

Review

Can Policy Adoption and Transfer Lead to Policy Implementation? Environmental Financial Assurance Policy in Ghana

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The introduction of a regulatory policy such as Environmental Financial Assurance (EFA) requires a change in other fronts including enforcement philosophies, modes of organization and an increase in financial support for the regulatory system. Regulation is an essential developmental policy toolkit that favours poorer countries in the developing world. This research aims at contributing to the field of environmental public policy, and assists policy makers and observers to understand what EFA policy is and what is transferable in the context of a developing world. This links it to the field of policy transfer, and in addition delivers a tangible result in terms of a positivistic case study that tests the transferability of a New Public Management (NPM) policy across substantial international and cultural boundaries. It allows us to ask to what extent imitative isomorphism exists in this context.

Key words: Ghana, Environmental Financial Assurance, Regulation, Policy transfer, New Public Management

INTRODUCTION

Governments commonly aim to reduce environmental risk by regulating the mining sector. Regulation in the context of this research refers mainly to the need for environmental accountability from all stakeholders especially Trans-national companies (TNCs)ⁱ operating in the mining sector in fulfilling their Environmental Financial Assurance (EFA) policy. EFAⁱⁱ policy such as reclamation bonds are a form of assurance such as pledged assets of a company and letters of credit which guarantees that mining operators will undertake reclamation activities or forfeit the amount posted as bonds or pledged assets. These bonds are normally payable to regulatory authorities by insurance companies if the mining operator fails to fully undertake post-mining closure plans.

The ultimate aim of post mining reclamation is to ensure that mining operators restore the land to socially

acceptable standards as stipulated by the environmental regulatory policy. It is also meant to serve as a form of assurance to protect the public against the cost of mine clean up, should the company declare bankruptcy or refuse to complete the reclamation plan in accordance with its mining permit. A bond inspection is conducted after the mine closure to assess whether to release an operator by issuing a certificate or recommend a denial when there is non compliance. This study, explores the concept of regulation, policy transferⁱⁱⁱ and knowledge from developed to developing countries and its implication on Ghana's EFA Policy. It questions if policy transfer from developed to developing countries can lead to a like for like policy implementation. This research is intended to ignite scholarly discussion on environmental regulation and transfer policies in developing countries,

especially in the arena of environmental policy debate.

Methodology

The study was conducted using a qualitative research approach. Accordingly, the research was designed as described by Kindon et al. (2007), to draw on the capabilities and assets of twenty six elite participants.

A field study was carried out in Ghana to obtain primary data from target groups within the research scope, through a participatory interview approach with a cross section of stakeholders in the mining sector from March 2010 to September 2010, after a reconnaissance study conducted between April 2008 and June 2009. This was based on participatory action research methodology, which assists in developing practical knowledge through a combination of theory and practice in the quest to offer practical solutions in line with Reason and Bradbury's (2001) suggestion on social science research.

The research design included these thematic areas: (i) classical review of in-country mining EFA policies in developing and developed countries; (ii) the development and implementation of bond posting; (iii) assessment of the quality of currently existing mining reclamation bond and comparison with other developed countries such as the United States and (iv) elite interviews, published and unpublished documentary analysis. Heads of department or local chief and opinion leaders in the mining communities along with other institutions which are listed below were interviewed:

1. Financial institutions, which included: Merchant Bank Ghana Ltd, National Investment Bank Ghana Ltd, Barclays Bank Ghana Ltd, Bank of Ghana, Databank Financial Services, Ecobank Ghana Ltd. and Standard Chartered Bank Ghana Ltd.
2. The Environmental Protection Agency (EPA) with focus on its legal, regulatory and mining sections
3. Ghana Investment Promotion Council
4. Local chiefs from Bontefufuo and Amansie West
5. NGOs', Three Non-Governmental Organizations (NGOs'); The Third World Network, Friends of the Earth and Wassa community affected by mining (WACAM) were interviewed for this paper because they are involved with mining and EFA policy.

Secondary information was obtained through a comprehensive search and review of related literature of relevant academic and non-academic materials on the topic at the national level and in other parts of the world from textbooks, journals, newsletters and reports available in libraries of the related institutions in Ghana such as the EPA, Ghana mineral and mining law 2006, Generic guidelines for reclaimed lands, internal reports within the regulatory agency and mining companies about EFA, EPA Act 490, Legislative Instrument 1652 of the EPA, Government and NGO reports on mining activities.

