

# GET US INCLUDED

# A Disability Audit of Ghana's Extractive Sector Policies and Revenue Sharing Arrangements



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A VOICE Ghana Initiative



Supported by ACEP

**JULY 2020**

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**Supported by  
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## ACRONYMS AND ABBREVIATIONS

ABFA	Annual Budget Funding Amount
ACEP	Africa Centre for Energy Policy
BoP	Balance of Payment
CBO	Community Based Organisation
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organisation
DACF	District Assembly Common Fund
DCE	District Chief Executive
ECOWAS	Economic Community of West African States
EITI	Extractive Industries Transparency Initiative
ERP	Economic Recovery Programme
FDI	Foreign Direct Investment
FPSO	Floating, Production, Storage, and Offloading
GDP	Gross Domestic Product
GHEITI	Ghana Extractive Industries Transparency Initiative
GNPC	Ghana National Petroleum Corporation
GPRS	Growth and Poverty Reduction Strategy
GSFP	Ghana School Feeding Programme
HSE	Health, Safety, and Environmental
IGF	Internally Generated Funds
LEAP	Livelihood Empowerment Against Poverty
MCDS	Mining Community Development Scheme
MDAs	Ministries, Departments, and Agencies
MDF	Minerals Development Fund
MMDAs	Metropolitan, Municipal, and District Assemblies
NDC	National Democratic Congress
NHIS	National Health Insurance Scheme
NREG	Natural Resources and Environmental Governance
NSPS	National Social Protection Strategy
OASL	Office of the Administrator of Stool Lands
PHF	Petroleum Holding Fund
PIAC	Public Interest and Accountability Committee
PNDCL	Provisional National Defence Council Law
PRMA	Petroleum Revenue Management Act
PWDs	People with Disabilities
R&D	Research and Development
UNCSD	United Nations Conference on Sustainable Development
VRA	Volta River Authority

# 1.0 INTRODUCTION

The Constitution of Ghana guarantees fundamental human rights and freedoms to all citizens, regardless, of race, economic status, religion or creed. This guarantee takes inspiration from the United Nations Universal Declaration on Human Rights, and the United Nations Economic, Social and Cultural Rights framework.

To ensure a socially just and equitable society, Article 17(4a) of the country's Constitution grants Parliament the power to enact laws that are reasonably necessary to provide for the implementation of policies and programmes, aimed at addressing social (including issues relating to disability), economic or educational imbalance in the Ghanaian society.

Article 29(6) further enjoins the state to ensure that, "As far as practicable, every place to which the public have access shall have appropriate facilities for disabled persons".

To address the inequitable access to livelihood and employment opportunities faced by Persons with Disabilities (PWDs), Article 29(7) requires special incentives to be given to PWDs engaged in business, and also to business organisations that employ Persons with Disabilities in significant numbers.

Pursuant to these provisions, Parliament is obliged by Article 29(8) of the Constitution to enact such laws, as are necessary to ensure their enforcement. It is in fulfillment of this injunction that the Persons with Disability Act, 2006, (Act 715) was enacted.

Therefore, in auditing the disability responsiveness of Ghana's extractive sector, which is what this report is about, due cognisance is taken of the provisions of the Disability Act, and the extent to which extractive sector policies and revenue sharing arrangements, address the needs and concerns of PWDs.

This audit forms part of VOICE Ghana's project dubbed '#Get us Included' which is being implemented with funding support from the Africa Center for Energy Policy (ACEP).

Established in 2002, VOICE Ghana, which is headquartered in Ho, Volta Region, operates as a registered national Non-Governmental Organisation (NGO), and plays active and leading role in disability policy advocacy and inclusive governance. The mission of the organisation is to advance inclusive development and social justice for Persons with Disabilities in Africa, particularly Ghana, through research, policy advocacy, and public consultations.

ACEP works to influence energy sector policies in Africa, by providing professional analysis of energy policy, training, advisory services and policy advocacy for the efficient and transparent management of Africa's energy resources.

The project is intended to promote diversity, equity, and social inclusion in Ghana.

### **1.1. THE ASSIGNMENT**

The assignment is to undertake a desktop review (Disability Audit) of Ghana's mining, oil and gas sector policies, and revenue sharing arrangements, to ascertain the extent of their responsiveness to the needs of PWDs. It is also to establish whether or not the revenue sharing arrangements reflects the principles of equity and fairness as required by the Constitution of Ghana and the international conventions on disability rights, including the United Nations Convention on the Rights of Persons with Disabilities - CRPD.

### **1.2. OBJECTIVES**

- The objectives of the assignment are:
- Assess the level of compliance with the Disability Act in Ghana's extractive sector;
- Document policy gaps for advocacy on policy and legislative reforms in Ghana's extractive sector;
- Provide empirical basis for PWDs to demand an equitable and fair share of benefits from the revenue allocations in the extractive sector;
- Raise awareness on resource revenue management in Ghana among PWDs.

### **1.3. METHODOLOGY**

The main method adopted for the purpose of this study is qualitative analysis. It involved the review of relevant policies and laws, set against the state's obligation to promote the interest and rights of PWDs as enshrined in the relevant international conventions and Constitution of Ghana. The study also employed key informant interviews to seek further clarity on the existing policies and practices in respect of revenue sharing in Ghana's mining, oil and gas sectors. The difference between the primary obligations of the state and the practice is projected as the gaps in the promotion of disability rights and well-being in the context of resource extraction, which may require some reforms to address.

## 2.0 EXECUTIVE SUMMARY

This report contains the findings and recommendations of an audit of Ghana's mining, oil and gas sectors, to establish the extent of compliance of industry policies, practices, and revenue sharing arrangements with Ghana's constitution, international obligations, and statutory provisions on the rights and well-being of Persons with Disabilities (PWDs) in Ghana.

It particularly interrogates the extractive sector policies as well as their legislative frameworks, and compares them with the dictates of the country's constitution and commitments under the UN Convention on Persons with Disability.

The report observes that, even though Ghana has made some progress in its efforts at building an inclusive society, through the promotion of the human and developmental rights of vulnerable groups, including Persons with Disability, there is a lot more work to be done in the country's extractive sector to make it more accommodating of PWDs' participation, and to ensure that, its revenue sharing arrangements are fair, and responsive to the development needs of PWDs, based on the constitutionally established principle of equity in national resource allocation, using the budget as the common framework.

### **The following are the findings from the study:**

1. There is substantial level of incoherence between policy and legislation, reflected in the fact that, though Article 29(7) of the 1992 Constitution requires special incentives to be given to Persons with Disabilities engaged in business, and also to business organisations that employ Persons with Disabilities in significant numbers, to address the inequitable access to livelihood and employment opportunities faced by Persons with Disabilities, these incentives are not being promoted through sector legislations to encourage employers to consider employing Persons with Disabilities.
2. Even though Ghana's Minerals and Mining Policy requires among others, the removal of obstacles to participation in the mining sector on the basis of gender, marital status or disability, the operating law (Minerals and Mining Act, 2006, Act 703) does not reflect this principle, and in practice, there is no evidence of the identification and removal of barriers to PWDs' participation in the industry.
3. The incoherence between the mining sector policy prescription on PWDs and the provisions of the Minerals and Mining Act may not be deliberate, as the law preceded the policy and couldn't have envisaged what the policy position would be, at the time it was passed.
4. The extractive industries laws do not clearly articulate or reference the provisions of the Persons with Disability Act, 2006 and the CRPD, resulting in general non-compliance with the disability policy and legislative framework in the sector.
5. The Minerals and Mining, as well as the Oil and Gas Policy offer opportunities for skills training and

acquisition for all Ghanaians, but in practice appropriate and industry relevant training for PWDs are not prioritised.

