33.

139. See Emily Bowers, *Ghanaian Central Bank Cuts Key Lending Rate to 16%*, BLOOMBERG, Feb. 19, 2010, <http://www.bloomberg.com/apps/news?pid=20601116&sid=a0xlvMEExJsU>; Cf. Hakan Berument, Nildag Basak Ceylan & Hasan Olgun, *Inflation Uncertainty and Interest Rates: Is the Fisher Relation Universal*, in 39 APPLIED ECONOMICS 53 (2007). The Fisher equation is not universal and does not hold in developing countries like Ghana. *Id.* at 56. Notwithstanding this, the method used and the data collected could be useful when factoring risk into business calculations. Under the equation, where inflation is steady, the nominal interest rate changes one-for-one with the inflation rate. Fisher Effect: "The fisher effect is in a model where inflation is expected to be steady, the nominal interest rate changes one-for-one with the inflation rate." http://economics.about.com/cs/economics_glossary/g/fisher_ef.htm.

140. P.K. Opoku Bonna, GhanaWeb, *Ghana and Her Oil Contracting: PSA or Licensing* (Feb. 18, 2009), <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=157392>; see Ernest E. Smith & John S. Dzienkowski, *A Fifty Year Perspective on World Petroleum Arrangements*, 24 TEX. INT'L L.J. 13, 37-38 (1989).

141. Dzienkowski, *supra* note 140.

142. *Id.*

143. Bonna, *supra* note 140.

144. *Id.*

145. *Id.*

146. *Id.*

manufactured goods, use local services, employ local sub-contractors, and so on).¹⁴⁷

Under the PSA, the FOCs must submit their work program and budgets for approval by the state.¹⁴⁸ Through its NOC, Ghana retains the right to terminate the contract.¹⁴⁹ Under PSAs, FOCs get a term lease¹⁵⁰—avoiding a clash between Ghana's property régime and the FOCs notions about property.¹⁵¹ Additionally, through its NOC and other agencies, Ghana can demand royalties, levy taxes¹⁵² and, during periods when oil prices are high, exact excess profits taxes.¹⁵³

During low periods, when the FOC is trying to get ends to meet, Ghana can suspend royalty claims and excess profit taxes.¹⁵⁴ It can claim management fees for all work programs under PSAs (to retain control over and get experience with the way work is done in the country) and, when the PSA term ends, it can claim all the machinery used in oil production.¹⁵⁵

These agreements generate *cost oil* and *profit oil*,¹⁵⁶ and Ghana can monitor the cost oil facet of its deals. The danger is not having skilled negotiators in place to put gadgets in the PSAs to capture a fair share of funds from profit oil.¹⁵⁷ From gross production under the PSA, the FOC should get all operating costs plus 20% of its capital investment. Profit oil should be a 65.9091% and 34.0909% split—the larger share going to Ghana.¹⁵⁸ Barrels of profit oil ought to be guaranteed under the PSA, and the FOCs should be stripped of the power to use time to limit the volume of oil the country gets.¹⁵⁹ Last but not least, Ghana should have the power to claim all royalties and taxes.¹⁶⁰

FOCs can use the Energy Charter Treaty.¹⁶¹ It strips the host country of the power to discriminate, expropriate its assets, and block

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*; see Blocher, *supra* note 54, at 179-83.

152. Bonna, *supra* note 140.

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*; see also David G. Ebner, *Smaller Exploration Companies on the International Frontier*, 37 NAT. RESOURCES J. 707, 714 (1997).

157. *Id.*

158. *Id.*; see Dzienkowski, *supra* note 140, at 38.