The use of multiple interviewees, theories and empirical materials, helped to minimise weaknesses or intrinsic biases and problems associated with single method, single-observer and single-theory studies. The objective was to gather information from multiple sources of evidence in a manner encouraging convergent lines of enquiry as described by Cohen and Manion (2000).

Selection of Elite Interviewees

A purposive sampling technique employed by other researchers (e.g. Hemmington, 1999; Saunders et al., 2003), was used to select the respondents. This assisted

in the selection of respondents and obtaining a sample that is more representative of the population, and thus ensures a wider range of data set is captured. Participants were therefore chosen based on their experience, role and influence in the mining industry. The purposely chosen interviewees included representatives of different views who are experienced, command respect and deemed credible by society as they were either the top level managers or experienced on the concept and/the effect of the EFA policy, first hand. The information obtained by interviewing was then cross referenced with other data from published and unpublished documents and other interviews. The interviews lasted between 45 and 105 minutes. The elite nature of this research did not allow the use of large numbers of respondents and may limit the grounds for generalisation, however, the aim of the study is to explore the quality of the data not the quantity (Nachmias 1996).

Consent, Ethics, Validity and Reliability

Elite interviews were conducted in line with Bryman's (2001) guidance on ethical approach to social science research. To eliminate some of the concerns regarding validity, respondents were not subjected to pre-testing nor did they interact with each other to offer pre-arranged information (Bryman, 2001). The overall analytical approach adopted was the gathering of themes in the transcripts which were then subjected to a more detailed manual analysis, which led to the formation of sub-themes within each theme. These themes directly address the research objective.

Similar questions were asked of all the respondents. The information obtained from heads of government departments, regulators, heads of NGOs', chiefs and elites of the community and local population who were chosen randomly reflected the real situation and understanding of the EFA policy implementation.

THE CONCEPT OF REGULATION

The analytical basis for this paper is regulation. Regulation refers to a social control mechanism, governmental interference in managing the economy, sets of rules established by government and administered by governmental agencies for the purpose of monitoring and enforcing compliance (Majorne, 1994b). Echoing this, Hancher and Moran (1989) simply refer to it as a call for accountability. In this paper, the effectiveness of EFA as a regulatory tool is explored in these terms: its effectiveness as a means of development and ensuring public interest through environmental accountability by stakeholders such as governments and its agencies through the exhibition of political will to ensure efficacy and TNCs responds to EFA regulation.

Regulation then is aimed at improving quality, raising standards and eliminating failures in previous policies in

the interest of the public (James, 2000). Governments often exercise authority over the regulated bodies and businesses by setting standards and developing policies and guidelines. The aim is to ensure there is efficiency and quality delivery in line with regulation by providing the resources needed. The regulator is often responsible for the monitoring of performance and persuades the regulated firm to adhere to regulations (James, 2000). But if political support for regulators recedes, the agency's ability to place demands on its regulatory clients may be weakened (Majorne, 1994a). The politicians at the top of government business, acting as the principals, aim to control the regulators who act as agents in their interest.

In their quest to reach international standards of environmental sustainability, and satisfy financially supporting institutions such as the World Bank, developing countries are moulding their regulations from transport to environmental sector on western models (Orgus, 2005). A quick study of regulatory diffusion is likely to indicate that developing countries are adopting similar regulatory requirements as in the developed West (Evans, 2004; Majorne, 1989; Stone, 2001) but the core issue of implementation is different as a result of certain factors such as an apparent lack of financial resources and political instability.

EFA regulation in Ghana is at a juvenile stage compared to developed countries such as the United States where EFA policies began in 1895 (Walker, 1990). Governments and regulators in Less Developed Countries (LDCs) are struggling with either adherence to strict EFA regulation and risk TNCs leaving or becoming uninterested in investing in the country or relaxing regulation and expecting an influx of TNCs battling with environmental litigation (Freynas, 2004) issues in developed countries resulting in the possibility of pollution haven in developing countries.