6. Just like the Minerals and Mining Act, the Petroleum (Exploration and Production) Act, 2016, Act 919, makes no mention of PWDs and how to ensure their participation in the industry, or their access to an equitable share of the benefits of extraction.
7. While the decision to include youth and women in the composition of the Local Management Committees to manage the Mining Community Development Scheme is commendable, it is regrettable that, the framers of the law, did not find it expedient to include PWDs, who, besides the fact that they are equal stakeholders, are perhaps the most vulnerable, and whose development needs are likely to be overlooked by the scheme.
8. There are no guidelines to the MDF, requiring MMDAs to consider the needs of PWDs in the utilisation of communities' share of mineral royalties.
9. Though the ABFA expenditure priority list includes PWDs and other vulnerable groups, the PWDs-related expenditure category has never been selected in the last 10 years of oil production.
10. The injunction imposed by section 21(2b) of the PRMA to the effect that, among others, the use of the ABFA shall be with a view to promote equality of economic opportunity and to ensure the well-being of citizens, though well intended, may not promote social justice.
11. Though the 'Provision of social welfare and the protection of Persons with Disabilities and disadvantaged citizens' category has so far never been prioritised, PWDs have not been completely overlooked in the allocation and spending of petroleum revenues. In 2012, under the 'Capacity Building' category, 5,000 PWDs received training in ICT, at a total cost of GHC10 million, fully funded from the ABFA. Again, in 2015, under Physical Infrastructure and Service Delivery in Education, a total of GHC31,531,764 was spent on feeding grant for schools and institutions of PWDs. This brings total expenditure on PWDs for the two years to GHC41,531,764 out of a total ABFA of GHC1,124,200,214.14 (approximately GHC1.1 billion, representing 3.69 percent of the ABFA for the two years).
12. If ABFA allocations are to be factored into the computation of the DACF, as directed by the Supreme Court, the effect will be an increase in DACF allocations and therefore a proportionate increase in the nominal value of the three percent assigned to PWDs.
13. Access to information on the sector for some categories of PWDs, particularly the visually, and hearing impaired is heavily constrained. Both the GHEITI and PIAC reports are not accessible to this category of PWDs. Again, stakeholder consultations in the sector often do not prioritise the participation of PWDs.
14. Regrettably, the Associations of PWDs were overlooked in determining the composition of PIAC, an additional public oversight body that monitors and reports on the management and use of petroleum revenues in Ghana. Because of the absence of PWDs on the Committee, it has not



been minded to produce copies of its reports in braille for example, to broaden access to PWDs. As a result, PWDs have not had the opportunity to be consulted or make input into spending decisions around the ABFA., even where the expenditure is for their benefit.

Based on these findings and observations, the report makes the following recommendations for addressing the gaps, and inconsistencies among the country's constitution, the Convention on the Rights of Persons with Disabilities, and extractive sector policies and practice:

1. Extractive sector laws should reference policy commitments in respect of disability rights, and actively promote them. The ongoing consultations towards the revision of the Minerals and Mining Act, affords the opportunity to include fiscal incentives in the Act, to encourage employers to consider employing more PWDs. Advocacy may be required to get similar legal reforms in the petroleum sector.
2. Again, government must properly sequence the governance frameworks for the extractive sector, and ensure that at all times, policies precede legislation in order to adequately reflect the policy intent in the law.
3. To ensure that PWDs have access to opportunities in the extractive sector, quotas ought to be assigned in appropriate fields to PWDs, when selecting persons for skills training.
4. Opportunity should be created for the representation of PWDs on the Local Management Committees of the MCDS to ensure that their needs and aspirations are not overlooked in the spending decisions. This will be fair and consistent with the rationale for including women and youth in the composition of the Committee.
5. To further promote equity in the use of the MDF at the local level, guidelines should be developed to among others, require MMDAs to consider the needs of PWDs in the utilisation of communities' share of mineral royalties. Equity in revenue allocation and utilisation, if pursued, would leverage resources for developing further employment opportunities for PWDs in the industry value chain.
6. PWDs and their allies should consider advocating for a share of the MDF disbursed to MMDAs, just as it's done in the case of the DACF. The advocacy should be rooted in the fact that, minerals constitute a common heritage of all Ghanaians, including PWDs.
7. To get the disability category of the ABFA priority list selected for ABFA spending in future, PWDs are encouraged to make submissions to the Ministry of Finance during the review cycle, and mobilise public opinion in support of their demands. For instance, a small percentage of ABFA can be committed to supporting effective implementation of Ghana's Inclusive Education Policy for the benefit of all children regardless of their disability and gender, or to refurbish, resource, and run the existing dilapidated and abandoned Limb Fitting Centres in the regions, for the benefit of PWDs. Additionally, it can be used to establish and resource Regional Offices of the National Council on Persons with Disabilities to effectively carry out its constitutional mandate for PWDs.

8. The injunction imposed by section 21(2b) of the PRMA to the effect that, among others, the use of the ABFA shall be with a view to promote equality of economic opportunity, ought to be changed to emphasise 'equity' instead of equal opportunity, as PWDs may not be able to compete favourably, in the face of equal economic opportunity.
9. While acknowledging that PWDs have not been entirely neglected in the allocation and spending of the ABFA, it is important to seek their input into spending decisions where the expenditure is being incurred in their name and for their good.
10. Following the Supreme Court ruling on the computation of the DACF, which now includes mineral revenues, PWDs are expected to see an increase in their share of the DACF. It will be important to monitor implementation of the Court's decision, and to ensure that PWDs receive their due.
11. Access to information on the extractive sector can be improved by advocating for the production of reports and other useful information in disability-friendly formats. This will equip PWDs to be able to effectively engage in the sector discourses.
12. Again, stakeholder consultations in the sector should be inclusive of PWDs as a matter of routine.
13. The PWD fraternity have an opportunity of a life time to be represented on PIAC. The group is therefore encouraged to make representations to the Ministry of Finance and to take advantage of the ongoing revision of the PRMA to have them included in a reconstituted Committee. Indeed, the population of PWDs are by far larger than some of the constituencies represented on the Committee.
14. As part of Corporate Social Responsibilities (CSR) in the extractive sector, mining and oil and gas companies should be engaged to commit a small percentage of their respective CSR budget to support the educational, health and other social needs of PWDs including procurement of their assistive and mobility devices. The Minerals Commission for instance, can help by reflecting this need in its guidelines for the design and implementation of CSR in Ghana's mining sector, while the Petroleum Commission is encouraged to develop such guidelines.

## 3.0 CONTEXTUAL FRAMEWORK

This exercise is undertaken within several contexts, particularly within the context of Ghana's social inclusion policy / strategy; Ghana's commitments under the CRPD, which was ratified by Ghana in 2012; the Ghana's Disability Act; as well as the extractive sector governance arrangements. Unraveling these contexts affords deeper insights into what opportunities exist to advance the interest of PWDs in the country's extractive sector.

