



VOICE GHANA

A VOICE Ghana Initiative

P O L I C Y B R I E F

On Promoting an Inclusive Extractive Industry in Ghana: Required Policy and Legislative Changes





CONTEXT

Ghana has a thriving mining, oil, and gas (extractive) sector. In 2018, the country overtook South Africa as Africa's leading producer of gold. In that same year, its GDP grew by 6.3 percent, with mining accounting for as much as 5 percent.

Minerals export accounted for 42.7 percent and 37.7 percent of the total merchandise export in 2017 and 2018 respectively¹, and it is estimated that, mining alone provided some 26,000 direct and indirect jobs as of June 2019².

Oil is also growing in importance to the Ghanaian economy. Between 2011 and 2018, the country produced 315,021,308 barrels of oil, which translated into US\$4.97 billion in revenues to the state, and constituted about eight percent of total government revenue for the period. Because most of the oil production activities take place offshore on a Floating, Production, Storage, and Offloading (FPSO) facility with limited space, its employment potential, compared to mining is rather modest.

Regrettably, opportunities in these thriving industries are not accessible to people with disabilities.

One would have thought that, the adoption of the International Covenant on Economic, Social and Cultural Rights (ESCR) in 1966, which expanded the scope of fundamental human rights beyond political and civil rights, to include the right to decent work, an adequate standard of living, housing, food, water and sanitation, social security, health, and education; would have paved way for the frontal redress of the economic and social marginalisation that people with disabilities face.

The ESCR enjoins UN member states to create an enabling environment for their citizens to be able to

access the rights covered by the ESCR framework.

Even though Ghana signed on to the Covenant, and ratified it after 34 years of its adoption by the UN, the country's 1992 Constitution appears to have taken some inspiration from it, as the Constitution 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 and educational imbalance in the Ghanaian society. Since September 2000 when Ghana acceded to the UN Covenant, it has taken steps to implement its provisions, albeit at a slow pace. Indeed, the ratification of the United Nations Convention on the Rights of Persons with Disabilities in 2012, gave further impetus to the country's efforts. Some notable policies and programmes that Ghana has initiated in its effort to build a rights-based, inclusive society 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 percent deducted from the District Assembly Common Fund, in 2005,
- The enactment of the Persons with Disability Act, 2006, (Act 715), which provides for the rights of persons with disability to employment, education, access to public transportation, healthcare, and public facilities,
- The enactment of the Mental Health Act, 2012, (Act 846), which provides for the rights and welfare of people with mental health conditions

¹GHEITI 2017 / 2018 Reconciliation reports

²www.ghanaweb.com/GhanaHomePage/business/Over-26-000-employed-in-mining-sector-as-at

and psychosocial disabilities, to access affordable mental health care service, employment, and education among others,

- 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.

Despite the remarkable progress made towards reducing inequalities in Ghana, people with disabilities including people with mental health conditions, continue to face enormous challenges in accessing economic opportunities. As already

noted, the extractive industry is one economic sector that has remained inaccessible to people with disabilities, regardless of their qualifications and competences. This is largely due to a gap between the laws on disability and the laws governing this particular sector of the economy.

A Disability Audit conducted by VOICE Ghana in 2020, provided a great deal of insight into this challenge, and why it persists. It is hoped that this Brief will shed some light on the problem and offer recommendations for remedying the situation, as Ghana pushes ahead with its social inclusion agenda.



The Problems, as identified by VOICE Ghana's Study

Key informants, who provided input into the VOICE Ghana's Disability Audit Report suggested that, there has been no conscious effort at employing people with disabilities in the sector, because the industry is generally considered hazardous, and therefore not disability friendly. They cited the fact that 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 ore-processing, to justify the situation.

In the case of oil and gas, they similarly explained that 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, they argued that 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.

These explanations can be deemed as lame, because the 17th Guiding Principle 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 problem however is that, the operating law (Minerals and Mining Act, 2006, Act 703) does not reflect this principle, and in practice, there is no evidence of barriers being identified and removed to foster active participation of people with disabilities in the sector.