Mining is a temporal land use and the need for regulation is paramount to a sustainable development agenda. As part of the good corporate responsibility requirement of companies and in pursuance of social, environmental and economic practices, access to capital is sometimes tied to the existence of a regulation. Research by Jalilian et al (2007) indicates that there is a direct relation between efficient regulation and economic performance.

Regulating under economic pressure

Developing countries implement policies against the backdrop of economic pressure in order to avoid capital flight (Drezner, 2001). In his contribution to the debate on decision-making, Amartya (1977) asserts that the decision maker more often than not makes a decision based on the situation confronting them at the present

time where the benefit or failure in the future cannot be determined. This was certainly the case for Ghana during the post-independence era where nationalization policies were pursued until mining reforms started in the 1980s. At that time, the country's economy was in crisis. For example, gold production in Ghana fell from a level of 100 per cent in 1960 to about 25 per cent or less in the 1980s; a clear indicator of economic decline (Waelde and Omale, 2000). In seeking to revive the economy, the government had to present the nation as ready to do business by enacting new minerals laws as an incentive to attract direct foreign investment in the mining sector. The neo-liberal policies^{IV} enshrined in the mining law reforms were published in the international media with guarantees and assurances from government.

Knuckey (1996:8) summed up this liberalization of developing countries' economies as "changes in political systems, liberalization of investment policies and the adoption of enticing new mining laws which have created an appearance of reduced political risk in many places that were clearly off limits in the past". The opening of doors by developing countries such as Ghana to TNCs was based on the belief that the injection of capital into industries such as mining will impact the economic growth of the country which is expected to improve the lives of the local population. According to a World Bank report (1992) the neo-liberal school of thought was that by creating an appropriate environment for investors, mineral rich countries like Ghana could gain some revenue through tax and other benefits.

As a result of these government interventions, there was an increase in employment in the mining sector and perceived economic development in the mining areas and the nation as a whole in that the gross domestic product (GDP) rose to a significant level (Akabzaa, 2001). The influx of TNCs was unprecedented as a result (Akabzaa, 2001). However, not the same zeal to see through with implementation of EFA policy leading to loss of lives in rural mining villages through water pollution and non-reclaimed lands that serve as death traps. Thus, the clarion call for an effective EFA policy is unquestionable.

Policy connectivity and transfer

EFA regulation policy in Ghana was adopted from developed countries such as Australia. Most often, these policies that are adopted by countries are often interconnected (Majorne, 1989). For example, an economic policy could be closely linked with a social policy, trade policy connected to international or foreign policy and an environmental policy associated with industrial policy. Sometimes an international policy and domestic policy appear to be the same (Majorne, 1989). Apart from other incentives, such as improvements in

technology necessitating a change in environmental policy, the transfer of an environmental policy could be associated with a loan agreement or a bilateral treaty. Usually such a policy could have been in use in some developed countries for some time as a pre-requisite for an international body such as the World Bank or Barclays Plc. who have signed up for the 'equator principles' to give out loans to companies based on the guarantee that mine closure will be adhered to in line with a particular guideline (Principle, 1999).

The idea of policy transfer has been around since the dawn of civilization (Evans, 2004), necessitated by changes in global political and economic institutional structures and nations themselves. By drawing lessons, positive or negative from international experience and incorporating them into a national agenda, may be considered prudent, especially in marketing a nation's resources to the international community. Transfer takes place across time, within and across countries (Stone, 2001). Policy transfer could be through voluntary transfer or lesson drawing, negotiation transfer or direct coercive transfer (Dolowitz and Marsh, 1996).

Evans (2004) describes the voluntary transfer approach as an action-oriented approach to dealing with public policy problems that emerge from one or more of the following: identification of public or professional disagreement with existing policy as a consequence of poor performance, a new policy agreed that is introduced due to a change in government minister or management of public organization, or a political strategy aimed at promoting political interest or neutralize political enemies. In Ghana, the situation is more of a reaction to poor environmental performance by TNCs necessitating an EFA policy.

