

Ghana defeats gold mine claim

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Gold and the Ghanaian flag (Credit: ThinkStock and Wikicommons)

An ICC tribunal has dismissed a US\$200 million claim filed by two mining companies against Ghana, ordering them to pay costs to the state.

In an award received in early August, the tribunal rejected claims by foreign-owned Ghanaian entities Dunkwa Continental Goldfields and the Continental Construction and Mining Company that the state had breached and unlawfully terminated an agreement to extract gold from a site near the southern town of Dunkwa-on-Offin.

Ghana's attorney general **Marietta Brew Appiah-Oppong** announced the result last week, according to state-owned newspaper *Daily Graphic*.

According to the attorney general, the tribunal upheld the state's counterclaim for US\$700,000, the amount given by the state to the two companies as a World Bank loan for the project. It also awarded the state US\$3.1 million in costs. She says the state intends to enforce the award in the Ghanaian courts.

The seat of the arbitration and the names of the arbitrators have not been disclosed.

While details of the dispute are scarce, it apparently arose from a 1995 project agreement between Ghana and Continental Construction and Mining Company, which provided for the mining of gold from the Dunkwa region and the establishment of other industries such as water and electricity generation, agriculture, and timber on the site. However, the project stalled after gold prices dropped, and Ghana terminated the agreement in 2005.

Dunkwa's director Kris Kapoor was quoted in a local news article in 2009 stating that the termination was unlawful and would be referred to the ICC pursuant to an arbitration clause in the project agreement. He also said local youths had vandalised the company's property and threatened employees.

Ghana was represented in the arbitration by a team from Curtis Mallet-Prevost Colt & Mosle team led by partners **Ben Preziosi** in New York and **Peter Stewart** in London, alongside government lawyers.

The claimants used a team from Jones Day led by partner **Baiju Vasani** in London.

Although the parties were not identified, a notice posted on Jones Day's website in 2011 appears to refer to the case. It said the law firm was acting for two Ghanaian companies in a gold mining dispute at the ICC for breaches of a project agreement "and other violations of Ghana law, including unlawful expropriation of their property and right to conduct mining and auxiliary activities".

The notice said the two companies had British, Canadian and Indian shareholders.

Continental Construction and Mining Company Ltd & Dunkwa Continental Goldfields Ltd v Ghana

Tribunal

Unconfirmed

Counsel to the claimants

- Jones Day

Partner **Baiju Vasani** and associate **Sylvia Tonova** in London

Counsel for Ghana

- Curtis Mallet-Prevost Colt & Mosle

Partner **Ben Preziosi** and counsel **Alexandra Maier** in New York with partner **Peter Stewart** and associates **Justin Jacinto** and **Sena Tsikata** in London