Again, there are certain roles and job functions

across the extractive industry value chain that are not hazardous and can therefore accommodate people with disabilities. These are mainly administrative functions either within the mining, oil and gas companies, or within the relevant Ministries, Departments, and Agencies (MDAs). Besides, some categories of disability such as persons with hearing impairment, persons with hearing impairment and some persons with physical disability, can also work as welders, metal fabricators, and can operate forklifts and excavators, among others. Some can also provide logistical services to the industry.

Further analysis of the barriers to the participation by people with disabilities in the extractive industry, revealed several other instances along the industry value chain, where the rights of people with disabilities are overlooked, mostly, because of some incoherence among the Constitution, sector policy, legislation, and practice.

For instance, even though Article 29(7) of Ghana's 1992 Constitution requires special incentives to be given to people with disabilities engaged in business, and to business organisations that employ people with disabilities in significant numbers, the reality is that the incentives are not being promoted through sector legislations to encourage employers to consider employing people with disabilities.

The incoherence between the mining sector policy position on people with disabilities, and the provisions of the Minerals and Mining Act, 2006, Act 703 may not be deliberate, as the law preceded the policy and couldn't have envisaged the policy positions at the time it was passed.

OTHER PROBLEMS IDENTIFIED:

Participation of People with Disabilities in the Operations of the Extractive Industry

- The extractive industry laws do not clearly articulate or reference the provisions of the Persons with Disability Act, 2006 and the Convention on the Rights of Persons with Disabilities (CRPD), resulting in general non-compliance with the disability policy and legislative framework in the sector.
- Both the minerals and mining, and the oil and gas policies offer opportunities for skills training for all Ghanaians, but in practice appropriate and industry relevant training for people with disabilities are not prioritised.
- Just as in the mining sector, the Petroleum (Exploration and Production) Act, 2016, Act 919, was found to be silent on people with disabilities, and how to ensure their participation in the industry.



MANAGEMENT AND USE OF EXTRACTIVE REVENUES

Several of the rules and arrangements in respect of the management and use of natural resource revenues in Ghana were found in the Disability Audit Report to have overlooked the interest of people with disabilities.

- For instance, while the decision to include youth and women in the composition of the Local Management Committees (LMC) to manage the Mining Community Development Scheme (MCDS) is commendable, it is regrettable that, the framers of the law, did not find it expedient to include people with disabilities, who are perhaps the most vulnerable stakeholders in the communities, and whose development needs are likely to be overlooked by the scheme without prompting.
- There are no guidelines to the MDF, requiring Metropolitan, Municipal and District Assemblies (MMDAs), to consider the needs of people with disabilities in the utilization of communities' share of mineral royalties.
- On the oil side, though the Annual Budget Funding Amount (ABFA) expenditure priority list includes people with disabilities and other vulnerable groups, the disability related expenditure category has never been selected in the last 10 years of oil production.
- The injunction imposed by section 21(2b) of the Petroleum Revenue Management Act (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, as vulnerable groups, such as people with disabilities may not be in a position to compete favourably under equal opportunities.
- Access to information on the sector for some categories of disability, particularly persons with visual impairment, is heavily constrained. Both the Ghana Extractive Industry Transparency Initiative (GHEITI) and the Public Interest and Accountability Committee (PIAC) reports are not accessible to this category of people with disability. Again, stakeholder consultations in the sector often do not prioritise the participation of people with disabilities.
- Regrettably, Organisations of Persons with Disabilities (OPWDs) were overlooked in determining the composition of PIAC, in spite of the fact that, the population of people with disabilities are by far larger than some of the constituencies represented on the Committee. Though this may have been an oversight, it flies in the face of Government's social inclusion agenda for as long as the situation remains.