In the negotiated transfer policy approach, governments are compelled by international donor countries, global, financial institutions, supra-national institutions, international organizations or transnational corporations (Dolowitz and Marsh, 1996; Evans, 2004) to embrace or introduce policies or a policy in order to secure loans, grants or other benefits. This approach is labelled 'coercive' because the recipient is denied the freedom of choice. This is the situation when a country designs policies because it 'fears' falling behind neighbouring countries. The country then joins a community of nations embracing similar policy. In Ghana, the World Bank's Structural Adjustment Programme (SAP) in the 1980s and 1990s is an example of the coercive policy transfer.

Direct coercive policy transfer also occurs when a government is forced by another government to introduce constitutional, social or political changes against its will or the will of its people (Evans, 2004). The IMF, for example, coerced developing countries to remove barriers to investment and adopt policies similar to developed countries through the Structural Adjustment

Policies. This was also the case in the period of imperialism in most developing countries such as South Africa, Ghana, Sri Lanka or Pakistan by the British colonial masters (Stone, 2001). The commonality in policy approach is the demand for minerals such as diamond and gold in both developing and developed countries. The EFA regulatory policy adoption is similar in both structure and organization; an imitation.

Regulation diffusion and convergence

During the 1990s a new regulatory pattern in domestic environmental policy making emerged. This pattern was largely a result of policy diffusion (Per-Olof et al., 2005). Although the international promotion of regulatory instruments often facilitated regulatory diffusion, the motivation of policy makers was to improve environmental effectiveness (Per-Olof, Helge and Kerstin, 2005). Another reason was that governments orientated their policy to what was already in other countries (Per-Olof, Helge and Kerstin, 2005). This section explores policy convergence and diffusion theories in order to underline how policies and ideas such as EFA that are transferred from other parts of the world shape domestic policies in other countries.

Convergence theories postulate that growing international integration will have direct impact on the domestic political arena. Bennett (1991) identifies four types of policy convergence: emulation, harmonization, penetration and elite networking. 'Emulation' involves borrowing ideas and adapting policy approach tools or structures to local conditions. Here, policies developed elsewhere such as EFA are monitored by policy experts, and then analysed and lessons learnt. Policy 'penetration' involves the clear use of powers by external factors and is coercive, entailing a compulsion to conform. Poorer countries in the world are exceptionally susceptible to this type of diffusion through donor agencies (Stone, 2001). 'Harmonization', on the other hand promotes convergence as a consequence of political recognition of interdependence and awareness of the costs of divergence (Stone, 2001). It involves an element of sacrificing some national autonomy and sovereignty to ensure a set of similar norms, rules or decision making converge. This is evident in supra-national institutions such as the European Union (EU) or African Union (AU). Harmonization on the other hand, according to Bennett (1991:225-227) is driven by a 'recognition of interdependence and characterized by the coincident recognition and resolution of a common problem through the pre-existing structures and the processes of an international regime'. The Brundtland report titled 'Our Common Future' commissioned by the United Nations in 1987 is an example of how connected the world is and the need to harmonize policies in the world such as EFA

that ensures sustainable development in the world. By adopting similar policies, it is more likely that the concept of sustainability through EFA policy implementation could be achieved. Lastly, there are 'elite networks' as a force for convergence (Bennett, 1991). Through elite networking, where transnational policy communities of experts or professionals that share their expertise or information and form common patterns of understanding regarding policy regulation interact, ideas and policies such as EFA are transferred between nations.

Divergence theories, however, suggest that growing international regulation will not deflect states from their historically rooted trajectories. It presumes that policies will not converge but will vary (Levi-Faur and Jordana, 2004). The transfer of policy initiatives through regulatory diffusion from advanced countries to LDCs is laudable but their application or implementation often seems ineffective and is locally negotiated. For instance, while environmental financial assurance (EFA) is being adopted as an international policy approach in mine reclamation in many countries, this tool's use differs from place-to-place (Miller, 2006). Diffusion describes a pattern of adoption of a practice, policy or programme. Stone (2001) however argues that although national decision making can be influenced by diffusion, policy innovations elsewhere are not sufficient conditions for another jurisdiction to adopt the same policy. This is due to changing dynamism of political interest to the socio-historical make-up of a policy.