159. Bonna, *supra* note 140.

160. *Id.*

161. *Id.*; see *Energy Charter Treaty*, Council on Foreign Relations, http://www.cfr.org/publication/21283/energy_charter_treaty.html, April 1998.

the FOCs' repatriation of funds.¹⁶² It empowers the FOCs to make claims against the host government for breach of contract, and it arms them with the power to use domestic courts or international arbitration forums to resolve disputes.¹⁶³

IX. TAXES

Ghana spends more revenue than its tax agencies collect,¹⁶⁴ and too much comes from foreign aid.¹⁶⁵ To lessen foreign dependence, Ghana must fix its tax system.¹⁶⁶ It should ratchet-down its exchange rate to net more revenue from international trade payments.¹⁶⁷ It should lower or abolish export duties on exportable raw materials,¹⁶⁸ like cocoa and palm oil, to incentivize domestic production and up the income yields at home for taxation.¹⁶⁹

It should flatten the tax on wage and salaried employees to give them a break¹⁷⁰ and impose a value added tax of 3% on the values added to goods imported, manufactured, bought and sold in Ghana.¹⁷¹ Additionally, the government should impose a presumptive tax on the informal economy based upon profit projections for particular sectors.¹⁷² Finally, Ghana should shower foreigners with incentives to spend their money in the country to grow income for taxation.¹⁷³

With regard to oil, the government should rake-off a percentage of the revenue for a Permanent Income Fund run by the Central Bank,¹⁷⁴ and the Fund's money should be spent by the bank on profit

162. Bonna, *supra* note 140.

163. *Id.*

164. Robert D. Osei & Peter Quartey, *Tax Reform*, Research Paper No. 2005/66, UNU-WIDER, December 2005, at 1.

165. *Id.* at 13.

166. *Id.* at 5.

167. E. Owusu-Afriyie, Bank of Ghana, *An Assessment of the Impact of Tax Reform on the Tax System of Ghana*, Working Paper, Monetary Policy Analysis and Financial Stability Department, at 7 (Aug. 2009) on file with the author.

168. *Id.* at 6; see Osei, *supra* note 164, at 4.

169. Osei, *supra* note 164, at 8.

170. *Id.* at 10.

171. Afriyie, *supra* note 167, at 18.

172. Joseph R.A. Ayee, Dean, Faculty of Social Studies, University of Ghana, *Building Tax Compliance Through Reciprocity with Government*, Paper presented at the Foreign Investment Advisory Service (FIAS) of the World Bank, Alisa Hotel, Accra, Ghana 5, 10 (Jan. 11-12, 2007).

173. Osei, *supra* note 164, at 8.

174. See Todd Moss & Lauren Young, *Saving Ghana From the Oil: A Case for Direct Cash Distribution* 9 (Cent. for Global Dev. Working Paper No. 186, 2009), available at <http://www.cgdev.org/content/publications/detail/1422981>; see also Letter from Todd Moss,

producing projects outside of Ghana (e.g. Egypt, Angola, and South Africa).¹⁷⁵ By law, yields must be repatriated to Ghana and distributed to Ghanaians on a pro rata basis.¹⁷⁶ The Central Bank could use a rolling average yield from different projects, calculated over three year period,¹⁷⁷ or cap the payment as a percentage of the gross domestic product.¹⁷⁸ Payments would get sent to regional banks, the postal service,¹⁷⁹ EZ-credit cards used by some Ghanaians,¹⁸⁰ and mobile phones, with software robots to download payments to ATMs and banks.¹⁸¹ All recipients would have to prove their entitlement, and because the money is income some would be subject to tax.

With regard to oil byproducts,¹⁸² Ghana must establish a tax policy for the downstream use of natural gas. It should borrow money from the world's hedge funds for projects¹⁸³ and link the undertakings with the borrower's promise to: (1) plough repayments into other projects;¹⁸⁴ and (2) repatriate the hedge funders' profits as dividends.¹⁸⁵

The government should grant fledgling domestic businesses a three year tax holiday¹⁸⁶ and allow them to deduct all interest attendant to loans utilized for downstream gas projects.¹⁸⁷ It should also give all of these businesses a 90% right-off of capital expenditures for new plants and machinery.¹⁸⁸ Finally, on the assumption that foreign cur-

Center for Global Development, Washington, D.C., to President John Atta Mills, Republic of Ghana, October 19, 2009.

175. Moss, *supra* note 174.

176. *Id.* at 9.

177. *Id.* at 17.