### 3.1 OVERVIEW OF GHANA'S SOCIAL INCLUSION POLICY / STRATEGY

Ghana has been working assiduously in the last four to five decades to ensure that all its citizens are able to enjoy the rights espoused by the UN in its Universal Declaration on Human Rights, as well as its Economic, Social and Cultural Rights, including the right to participate in the political, social and economic affairs of respective member countries.

As already indicated, the 1992 Constitution of Ghana enjoins Parliament, and for that matter, the state, to enact laws that are reasonably necessary to provide for the implementation of policies and programmes aimed at addressing the social, economic or educational imbalance in the Ghanaian society. Some notable policies and programmes of the state in this regard are:

- The establishment of the National Health Insurance Scheme (NHIS) in 2003;
- The Ghana School Feeding Programme (GSFP) in 2005;
- Establishment of the Disability Fund, which currently receives 3% deducted from the District Assembly Common Fund, in 2003;
- The formulation and adoption of a National Social Protection Strategy (NSPS) in 2007, which heralded the implementation of the Livelihood Empowerment Against Poverty (LEAP), a social grant for the poorest and most vulnerable in society.

Available evidence suggest that the country made its biggest strides in its social inclusion efforts between 2000 and 2010. Indeed, the country's efforts received a boost, following the adoption of the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol, in 2006. In that same year, Ghana's Parliament passed a law to ensure the enforcement of the provisions of Article 29 of the 1992 Constitution, the Persons with Disability Act, 2006, (Act 715). The Act covers the Rights of PWDs; Employment of PWDs; Education of PWDs; Access to public transportation, health-care and facilities; Miscellaneous provisions; Establishment and functions of a National Council on Persons with Disability; and Administrative and financial provisions.

### 3.2 THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Ghana ratified the CRPD in 2012. It later became evident that the Persons with Disability Act, 2006, Act 715 is inconsistent with the principles enshrined in the CRPD, which seeks to promote disability rights as a human rights instrument with an explicit, social development dimension. It is against this backdrop that the National Council on Persons with Disabilities (NCPD) is currently working on the Persons with Disabilities Amendment Bill, 2020 and its Legislative Instrument for ratification by Parliament to conform with the CRPD.

The CRPD adopts a broad categorisation of Persons with Disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to PWDs, and identifies areas where adaptations have to be made for PWDs to effectively exercise their rights. For example, in Article 27 of the Convention, dealing with work and employment, State Parties have obligation to recognise the right of PWDs to work on an equal basis with others. This includes the right to employment opportunities to earn a living, to be accepted in a labour market, and to work environment that is open, inclusive and accessible to persons with disabilities.

### **3.2.1 THE PERSONS WITH DISABILITY ACT OF GHANA**

The Disability Act of Ghana was enacted in 2006 with the sole purpose of providing the enabling legal framework for the actualisation of the rights of PWDs as provided for in the country's Constitution. The specific rights protected under the Act are:

- The right to a family life and right to participate in social, creative or recreational activities;
- The prohibition of differential treatment for residential purposes;
- The right to the same living conditions as persons without disability, when persons with disability are placed in special institutions;
- No exploitation, abuse, discrimination or disrespect to persons with disability;
- Appropriate facilities when involved in court proceedings; and access to public places.

Owners of facilities to which the public have access, and persons who provide services to the public are under obligation to ensure that persons with disability may also access the public places and the public services provided. The law allowed for a 10-year moratorium, within which all public buildings were supposed to be made accessible to PWDs.

The Act criminalises failure to respect the rights of persons with disability, and imposes fine of fifty penalty units or a term of imprisonment, which is not more than three months.

The Act imposes an obligation on the Minister responsible for Manpower and Employment to secure employment for persons with disability, through the Public Employment Centre. If the name of a person with disability remains on the job search list for more than two years, the Ministry shall give the person appropriate training, provide the person with necessary working tools and assist the person to access loan capital to start a business. If the person who has been given the tools, sells them, then he/she is guilty of a criminal offence.

Employers may not discriminate against any prospective or current employee on the grounds of disability. Not only does the law criminalise non-compliance with its provisions, it also provides incentives to employers to encourage them to provide employment quotas for PWDs. The incentive is mainly in the form of tax rebates.

Employed PWDs and those in private business are also entitled to tax rebates and other incentives to encourage them to seek work rather than beg for alms. These are:

- Annual tax rebate on the taxable income of PWDs;
- Provision of tools and appropriate facilities to PWDs;

- Prohibition of posting or transfer of a PWD to a section, which is not suited for him/her.
- If a person suffers a disability as a result of employment, the employer is under an obligation to re-train or deploy the person to another section of the workplace, which is more suited to the person's disability, and should give that person any relief that he/she is entitled to under the Workmen's Compensation Law, 1987 (PNDCL 187).

The provisions in terms of training and employment opportunities are the most pertinent in terms of the participation of PWDs in Ghana's extractive sector. Of course, equitable allocation and utilisation of the derived revenues could leverage additional resources for catering to the needs of PWDs, including creating an enabling environment for their participation in the industry.

### **3.3 OVERVIEW OF GHANA'S EXTRACTIVE SECTOR**

Ghana is famous for its mineral endowment. In 2018 the country's GDP grew by 6.3 percent, with mining accounting for 5 percent. Besides gold, Ghana is endowed with diamond, bauxite, manganese, iron ore, and limestone.

In 2016 gold mining in Ghana contributed about GHC1.6 billion to Ghana's tax revenue, representing 15.8 per cent of the Ghana Revenue Authority's total direct taxes for the year.

In the same year, Ghana's gold industry accounted for 46 percent of the country's gross export revenue, making it the leading foreign exchange earner, and a major contributor to the country's Balance of Payment (BoP).

The country is home to 23 large scale, and over 300 registered small-scale mining companies. There are also about 90 mine support service companies operating in the sector. Gold production in Ghana has seen a steady increase in recent years. In 2018, the country overtook South Africa, to become the leading producer of gold in Africa, largely on account of increasing cost of production as a result of mine depths, and labour unrest in South Africa.

Minerals exports accounted for 42.7% and 37.7% of the total merchandise export in 2017 and 2018 respectively.

In 2007, Ghana announced its entry into the club of oil producing countries of the world, with the discovery of commercial quantities of oil reserves off the western coast of the country. The news was greeted with excitement, and the hope that the country's newly found wealth will fundamentally transform the economy and contribute to the country's poverty reduction efforts. While the onset of oil and gas revenues was expected to unleash massive resources needed to address the huge infrastructure gap that thwart the country's efforts at improving the quality of life of its citizens, for some Ghanaians, the corrosive effects of oil wealth on the democratic development of neighbouring African countries, such as Sudan, Chad, Nigeria, and Equatorial Guinea is enough reason for anxiety.

It's been 10 years since first oil, and impressions about the impact of the industry on the well-being of Ghanaians are mixed. Between 2011 and 2018, the country produced 315,021,308 barrels of oil. This translated into US\$4.97 billion in revenues to the state. Though it may appear substantial, it constitutes less than 10 percent of total government revenue for the period.

The industry is governed primarily by the Petroleum (Exploration and Production) Act 2016, Act 919 with its associated regulations, while the Petroleum Revenue Management Act 2011, Act 815, with its 2015 amendment, Act 893 provide the legal framework for the management and use of petroleum revenues.

## **4.0 RECEPTIVENESS OF THE OF THE EXTRACTIVE SECTOR TO PERSONS WITH DISABILITY**

The extractive industry activities are generally hazardous, and therefore not disability friendly. Mining takes place either underground, where there is a risk of pits collapsing, or on land surfaces, where injury can be caused by earth moving equipment or by rock crushers during the ore-processing phase of operations.