The LDCs adopted neo-liberalization policies fashioned by the World Bank and the IMF in the form of privatization, deregulation under SAP and Economic Recovery Programme (ERP). Neo-liberalism seeks to transfer control of the economy from public to the private sector under the belief that it will produce a more efficient government and improve the economic health of the nation (Cohen, 1996). It was expected that developing countries would benefit from the adoption of neo-liberalization policies through technology transfer and skills, as well as foreign investment, when the IMF and the World Bank initiated the SAP and ERP (Akabzaa, 2001). However, little provision was made to address issues of environmental regulation that are similar to those in the developed world. In fact, the mineral and mining law in Ghana contains just a single sentence on the environment: 'the holder of a mineral right shall in the exercise of his rights under the license or lease have due regard to the effect of the mineral operation on the environment and shall take such steps as may be necessary to prevent pollution of the environment as a result' Such an approach lacks the contractual agreement and enforcement clause which mandates mine operators to carry out mine reclamation such as exist in developed countries.

The diffusion of policy ideas, expertise and programmes could be extensive: this is indicative in a lot

of the treaties and memoranda of understanding signed by various countries such as the transfer of EFA policy. Policy innovations are often communicated in the international system and adopted by an increasing number of countries over time (Rogers, 2003). Per-Olof et al. (2005) argue that policy diffusion in the international level could occur in the absence of formal or contractual obligations although in the early stages of a diffusion process policy makers may be actually persuaded by the national, international or transnational actors.

Environmental reclamation bond policies, laws and regulations cut across the globe, mining companies are required to post reclamation bonds to the government to guarantee reclamation of the disturbed land at the mine site on termination of mining operations in many nations in the world. This has mainly been achieved through formulation of appropriate policies, laws and regulations governing the posting of reclamation bonds for mine closure.

DOES EFA POLICY TRANSFER FROM DEVELOPED TO DEVELOPING COUNTRIES LEADS TO POLICY IMPLEMENTATION?

There were several reasons such as economic decline that led to the adoption of the SAP in most African countries. As a result, there was adoption of development policies such as privatization fashioned in the US and UK model under Margaret Thatcher and Ronald Reagan in the 1980s (Massey, 2008). A New Public Management (NPM) model that ensured the creation of a market-friendly, outward-looking, efficient, decentralised, customer-oriented and a democratic state was adopted in the 1980s and 1990s (Bangura and Larbi, 2006).

The public sector reforms were meant to achieve several objectives such as public sector efficiency, state capacity and public accountability (Bangura and Larbi, 2006). Relevant to this study are the capacity building reforms of the 1980s and the 1990s through the SAP that were meant to address issues relating to the technical capacity of civil servants in policy analysis and monitoring, strengthening and training institutions, improvement of human resources and financial management systems (Bangura and Larbi, 2006).

However, these new developmental policies failed to take into account the norms and the practical limitations of the less developed countries (Otto, 1992). For example, on the subject of environmental management, Otto (1992) argues that most developed countries have a matured system of environmental mining regulations; many of these regulations are however not desirable or practical in the context of developing countries because from an administrative standpoint, it is costly. In the case for Ghana, most of the government-trained officers are quickly tapped by Multinational Companies (MNCs), who

Table 1: Reasons why adoptions of similar EFA policy inefficient in the case of Ghana

	Developed Nation e.g. USA	Developing Nation e.g. Ghana
Autonomy of regulator	Regulator is self-sufficient and makes decision independently with less government intervention	Regulator not independent of government influence
Bonds	Kept /provided by local insurers or banks. Verifiable and Accessible	Kept/Provided by insurers not necessarily operating locally. Not easily verifiable and difficult to access funds
Timing of EFA policy	Bonds posted before mining operations begin. Progressive reclamation agreement	Bond could be posted after mining operations begin. End of mine life agreement
Resources	Adequately resourced	Inadequately resourced
Accountability	More accountable with public interest at the core using a predetermined models	Lacks transparency e.g. negotiation process

offer better remuneration to their staff. Thus, there is often a lack of environmental expertise to work for the regulator to monitor and evaluate environmental management. This has led to lack of skilled staff within the regulatory body and a lack of depth in the regional offices, making it almost impossible to decentralize to the district level. The situation thus affects Ghana's EFA policy implementation. Table 1 is an illustration of the differences discovered by this research in Ghana's EFA

Policy

These research findings are very important in trying to generalize EFA policy in developing countries because Ghana is seen as a democratic and 'flagship' country in Africa and offers favourable conditions for research on policy transfer. This is because it is one of the first countries that embraced the Bretton Woods institutional policy of privatization, economic recovery or structural adjustment program and promulgated new mining codes (Campbell, 2004). Ghana's EFA policy as an example depicts how policy transfer as a result of globalization, technology innovation or political fashion (Massey, 2008), does not necessarily result in like-for-like policy implementation.