178. *Id.*

179. *Id.* at 18.

180. See E-Zwich, Easy Banking for Everyone, <http://www.vvvvve-zwich.com/index1.php?linkid=304> (last visited Oct. 7, 2010); Ghana Business News, E-transact Revolutionizes e-commerce in Ghana, (Mar. 17, 2009), <http://www.ghanabusinessnews.com/2009/03/17/etransact-revolutionizes-e-commerce-in-ghana/>.

181. Moss, *supra* note 174, at 18.

182. Lolade Ososami, *Nigeria: Developments in Nigeria's Tax Regime for Gas Utilization Projects*, MONDAQ, <http://www.mondaq.com/article.asp?articleid=70210>, December 1, 2008.

183. See FORBES, *supra* note 132, at 22.

184. *Id.*

185. See John E. Baumgardner, *Principles and Best Practices for Hedge Fund Investors: Report of the Investors Committee to the President's Working Group on Financial Markets*, 1732 PLI/Corp 615, 630-31 (2009); Stacy P. Collins, *Valuation of Hedge Fund Business*, 21 J. AM. ACAD. MATRIM. LAW 389, 394-96 (2008). See also Andrew Beattie, *Hedging in Layman's Terms*, in INVESTOPEDIA, A FORBES DIGITAL COMPANY, <http://www.investopedia.com/articles/optioninvestor/07/hedging-intro.asp>.

186. Ososami, *supra* note 182, at 4.

187. *Id.*

188. *Id.*

rency was spent on the project, Ghana should grant the shareholders tax free dividends during the tax holiday,¹⁸⁹ grant a value added tax exemption (where possible) for new plants and equipment,¹⁹⁰ and, with the aid of experts, provide a floor price for the domestic use of gas to husband income for taxation.¹⁹¹

Of course, laying out tax strategies for oil and gas should be accompanied by a warning. Ghana shouldn't suckle on oil.¹⁹² The stuff spawns authoritarian governments,¹⁹³ and legal transparency (who gets what) and the rule of law (certainty, continuity, and fairness) become casualties.¹⁹⁴ Additionally, too much money falls into the hands of generals,¹⁹⁵ while the government loses the incentive to tax.¹⁹⁶ Finally, social stratification worsens¹⁹⁷ while the boom in oil sucks too much capital and labor from other economic sectors,¹⁹⁸ making them weak and ripe for foreign predation.

In the end, oil revenue, or some of it, should go to educational, agricultural, and rural development funds.¹⁹⁹ It will lower factors attributable to poverty and teach folks, by example, that oil revenue can help the "Average Joe".²⁰⁰

X. CONCLUSION

The global economic order is in flux—chaos and serendipity make it so. The top economic powers (United States, United Kingdom, France, and Germany) are on the bottom, while the bottom players (China, Dubai, and the United Arab Emirates) are on top. Social mixes of nations and indeterminacy makes today's intersections of power fearsome *sometimes*, callous *all the time*, as well as rapacious, destructive, disassembling, and with grist everywhere for nations to do something new. Ghana has the wherewithal to be a part of this flux on

189. *Id.*

190. *Id.* at 5.

191. *Id.* at 2.

192. Moss, *supra* note 174, at 5.

193. *Id.* at 6.

194. *Id.* at 7.

195. *Id.* at 6.

196. *Id.*

197. *Id.* at 7.

198. *Id.* at 6.

199. See Clemens Breisinger, et al, *Managing Future Oil Revenue in Ghana-An Assessment of Alternative Allocation Options*, 1 (Kiel Institute for the World Economy Working Paper No. 1518, 2009).

200. Moss, *supra* note 174, at 14.

terms devised by its own leaders. It can husband its resource in oil, establish new businesses at home, troll for new sources of tax revenue, invest in its children with oil funds, arrest domestic inflation, and tackle poverty. It can also make deals with emerging economic powers to do things for its people at home, use hedge funds for projects, spend money on its people to promote good governance, retire foreign debt when it's prudent, and use its resources to aid neighboring African countries. Only time will tell.