In the case of oil and gas, the activities are mainly offshore and are susceptible to technical emergencies such as fire, explosion, and collision between loading tankers and the Floating Production, Storage, and Offloading (FPSO) vessel. Though, these risks are usually mitigated through strict Health, Safety, and Environmental (HSE) regulations, there can be an eventuality at any time, which may require emergency evacuation, and in which case a person with disability could hamper the emergency evacuation processes.

There are however, certain roles and job functions across the extractive industry value chain that are not hazardous and can therefore accommodate PWDs. These are mainly administrative functions either within the mining, oil and gas companies, or within the relevant Ministries, Departments, and Agencies (MDAs). Some categories of disability such as persons with hearing impairment and some persons with physical disability can work as welders/metal workers, and can operate forklifts and excavators, among others. Besides, some can become suppliers of services to the industry. But these opportunities would be extended to PWDs, only when the sector policies promote them through an incentive regime, as prescribed by the Persons with Disability Act, 2006.

### **4.1 ANALYSIS OF THE DISABILITY RESPONSIVENESS OF GHANA'S MINERALS AND MINING POLICY**

Ghana's minerals and mining policy has gone through three distinct phases of its evolution since independence. These are:

1. The Immediate Post Independence Era (1957-1983);
2. The Economic Recovery Programme (ERP) and Structural Adjustment phase (1983-2006);
3. Post-structural Adjustment (2006 to date).

#### **4.1.1 MINERALS AND MINING POLICIES IMMEDIATELY AFTER INDEPENDENCE (1957-1983)**

Ghana does not appear to have had a written policy to guide the exploitation of its abundant mineral resources. What may count for its policy in the mineral sector is only inferred from practice. For instance, immediately after independence in 1957, the state nationalised all mining companies with the exception of Ashanti Gold Company, and became the sole producer and exporter of its own minerals. The justification for the nationalisation policy was to protect workers' right to employment and for the new government to gain quick and easy access to foreign exchange. The creation of state monopoly in the mineral sector eventually undermined the competition needed to drive the industry forward. As a result, many mining companies, both local and foreign, were forced out of business and this further crippled Ghana's mining industry and the eventual downturn of the economy (World Bank, 1992).

In the absence of a clearly articulated vision for the mining industry, in the form of policies, the country passed a law in 1962, Act 126, which regulated mining activities in the 1960s and 70s. The government, through an executive instrument of compulsory acquisition, consolidated all rights to minerals under the sovereignty of the State, and took over mining operations under a state monopoly. An analysis of the Act and its implementation with its sister acts (the Concessions Act- Act, 124 and Administration of Lands Act- Act 123) reveal no format for the payment of fair and adequate compensation; and in terms of community development, mineral royalty allocation and disbursement to host or affected communities were non-existent. Although, mention is made of using steps in administering indigenous lands or stool lands under the sister Act, Administration of Lands (Act 123) in cases of compulsory acquisition for mining, the definition of what was deemed as fair and adequate compensation were not clear in the Act. More so, a formula or mechanism of allocating mineral royalties were not fixed and subject to the dictates of the Minister.

Neither of the operational Acts made any reference to PWDs, not by way of incentivising the extension of job opportunities to them or ensuring that they were not overlooked in the allocation of benefits from the mining sector.

#### **4.1.2 MINERAL POLICIES AFTER STRUCTURAL ADJUSTMENTS (1983-2006)**

After the challenges and failures associated with the country's nationalisation policy, Ghana initiated far-reaching economic reforms especially in the mining industry to revitalise the economy. The country adopted and instituted the Economic Recovery Programme (ERP) at the instance of the World Bank and succeeded in reviving the mining industry. This occasioned substantial increases in its Gross Domestic Product in 1985 (World Bank, 1992; UNCSO, 2010). During the ERP period, there were reviews of the existing legal frameworks that emphasised a private sector-led development with little governmental intervention. This ushered in the neo-liberalist policy in the mining industry. The main purpose of government was only to promote the mineral industry through implementing policies and regulations that would create an enabling environment for Foreign Direct Investment (FDI) or foreign capital injection (World Bank, 1992). The reforms led to a 700 percent increase in gold production during the period (Bloch & Owusu, 2011). It also strengthened the mineral rights framework for mining companies in Ghana, and led to increasing successes for the industry as it became easier for mining companies to obtain the right to mine for minerals, and provided increased security of tenure. The macro-economic reforms in the form of investment incentives, such as low royalty rate of three per cent, removal of restrictions on transfer of dividends, reduced mining tax and waived import duties, led to an overnight inflow of FDI into the mining sector by multi-national companies (Aubynn, 1997; Hilson and Clive, 2005; Hilson and Yakovleva, 2007). Added to the fiscal incentives was the fact that, the Minerals and Mining Law, PNDL 153, provided regulatory certainty for mining companies. The law was however silent on the issue of mineral royalty disbursement, and what should be invested in mining communities that co-existed with mining companies. It was again silent on PWDs' participation in the industry and measures to cater for their interest in the allocation and utilisation of mineral revenues.

#### **4.1.3 THE PREVAILING MINERAL POLICY OF GHANA (2006-TO DATE)**

Ghana has continued to operate a neo-liberalist, private sector-led policy in the mining sector, albeit, without a written policy statement on what role the country expects the mining sector to play in the



rest of the national economy. The current Minerals and Mining Act, 2006 (Act 703) can therefore be said to have been passed in a policy vacuum. It constitutes the main legal framework governing mining activities in Ghana.

A process to develop a minerals and mining policy for Ghana began at the turn of the millennium, and was finalised only in 2014. The Minerals and Mining Policy Document provides the requisite written declaration of the framework of principles and policies that will guide the State in the management of the minerals sector, with key objectives outlined to support the sustainable development of the national economy. The document was developed having regard to the Constitution, and with a view to complementing the Ghana Growth and Poverty Reduction Strategy (GPRSII). It is also in alignment with the Draft Medium Term Development Plan, and the Better Ghana Agenda, which set out measures and initiatives for economic growth and improvement in the standard and quality of life of all Ghanaians. Other documents taken into account include: Guidelines and policies prepared under the Natural Resources and Environmental Governance (NREG) programme, which related to social and environment issues, and the sustainability of mining communities after mine closure. It drew inspiration from the Africa Mining Vision and Action Plan; the ECOWAS Minerals Development Policy, and the ECOWAS Directive on the Harmonisation of Guiding Principles and Policies in the Mining Sector.

It again took into account the outcome of the Rio+20 Summit, which emphasised a development approach involving prudent and strategic use of natural resources, respect for the environment and equitable distribution of their revenues.

A review of the policy reveals a conscious effort at addressing almost all the documented challenges that inhibit the country's ability to derive maximum benefit from the exploitation of its rich mineral resources.