As Massey (2009: 26) acknowledges, policy initiatives such as privatization (using Kenya Airways as an example) 'can be transferred or transplanted to different countries and cultures only if full and proper cognizance of local conditions is taken' Even though the 1984 Structural Adjustment Programme led to mining sector growth and may have created economic opportunities for communities, the liberalization of mining activities may have led to a short-term economic approach instead of long-term environmental consequences of engaging TNCs in the mining sector; this is because the local

communities are still poor and face dire environmental problems, such as polluted water-bodies and deaths as a result of people falling into pits created by non-reclaimed lands. It can be postulated that government policies that attract MNCs incorporate environmental requirements only on paper to access funds for perceived development such as building basic infrastructure such as schools and water that are still in short supply after fifty seven years of political independence.

Is 'One size fits all' regulatory policy: appropriate for countries at different stages of development?

As this research has uncovered and is illustrated in Table 1, there is a wide disparity between regulatory mechanism for mining activities and other natural resources extraction in terms of EFA regulation. For example, there are differences in terms of regulatory agency capacity to perform its regulatory functions and TNCs willingness to adhere to the regulatory policy in developing countries such as Ghana. This is because of various reasons which this paper summarizes. According to Otto and Barberis (1994), LDCs environmental protection plans are simple and different from those in western countries. Kumah (2006) adds that implementation of environmental laws are far from effective in developing countries partly because their environmental laws are at an infant stage. This perception is also echoed by Otto and Barberis (1994) who argue that LDCs may play a game of pretence, in that they have a model of western or developed country governance and policies, but lack the machinery of a developed country to effectively police and implement developed world policy locally. As Hilson et al. (2000) point out, regulatory framework and mechanisms differ markedly in the world, and even when there is a written

legislation there is no guarantee that the legislation or rule will be practical in developing countries.

Furthermore, Weber-Fahr et al. (2002) posit that more mining companies are operating in developing countries because institutions and systems for exploration, monitoring and environmental management vary with developed countries and this favours TNCs. It could be argued that TNCs operate in developing countries based on perhaps their higher political and economic leverage instead of fulfilling host country regulations (Waelde, 2001). The big size, international recognition, technical and managerial skills of TNCs puts them in a favourable position when it comes to negotiating with host countries in most cases, especially in economic and environmental terms (Kirkpatrick and Nixon, 1981). Omalu and Waelde (2000) pitch the case that TNCs can negotiate mining agreements on their own. The National Democratic Institute (NDI, 2007) report indicated that MNCs like Anglo Gold Ashanti which operate in Ghana, South Africa and other developing countries wield significant power in the extractive industry. In fact, Omalu and Waelde (2000) claim there are very few standard mining agreements between TNCs and developing country regulators. Bell (2002) also mentions that TNCs as investors are unwilling to submit to developing countries' rules, regulations or institutions. Bell (2002) further posited that the opportunistic behaviour of investors does not permit the success of the transfer of regulatory measures like EFA policy from developed countries to LDCs. For example, in Ghana, the absence of fixed criteria for bond calculation is problematic. There is the absence of a floor or ceiling in estimating rehabilitation costs and no harmonious or fixed rate of estimating bond amounts to be paid for reclamation bonds.

Other authors, such as Graham and Woods (2006), assert that regulators from developing countries have less leverage on TNCs as they may not get the necessary support from their own governments and industry. This research noted that in the case of the regulators in Ghana, the regulators know that the right thing to do is to have bonds posted before mine operations but do not insist on it because of backlash from top level management. Generally, political patronage and the ruling government's influence on the regulator are high. In addition, the institutional and legislative authority differences (Otto and Barberis, 1994) and the institutions and systems for exploration, monitoring and environmental management vary with developed countries (Weber-Fahr, 2002).

The lack of proper regulation enforcement could possibly be linked to poverty levels in LDCs. One such example is Tetrem Bontefufuo^v, a local mining community in Ghana where the fear of losing their source of livelihood was enough to prevent local resident raising alarm to the obvious ill-effects of non-reclaimed lands as a result of mining by TNCs. Farmlands in such

communities are handed over to TNCs as concessions and even if released, are usually unsuitable for agricultural purposes unless properly reclaimed. On a national scale, the fear of capital-flight to other countries has caused regulators not to be strict in ensuring compliance to EFA. Gray (2002) further points out that the element of environmental regulation only tends to make investment policy wholesome, in that the document tends to satisfy the checklist for lenders, environmentalists and other stakeholders in a project. Countries are increasingly being influenced by the threat or indeed the potential threat of relocation by TNCs in ways that prevent a ramping up of environmental regulation (Neumayer, 2001). In fact, the calculation of the effects that TNCs relocation could have on the local economy can affect the extent to which environmental regulations are imposed.

Evans (2004: 1) rightly acknowledged that a policy transfer is 'a generic concept that refers to a process in which knowledge about institutions, policies or delivery systems at one sector or level of governance is used in the development of institutions, policies or delivery system at another sector or level of governance'. An EFA policy is seen as a political and developmental tool; its implementation is thus perceived as integration into the international regulatory standards (Miller, 2005).

Bjorkman et al. (2004) also argue that there are challenges involved in the effective transfer of knowledge within MNC's top management and units. Bjorkman et al. (2004) identified motivation as a reason for reluctance in knowledge transfer by a subsidiary of MNCs. Where knowledge transfer to operators of the subsidiary is not a key factor in meeting performance targets, some aspect of the knowledge is shelved or not transferred properly. The headquarters may not be aware of this situation (Bjorkman et al., 2004). The problem has been that, environmental plans are drawn on paper (in perhaps the TNC's host country) but not translated into practice because regulators in developing countries fail to monitor their implementation.

The idea of policy mimesis might be a better reflection of EFA policy implementation as a regulatory tool rather than as a transfer or transposition policy. This may be due to the historical, geographical, economic, social or political context within which the policy is implemented. This, nonetheless affects implementation efficacy; which raises questions as to whether the regulators acquired enough knowledge about EFA policy before application; or whether there was inappropriate knowledge transfer by foreign experts who were brought in, to draft international best practice models for developing countries but do not understand the situation in the Ghanaian context when it comes to implementation. The transfer of knowledge from epistemic communities to policy makers in developing countries is a grey area. This is because of how 'individual preferences and values mediate what is learnt

and from whom' (Dunlop, 2009: 291) and policy learning is not synonymous with policy adoption internationally (Dunlop, 2009:301). EFA policy was instituted by experts in developed countries and transferred to developing countries and policy makers to implement locally. Decision-makers when introducing a new policy, face a number of constraints. The limitations, Stone (2001: 14) identified include the building and establishment of policy legitimacy and the need to have the 'time and resources to accumulate sufficient evidence to make valid comparisons for lesson drawing'. The problem in most developing countries however is how well these lessons are learnt and how practical is the implementation.

THE WAY FORWARD

Developing countries, such as Ghana, need to enforce regulations and to ensure that TNCs adhere to regulations without receiving a backlash from developed countries that support their social and economic development. The inconsistencies in environmental regulations in developing countries could create environmental problems, raise legal arguments and breed conflict in affected communities. Because certain mining regulations (such as EFA) in developing countries are usually implemented differently, Otto and Barberis (1994) suggest that alternative environmental standards which can be monitored and assessed need to be agreed upon when signing a mining agreement; and this could remedy any possible environmental problems.