Its objectives are to:

- i. Diversify the country's mineral production base to promote a more sustainable support base for the economy;
- ii. Promote linkages (backward, forward and side stream) to minerals produced locally to the maximum extent possible;
- iii. Generate adequate geo-scientific data to promote investment;
- iv. Generate detailed geological information in designated areas for demarcation to artisanal and small scale miners;
- vi. Provide opportunities for artisanal and small scale miners to access financing to upscale their activities;
- vii. Enhance capacity of state institutions and strengthen inter agency collaboration in the management and development of mineral resources;
- viii. Optimise tax revenue generation and ensure transparent and equitable distribution of mineral wealth;
- ix. Assist in the development of skilled human resource and develop local industrial capacity for the mineral industry;
- x. Contribute to infrastructure development in mining areas;
- xi. Use mining as a catalyst for wider investment in the economy;

- xii. Ensure high level of environmental stewardship in the exploitation and use of minerals;
- xiii. Promote social harmony between the mines and adjoining communities;
- xiv. Collaborate in the harmonisation of mineral policy in ECOWAS and in Africa;
- xv. Access the African Development Bank's African Legal Support Facility and the Facility for Fair Exploitation of Extractive Resources in Africa.

Two of the objectives that should provide some comfort to PWDs, relate to the transparent and equitable distribution of mineral wealth; and to the development of skilled human resource and local industrial capacity for the mineral industry. Equitable distribution of mineral wealth as a policy commitment should ordinarily find expression in benefit sharing arrangements; while the development of human resource and industrial capacity, which should include tailored training for PWDs, should find expression in the local content regulations. These two frameworks would be interrogated subsequently in this report.

It is instructive to note that among the guiding principles underpinning Ghana's Minerals and Mining Policy, 2014, are two that further amplify the intent of creating a fair chance for all to participate in the industry, and to equitably share in the benefits of the industry. These are:

- The principle to safeguard and protect, among others, human rights (Guiding Principle No. 2); and
- The principle of ensuring an equitable sharing of the financial and developmental benefits of mining between investors and all Ghanaian stakeholders.

The most explicitly worded provision in support of PWDs' access to opportunities in the sector is however found in Guiding Principle No. 17, requiring among others, the respect for rights of all, and the removal of obstacles to participation in the mining sector on the basis of gender, marital status or disability. This provision, no doubt, makes Ghana's Minerals and Mining Policy disability sensitive and pretty progressive.

It is important however, to recognise that, policies are mere declaration of intent, and that, the way to realise these progressive policy positions is through the laws that are subsequently passed, and their accompanying regulations, in this case, the Minerals and Mining Act 2006, Act 703; and the Minerals and Mining (General Regulations) 2012 (L.I.2173) which deals with local content and local participation issues.

A review of the Minerals and Mining Act, 2006, Act 703, however reveals a high level of incoherence between the policy and the law. While the policy commits to promoting access and participation of persons with disability in the industry, the law makes no such provision. In fact, it fails to mention or recognise PWDs and their rights to participate in the industry.

The incoherence may however not be deliberate, as the policy was formulated after the law. If the policy had preceded the law, then it would have been easy to reflect the policy positions in the law.

In the same vein, the local content provisions of the Minerals and Mining (General) Regulations, does not recognise or reference the rights of PWDs in the industry.

#### **4.2 ANALYSIS OF THE DISABILITY RESPONSIVENESS OF GHANA'S OIL AND GAS POLICY, 2010**

Ghana's oil and gas industry is nascent and still evolving. The industry is very broad, but for the purpose of this analysis, the focus will be on the Upstream to Midstream, as almost all the crude oil produced in Ghana is exported. The bulk of the gas is also sold to the Volta River Authority (VRA), for power generation, and a relatively small portion processed into Liquefied Petroleum Gas (LPG), and condensates.

Ghana's Upstream oil and gas policy is embedded in the Petroleum sub-sector of a broader energy sector policy. The policy was finalised and adopted in February 2010, about 10 months ahead of first oil.

The goals of the petroleum sub-sector as espoused in the policy document, are to ensure the sustainable exploration, development and production of the country's oil and gas endowment; the judicious management of the oil and gas revenue for the overall benefit and welfare of all Ghanaians; and the indigenisation of related knowledge, expertise and technology.

The document identifies the major challenges confronting the upstream petroleum sub-sector as how to sustainably develop the oil and gas resources and judiciously manage the revenue received from the industry.

The document commits to several policy actions, including improving hydrocarbon resources development and management; strengthening the regulatory framework for the sector; encouraging investments along the oil and gas industry value chain; developing local capacity in all aspects of the oil and gas value chain through education, skills and expertise development, transfer of technology and know-how; creating supportive industries that will sustain economic development; managing oil and gas revenues transparently, and ensuring equitable distribution for the benefit of present and future generations of Ghanaians.

The policy again, commits to supporting capacity building at all levels in the country's technical, vocational and tertiary institutions; and to obliging licensees to provide facilities for training and technology transfer as an integral part of their operations.

Just like with the Minerals and Mining Policy, the opportunity for skills training and acquisition for all Ghanaians, and the equity principle espoused by the oil and gas policy, provides some comfort for PWDs. Even though the document failed to reference PWDs, it won't be out of place, on the basis of equity, to advocate for the assignment of quota in appropriate fields to PWDs, when selecting persons for training.

Again, equity in revenue allocation and utilization, if pursued, would leverage resources for developing further employment opportunities in oil and gas related services to the industry.

In seeking to establish how the state intends to pursue the determined policy positions, the primary Act for the sector, the Petroleum (Exploration and Production) Act, 2016, Act 919 was analysed, and just like in the Minerals and Mining Act, no mention is made of PWDs and how to ensure their participation in the industry, or their access to an equitable share of the benefits of extraction.

## **5.0 EXTRACTIVE SECTOR REVENUE SHARING ARRANGEMENTS**

Ghana does not have a unitary revenue sharing arrangement for all its extractive industries. The policy and practice appear to vary across sectors. For more than two decades, the practice in the mining industry was based on an administrative directive, which assigned 20 percent of mineral royalties to key stakeholders, such as the District Assembly, the Stool, the Traditional Council, and Agencies in the sector. The remaining 80 percent was assigned to the national budget as part of government's consolidated revenues, and spent in accordance with government's Medium-Term Expenditure Framework. In 2016, Ghana provided legislative backing for the practice, by passing the Minerals Development Fund Act, 2016, Act 912.

Soon after Ghana's first major oil discovery in 2007, the people of the Western Region, ostensibly taking a cue from the practice in the mining sector, also demanded that 10 percent of oil revenues was spent on the region (The Christian Science Monitor, December 2010). This was however dismissed by the government on account that, the practice in the mining sector could not be applied to the oil and gas sector because the oil and gas activities were taking place offshore and that no traditional authority or group of people have jurisdiction over the country's territorial waters.

Provision has subsequently been made in the country's Petroleum Revenue Management Act, 2011, Act 815, to rather compensate or help mitigate adverse socio-economic impacts of the offshore activities on coastal communities, and to extend the practice of allocating 20 percent mineral royalty to key stakeholders, including impacted communities, only when oil and gas activities take place onshore.

Though no community has yet made a formal claim of adverse impact, and therefore requested for compensation, there is a high risk that, without appropriate regulatory guidance on how to assess impacts, adverse impacts on PWDs may be overlooked in the assessment.

### **5.1 ANALYSIS OF REVENUE SHARING AND UTILISATION IN THE MINING SECTOR**

As indicated earlier, mineral revenues in Ghana are allocated in accordance with the MDF Act 2016, Act 912, which sets aside 20 percent of mineral revenues for distribution between sector agencies and key stakeholders within impacted mining communities. The remaining 80 percent is spent through the budget.

Prior to its enactment, transfer of districts' share of royalties was done on the basis of an administrative directive. Under the administrative dispensation, the Minerals Development Fund (MDF) received 20 percent of royalties paid to government. The Minerals Commission was designated to manage the Fund, and to disburse 50 percent of it to the Office of the Administrator of Stool Lands (OASL) for onward distribution to beneficiary mining districts. The other 50 percent of the MDF was managed and disbursed for the purpose of supporting Research and Development (R&D) in the mining industry, pursuant to the promotion of its sustainability.

These arrangements remain largely in force under the current Act, except that, the role of the Minerals Commission as the manager of the MDF, has been taken away, and assigned to an MDF Secretariat hosted within the Ministry of Lands and Natural Resources.

The MDF Act was enacted with a clear purpose and in response to citizens' demand. The purpose of the enactment is summarized as follows:

- Provide a legal basis for the disbursement and management of ceded royalties received by government;
- Redress harmful effects of mining on communities;
- Promote local economic development;
- Provide an endowment for the sustenance of the mining industry through support to R&D, and institutional capacity-building in the mining sector.

The overarching goal of the MDF is to promote sustainable extraction, and sustainable development of impacted communities.

In terms of implementation, the Act requires that 20 percent of the royalty collected is sent to the MDF and managed by the MDF Secretariat and its Board. The MDF Secretariat allocates 10 percent to the Office of the Administrator of Stool Lands (OASL) for onward distribution to clearly identified stakeholders as per the Act. The OASL will first take one percent to cover its administrative costs. The remaining nine percent is treated as a whole, and 55 percent distributed to the local assembly to finance the district's development activities. A further 25 percent is distributed to the Stool, and the remaining 20 percent to the Traditional Council.

A further 20 percent of the undisbursed portion of the MDF set aside for promoting industry sustainability (the other 50 percent) is to be allocated to a Mining Community Development Scheme (MCDS) established by the MDF Act. The purpose is to facilitate the socio-economic development of mining communities. Under the scheme, each community will have a Local Management Committee made up of: the DCE or his/her rep, traditional rulers, rep of the local office of mining companies, rep of each company in the district, rep of women's group, rep of youth group. The MCDS are now being established in the mining districts of the country, with the first few to be set up being given seed money of one million Ghana Cedis.

It is indeed progressive that, in composing the Local Management Committee, youth and women were prioritised, but at the same time it is regrettable that, the framers of the law did not find it expedient to include PWDs, who, besides the fact that they are equal stakeholders, are perhaps the most vulnerable, and whose development needs are likely to be overlooked by the scheme.

Again, the Ghana Extractive Industry Transparency Initiative (EITI) has documented several instances of abuses in the utilisation of communities' share of mineral royalties, which deprives PWDs and other vulnerable groups of any benefit from mining. Almost all the Metropolitan, Municipal, and District Assemblies (MMDAs) tend to treat their share of mineral royalties as Internally Generated Funds (IGF) and consequently spend the bulk of it on recurrent expenditure items.

Just as a portion (3 percent) of the District Assemblies Common Fund has been set aside at the local level to cater for the needs of PWDs and their livelihoods, the same rationale could support demands of PWDs for a portion of the MDF disbursed to mining host communities to be allocated to PWDs to create a much bigger pool of resources to take care of their growing numbers and rehabilitation. This is necessary because it appears the most plausible way to ensure that PWDs are not overlooked in the mineral benefit sharing arrangements. In fact, PWDs entitlement to a share of the MDF is based on the equity principle that underpin the MDF Act, and further supported by the fact that, minerals constitute a common heritage of all Ghanaians, including PWDs.

## **5.2 ANALYSIS OF REVENUE SHARING AND UTILISATION IN THE PETROLEUM SECTOR**

The legal framework for management and utilisation of petroleum sector revenues in Ghana is the Petroleum Revenue Management Act 2011, Act 815 and its 2015 amendment Act, Act 893.

The Petroleum Revenue Management Act (PRMA) was subjected to broad national consultation ahead of its passage into law. Some of the issues that came under intense debate were, revenue collection and allocation; how much to spend and how much to save; managing what is allocated for current spending; managing the savings; and citizens access to information on the management of the petroleum revenues.

Eventually, a decision was reached to first, take care of the Ghana National Petroleum Commission - GNPC's equity financing cost, after which GNPC is allocated not more than 55 percent of the Carried and Participating Interest. What is left is treated as a whole, and then 70 percent is allocated to the national budget. The remaining 30 percent is allocated between the Stabilisation and the Heritage Funds in the ratio of 21 percent to 9 percent respectively.

The amount allocated to the national budget is known as the Annual Budget Funding Amount (ABFA),<sup>1</sup> and it is required to be spent in accordance with the country's Medium -Term Development Strategy, aligned with its long-term development plan, or in its absence, give priority to programmes and activities relating to:

- a) agriculture and industry;
- b) physical infrastructure and service delivery in education, science and technology;
- c) potable water delivery and sanitation;
- d) Infrastructure development in telecommunication, road, rail and port;
- e) physical infrastructure and service delivery in health;
- f) housing delivery;
- g) environmental protection, sustainable utilisation and protection of natural resources;
- h) rural development;
- i) developing alternative energy sources;
- j) the strengthening of institutions of government concerned with governance and the maintenance of law and order;
- k) public safety and security; and
- l) provision of social welfare and the protection of Persons with Disabilities and disadvantaged citizens.

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<sup>1</sup> Annual Budget Funding Amount refers to the portion of net oil revenue (maximum of 70%) set aside for spending through the national budget.

A major defect of the provision in respect of expenditure areas to be prioritised is the fact that, even though the intent is to limit the spending areas to ensure a proper focus, an escape window is provided in the opening sentence, to the effect that expenditure areas are not limited to the list provided, and therefore defeating the actual intent. This has been brought to attention and is likely to be addressed through ongoing consultations on amendments to the PRMA.

It is heartwarming to note, and indeed the framers deserve commendation for the fact that, disability needs are prioritized in the list.

Indeed, section 21 (2b) of the Act provides further comfort to the effect that, among others, the use of the ABFA shall be with a view to promote equality of economic opportunity and to ensure the well-being of citizens.

It is however not clear however, as to whether in the face of equal economic opportunity, PWDs can compete. Perhaps the wording should have been "equitable" and not equality, as equity is the proven way to achieve social justice.

Out of the expenditure areas suggested by the PRMA, the Minister for Finance is required to prioritise not more than four expenditure areas in every medium term (three years).

In the first six years i.e. 2011 – 2016, the National Democratic Congress (NDC) government prioritised agriculture, physical infrastructure, Capacity building, and Amortisation of loans.

Currently, the NPP government has prioritised agriculture, railways and other critical infrastructure, physical infrastructure and service delivery in education (Free SHS), and physical infrastructure and service delivery in health, after prioritising these same expenditure areas in its first medium term (2017 – 2019).

Though the 'Provision of social welfare and the protection of PWDs and disadvantaged citizens' category has so far never been prioritised, PWDs have not been completely overlooked in the allocation and spending of petroleum revenues. In 2012, under the 'Capacity Building' category, 5,000 PWDs received training in ICT, at a total cost of GHC10 million, fully funded from the ABFA. Again, in 2015, under Physical Infrastructure and Service Delivery in Education, a total of GHC31,531,764 was spent on feeding grant for schools and institutions for persons with disabilities. This brings total expenditure on PWDs for the two years to GHC41,531,764 out of a total ABFA of GHC1,124,200,214.14 (approximately GHC1.1 billion, representing 2.5 percent of the ABFA for the two years).