TNCs are indeed important partners in development (Newell, 2001). They however enjoy certain freedoms at the expense of local communities and their environment (Madeley, 1999). The economic and political volatility that exists in developing countries enable foreign investors to engage in businesses that yield high return rates within a short period; these activities however result in both environmental and social devastation. It is therefore assumed that such a policy may be successfully applied in an ideal situation (such as in developed countries) but inappropriate for developing countries unless there is a like for like systems such as trained human resources, adequate finance resources, political and administrative systems. This is because unlike developed countries, developing countries usually lack the structures needed to ensure a like-to-like policy transfer such as equal economic development, dependence on developed countries, human capacity and extent of demand for accountability. Majone (1994b) suggests that the solution to the regulatory lapse is to delegate a supranational authority such as the European Union (EU) or the African Union (AU) with regulatory tasks to monitor the activities of mining companies and to authorize them to impose punitive sanctions where necessary. Regulated firms will therefore be obliged to comply with laid down regulations,

as the supranational regulators will be firm in sanctioning offending groups, especially when they have no personal interest in any particular group. Also, the credibility of the supranational authority will be at stake if stringent measures are not enforced. The regulators will also be less vulnerable to the risk of regulatory capture than national regulators. The paper recommends this approach because a regulatory measure from a supranational commission will comprise independent experts, administrators, academics, interest advocates and environmentalists as well as professional organizations and sub national governments in a more effective manner than the use of civil servants of the nation.

CONCLUSIONS

The transfer of policies, globalization, innovation and new public management come with economic opportunities but also present a regulatory challenge for developing countries. The actions of parties, both the regulated and the regulatory bodies, determine the outcome of a policy. Clearly in the case of Ghana's EFA policy the actions of both the regulator and the regulated falls short of effectiveness and efficiency in the implementation of Ghana's EFA policy.

There is the absence of a floor or ceiling in estimating rehabilitation costs and no harmonious or fixed rate of estimating bond amounts to be paid for reclamation bonds.

In comparison with developed countries who have successfully applied the EFA regulation for a considerable amount of time since 1895 (Walker, 1990), it can be said that the use of the EFA regulation in developing countries is at a young stage. Governments and regulators are torn between insisting on strict adherence to EFA regulation and losing TNCs, or relaxing the regulations and expecting an influx of TNCs. Although the transfer of policy initiatives such as EFA through regulatory diffusion from advanced countries to LDCs is laudable, their application is woefully inadequate.

Economic decisions and consideration affects how regulators ensure TNCs comply with EFA implementation in developing countries such as Ghana and there is a lack of institutional capacity of the EPA for EFA monitoring and implementation. The call for accountability through EFA regulation is thus essential in ensuring TNCs contribute meaningfully to Ghana's sustainable development strategy.

This research uncovered that policy transfer through diffusion or convergence from developed to developing countries does not necessarily result in a like for like implementation of similar policies. It is argued that the EFA policy is rather an imitation of a similar policy that exists in developed countries such as the United States

of America. This is because of the differences in the institutional and political establishments.

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ⁱA Multinational corporation (MNC) or Transnational company (TNC) is a corporation that is registered in more than one country or that has operations in more than one country. It is a large corporation which both produces and sells goods or services in various countries. In this paper they are used interchangeably.

ⁱⁱThe US EPA defines Environmental Financial Assurance as 'a tool used to quantify and transfer results related to brown fields clean-up cost and liability from the project stakeholders to an insurance company' (US EPA, 2008). The Mining Association of Canada, also defines mine closure as the returning of mine sites and affected areas to viable and where practicable self-sustaining ecosystems that are compatible with a healthy environment and with human activity.

ⁱⁱⁱA generic concept that refers to a process in which knowledge about institutions, policies or delivery systems at one sector or level of governance is used in the development of institutions, policies or delivery system at another sector or level of governance

^{iv} Neo-liberalism seeks to transfer control of the economy from public to the private sector under the belief that it will produce a more efficient government and improve the economic health of the nation

^v Bonte Gold Mines Limited in Tetrem Bontefufuo, which held a 30-year mining lease and was operating in Bonteso in the Ashanti region of Ghana, is a subsidiary of Akrokeri-Ashanti Gold Mines Inc., a Canadian-owned mining company listed on the Toronto Stock Exchange. It was liquidated in March 2005 leaving a debt of approximately \$18 million owed to various state institutions and private companies, as well as unpaid workers' wages and compensation to farmers whose lands were affected by the operations of the mine. The liquidation did not follow due process for mine decommissioning, and perhaps the most obvious example of its failure is the short time, approximately one week, to complete the closing procedures. In addition, the company closed down without reclaiming the land destroyed by its operations. Whilst the workers and farmers lamented the loss of their future livelihood, the management of the company had long since left for Canada.