Between 2011 and 2016 (6 years) a total of GHC3,306,880,313.00 was allocated and spent as ABFA. The disability component was 1.26 percent for the six years. It is important to understand that this was in spite of the fact that the social welfare and protection of PWDs etc. category was not selected as one of the four priority areas during the period. Again, it must be pointed out that, this was in addition to expenditures, which were not exactly focused on PWDs, but would also benefit them; such as health related expenditures.

**Table 1. ABFA ALLOCATION TO PWDs**

Period	PROJECT	PROJECT COST GH¢	TOTAL ABFA GH¢	% OF TOTAL ABFA
2012	Training 5000 with disabilities in ICT	10,000,000	516,834,831	1.93
<b>Total</b>		10,000,000	516,834,831	1.93
2015	1st term feeding grant for the institutions of the handicapped	2,500,000.00	1,124,200,214.14	
	Payment of feeding grant to the institutions of the handicapped for the 3rd term 2014/2015 academic year	2,000,000.00		
	Payment of feeding grant to the institutions of the handicapped for 3rd term 2014/15 and part payment for 1st term 2015/2016 academic year	3,500,000.00		
	Payment for Feeding Cost for Colleges of Education and Institutions of the Handicapped	23,531,764.00		
<b>Total</b>		31,531,764		
<b>Combined PWD Expenditures for 2012 /15</b>		41,531,764	1,641,035,045.14	2.5

Source: Author's Construct Based on Reconciliation Reports on Petroleum Funds and PIAC Report

Analysis of the implications of a recent Supreme Court decision on the computation of the District Assemblies Common Fund, suggests that PWDs are entitled a share of petroleum revenues outside what the PRMA provides.

The basis of the Supreme Court action, brought by two NDC Members of Parliament, Mr Benjamin Komla Kpodo, the MP for Ho Central, and Mr. Richard Quashiga, MP for Keta, against the Finance Minister's capping of the District Assembly Common Fund (DACF) was Article 252(2) which provides for the allocation of not less than five percent of the total revenues of the country to District Assemblies for local development financing. The prevailing practice, contrary to the provision, exempted foreign loans and foreign grants, non-tax revenue, petroleum revenue paid into the Petroleum Holding Fund under section 3 of the Petroleum Revenue Management Act, 2011 (Act 815) and revenues already collected by or for District Assemblies under any enactment, from the computation.

It appears the practice, from the perspective of petroleum revenues, had been informed by section 3(5) of the PRMA, which states that, the petroleum revenue paid into the Petroleum Holding Fund shall not be a) treated as part of the normal tax revenue for purposes provided for in relevant laws of the Republic; and b) used as the basis for the determination of any statutorily earmarked funds.

The suit therefore sought for the Supreme Court's declaration and proper interpretation of article 252(2) of the Constitution, section 3(2), 3(5) and 7 of the Earmarked Funds Capping and Realignment Act, 2017 (Act 947) and Section 126(2) of the Local Governance Act, 2016 (Act 916) to the extent that they purport to limit the proportion of revenue to be allocated to the DACF to tax revenue and not total revenue, and that, they are inconsistent with, and in contravention of the Constitution and, are therefore null and void.



It also sought the Supreme Court's declaration and proper interpretation of the exclusion of the DACF in disbursement of benchmark revenue from oil operations as provided for under section 3,16 and 21, as well as the First Schedule of the Petroleum Revenue Management Act, 2011 (Act 815) as amended as unconstitutional and therefore null and void.

In its judgment, the Supreme Court held that revenues from which the five per cent must be allocated to the DACF included tax revenues and non-tax revenues paid to the central government, as well as petroleum revenues, which were allotted to support the annual budget.

The court also ruled that, certain revenues, which came into the purse of the central government were not part of the total revenues and, therefore, portions must not be allocated to the DACF.

The exempted revenues include "foreign loans and grants, petroleum receipt paid into the Heritage and the Stabilisation Funds, retained internally generated funds and levies imposed by Parliament for specific purposes under an Act of Parliament".

If ABFA allocations are to be factored into the computation of the DACF, as directed by the Court, the effect will be an increase in DACF allocations and therefore a proportionate increase in the nominal value of the three percent assigned to PWDs.

#### **5.2.1 OPPORTUNITIES FOR PWDS ENGAGEMENT ON RESOURCE GOVERNANCE ISSUES**

The 2017 Resource Governance Index<sup>2</sup> ranked Ghana's petroleum sector, the best managed in Africa, and 13th best in the world. This is largely on account of the elaborate transparency and accountability provisions in the petroleum sector laws, and opportunities for citizens' participation in the governance arrangements in the sector.

It cannot be said, however, that Ghana's extractive sector is entirely inclusive, from a governance perspective. Access to information on the sector for some categories of PWDs, particularly the visually, and hearing impaired, is heavily constrained. The Ghana Extractive Industry Transparency Initiative reports are not accessible to this category of PWDs. Besides, stakeholder consultations often do not prioritise the participation of PWDs.

The PRMA created an additional non-partisan citizens oversight committee, the Public Interest and Accountability Committee (PIAC), to monitor the implementation of the Act, and to ensure citizens' access to information on the management and use of petroleum revenues. The Committee is made up of 13 members of various identifiable social groups in Ghana including Traditional Authorities, Queen Mothers, CSO/CBOs, Ghana Bar Association, Faith Based Groups, Trade Associations, Organized Labour, the Accounting Fraternity, and the Ghana Journalists Association. Regrettably, the Associations of PWDs were overlooked in determining the composition of the Committee. Because of the absence of PWDs on the Committee, it has not been minded to produce copies of its reports in visual formats, and with sign language or in braille to broaden access to PWDs. As a result, PWDs have not had the opportunity to be consulted or make input into spending decisions around the ABFA, even where the expenditure is for their benefit.

<sup>2</sup> This index measures the quality of resource governance in 81 countries that together produce 82 percent of the world's oil, 78 percent of its gas and a significant proportion of minerals, including 72 percent of all copper. The Resource Governance Index is a global initiative that assesses the quality of natural resource governance in 81 countries, that together produce 82 percent of the world's oil, 78 percent of its gas and a significant proportion of minerals, including 72 percent of all copper.

## 6.0 FINDINGS AND OBSERVATIONS

Generally, Ghana has made some progress towards ensuring an inclusive and democratic society, where the rights of all its citizens are not only respected but actively promoted.

The passage of the Persons with Disability Act in 2006 and Ghana's ratification of the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol, in March 2012, marked a watershed in the country's efforts at promoting social inclusivity. It heralded the formulation and adoption of a National Social Protection Strategy (NSPS) in 2007, within which framework the Livelihood Empowerment Against Poverty (LEAP), a social grant for the poorest and most vulnerable in society was implemented.

This Disability Audit of Ghana's Extractive Sector, has however revealed areas where some gap filling and further improvements in the sector's responsiveness to the needs of PWDs would be desirable. These are:

1. Incoherence between policy and legislation. To address the inequitable access to livelihood and employment opportunities faced by PWDs, Article 29(7) of the 1992 Constitution requires special incentives to be given to Persons with Disabilities engaged in business, and also to business organisations that employ Persons with Disabilities in significant numbers. The analysis revealed that, incentives are not being promoted through sector legislations to encourage employers to consider employing PWDs.
2. Even though Guiding Principle No. 17 of Ghana's Minerals and Mining Policy requires among others, the respect for rights of all, and the removal of obstacles to participation in the mining sector on the basis of gender, marital status or disability, the operating law (Minerals and Mining Act, 2006, Act 703) does not reflect this principle, and in practice, there is no evidence of barriers to PWDs' participation being identified and removed.
3. The incoherence between the mining sector policy position on PWDs and the provisions of the Minerals and Mining Act may not be deliberate, as the law preceded the policy and couldn't have envisaged the policy positions at the time it was passed.
4. The extractive industries laws do not clearly articulate or reference the provisions of the Persons with Disability Act, 2006 and the CRPD, resulting in general non-compliance with the Disability Policy and Legislative Framework in the sector.
5. Both the Minerals and Mining Policy, and the Oil and Gas Policy offered opportunities for skills training and acquisition for all Ghanaians, but in practice appropriate and industry relevant training for PWDs are not prioritised.
6. In seeking to establish how the state intends to pursue the determined policy positions, the primary Act for the sector, the Petroleum (Exploration and Production) Act, 2016, Act 919 was analysed,

and just like in the Minerals and Mining Act, no mention is made of PWDs and how to ensure their participation in the industry, or their access to an equitable share of the benefits of extraction.

7. While the decision to include youth and women in the composition of the Local Management Committees to manage the Mining Community Development Scheme is commendable, it is regrettable that, the framers of the law, did not find it expedient to include PWDs, who, besides the fact that they are stakeholders, are perhaps the most vulnerable, and whose development needs are likely to be overlooked by the scheme.
8. There are no guidelines to the MDF, requiring MMDAs to consider the needs of PWDs in the utilization of communities' share of mineral royalties.
9. Though the ABFA expenditure priority list includes PWDs and other vulnerable groups, the PWD related expenditure category has never been selected in the last 10 years of oil production.
10. The injunction imposed by section 21(2b) of the PRMA to the effect that, among others, the use of the ABFA shall be with a view to promote equality of economic opportunity and to ensure the well-being of citizens, though well intended, may not promote social justice.
11. Though the 'Provision of social welfare and the protection of persons with disabilities and disadvantaged citizens' category has so far never been prioritised, PWDs have not been completely overlooked in the allocation and spending of petroleum revenues. In 2012, under the 'Capacity Building' category, 5,000 PWDs received training in ICT, at a total cost of GHC10 million, fully funded from the ABFA. Again, in 2015, under Physical Infrastructure and Service Delivery in Education, a total of GHC31,531,764 was spent on feeding grant for schools and institutions of PWDs. This brings total expenditure on PWDs for the two years to GHC41,531,764 out of a total ABFA of GHC1,124,200,214.14 (approximately GHC1.1 billion, representing 3.69 percent of the ABFA for the two years).
12. If ABFA allocations are to be factored into the computation of the DACF, as directed by the Supreme Court, the effect will be an increase in DACF allocations and therefore a proportionate increase in the nominal value of the three percent assigned to PWDs.
13. Access to information on the sector for some categories of PWDs, particularly the visually, and hearing impaired is heavily constrained. Both the GHEITI and PIAC reports are not accessible to this category of PWDs. Again, stakeholder consultations in the sector often do not prioritise the participation of PWDs.
14. Regrettably, the Associations of PWDs were overlooked in determining the composition of PIAC, an additional public oversight body that monitors and reports on the management and use of petroleum revenues in Ghana. Because of the absence of PWDs on the Committee, it has not been minded to produce copies of its reports in braille for example, to broaden access to PWDs. As a result, PWDs have not had the opportunity to be consulted or make input into spending

## 7.0 RECOMMENDATIONS

The following recommendations by way of remedial actions and required advocacy interventions are put forward for consideration by stakeholders in the sector, including the PWD fraternity:

1. To address the incoherence between policy, legislation and practice, extractive sector laws should reference policy commitments and actively promote them. The PWD fraternity and allies should seize upon the ongoing revision of the Minerals and Mining Act, to advocate for the inclusion of fiscal incentives to encourage employers to consider employing more PWDs.
2. Again, government must properly sequence the governance frameworks for the sector. Policies should always precede legislation in order to ensure that the law adequately operationalizes the policy intent.
3. To ensure that PWDs have access to opportunities in the extractive sector, there will be the need to advocate for the assignment of quota in appropriate fields to PWDs, when selecting persons for appropriate training.
4. To ensure that the needs and aspirations of PWDs are not overlooked in the management and use of resources accruing to the MCDS, opportunity should be created for them to be represented on the Local Management Committees. This will be fair and consistent with the rationale for including women and youth in the composition of the Committee.
5. To promote equity in the use of the MDF at the local level, guidelines should be developed to among others, require MMDAs to consider the needs of PWDs in the utilization of communities' share of mineral royalties. Equity in revenue allocation and utilization, if pursued, would leverage resources for developing further employment opportunities for PWDs in the industry value chain.
6. PWDs and their allies should consider advocating for a share of the MDF disbursed to MMDAs on grounds of equity, and just as is done in the case of the DACF. The advocacy should be rooted in the fact that, minerals constitute a common heritage of all Ghanaians, including PWDs.
7. To get the disability category of the ABFA priority list selected for ABFA spending in future, PWDs should make submissions to the Ministry of Finance during the review cycle and mobilise public opinion in support of their demands. For instance, small percentage of ABFA can be committed to supporting effective implementation of Ghana's Inclusive Education Policy for the benefit of all children regardless of their disability and gender. Or to refurbish, resource and run the existing dilapidated and abandoned Limb Fitting Centres in the regions, for the benefit of PWDs. Or to resource and establish Regional Offices of the National Council on Persons with Disabilities to effectively carry out its constitutional mandate for PWDs.
8. The injunction imposed by section 21(2b) of the PRMA to the effect that, among others, the use of

the ABFA shall be with a view to promote equality of economic opportunity, ought to be changed to emphasise 'equity' instead of equal opportunity, as PWDs may not be able to compete in the face of equal economic opportunity.

9. While acknowledging that PWDs have not been entirely neglected in the allocation and spending of the ABFA, it is important to seek their input into spending decisions where the expenditure is being incurred in their name and for their good.
10. Following the Supreme Court ruling on the computation of the DACF, PWDs are expected to see an increase in their share of the DACF. It will be important to monitor implementation of the Court's decision, and to ensure that PWDs receive their due.
11. Access to information on the extractive sector can be improved by advocating for the production of reports and other useful information in disability-friendly formats. This will equip PWDs to be able to effectively engage in the sector discourses.
12. Again, stakeholder consultations in the sector should be inclusive of PWDs as a matter of routine.
13. The PWD fraternity have an opportunity of a life time to be represented on PIAC. The group is therefore encouraged to make representations to the Ministry of Finance and to take advantage of the ongoing revision of the PRMA to have them included in a reconstituted Committee. Indeed, the population of PWDs are by far larger than some of the constituencies represented on the Committee.
14. As part of Corporate Social Responsibilities (CSR) in the extractive sector, mining and oil and gas companies should be engaged to commit small percentage of their respective CSR to support the educational, health and other social needs of PWDs including procurement of their assistive and mobility devices. The Minerals Commission for instance, can help by reflecting this need in its guidelines for the design and implementation of CSR in Ghana's mining sector, while the Petroleum Commission is encouraged to develop such guidelines.

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