REQUIRED POLICY AND LEGISLATIVE CHANGES:

Participation of People with Disabilities in the Operations of the Extractive Industry

It is abundantly clear that most of the barriers to the participation of people with disabilities in Ghana's extractive sector can only be addressed through policy and legislative reforms. First, it is important to review the Minerals and Mining Policy of Ghana, and to ensure that all its provisions in respect of disability, are reflected in the operating law. For instance, in keeping with the spirit and letter of Policy Principle, No. 17 of the Ghana Minerals and Mining Policy, 2014, and in furtherance of Ghana's inclusive development agenda, we propose an insertion in the Minerals and Mining Act (currently under revision) to read: "as much as practicable, all mining companies and their subsidiaries, operating in Ghana, shall take steps to identify and remove any potential barriers to the employment of people with disabilities in their operations."

A further recommended insertion either on its own or as a subsection to the requirement to identify and remove barriers to participation of people with disabilities in the industry, should read: "All mining companies, their agents, and subsidiaries shall disclose their disability inclusive policy by way of a statement, in all their job adverts."

To ensure that, people with disabilities can acquire relevant skills for the industry or to upgrade same, all trainings should take into consideration the peculiar needs of people with disabilities. To this end, an insertion that reads: "All mining companies, their agents and subsidiaries, shall assign quotas in appropriate fields to people with disabilities, when selecting persons for skills training, and take into account, the needs of people with disabilities in

planning and delivering their skills training programmes".

Similar insertions should be made in the (Petroleum Exploration and Production) law, to ensure consistency in the applicable rules in both mining and petroleum activities.

Participation of People with Disabilities in Revenue Management and Utilisation

Just as women and youth are represented on the Local Management Committee (LMC) of the Mining Community Development Scheme (MCDS), it will help to advance the interest of people with disabilities to have them represented on this committee too. This will require an amendment by insertion into Section 19 of the MDF Act, 2016 (Act 978), to add people with disabilities to the formula for the composition of the LMC.

Again, 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 people with disabilities 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 people with disabilities in the industry value chain. It is understood that, draft guidelines have been developed but not yet finalized. This affords the opportunity to address this concern without going through a cumbersome process. Alternatively, people with disabilities and their allies should consider advocating for a share of the MDF, just as it's done in the case of the District Assembly Common Fund (DACF).

The Minister for Finance, is entreated to consider selecting the disability category of the ABFA priority list in his next review cycle. 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 persons with physical disability or for procurement of adequate psychotropic medications for people with mental health conditions and psychosocial disabilities. Additionally, it can be used to adequately resource the National Council on Persons with Disabilities and the Mental Health Authority, to effectively carry out their constitutional mandate for people with disabilities including people with mental health conditions.

To ensure that people with disabilities are able to access economic opportunities that arise out of the ABFA expenditure, it is proposed that section 21(2b) of the PRMA be amended to read: "the use of the ABFA shall be with a view to promote equitable access to economic opportunity," instead of equal opportunity.

To enable people with disabilities, particularly, persons with visual impairment to participate meaningfully in public discourses around natural resource governance in Ghana, GHEITI and PIAC are entreated to publish copies of their reports in braille and other accessible formats. Besides, the Ministry of Finance is encouraged to take advantage of the ongoing revision of the PRMA to add people with disabilities to the list of constituencies represented on PIAC.

CONCLUSION

There are current opportunities that may be leveraged to fix most of the identified problems in the short term, while a few others could be dealt with in the medium to long term.

First is the ongoing efforts to overhaul the Minerals and Mining Act, 2006 (Act 703), which is the appropriate vehicle for addressing most of the mining related concerns. Unfortunately, the disability fraternity did not receive invitation to any of the stakeholder consultations that the Minerals Commission organized in 2019 and 2020.

Second is the proposed revision of the Petroleum Revenue Management Act, 2011 (Act 815) with its 2015 amendments. Though, the process began in the late 2019, the proposed changes have not yet been sent to cabinet. This affords the opportunity to address a lot of the concerns raised in this Brief.

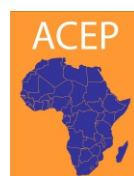
VOICE Ghana and its partners, have put together this Brief as their contribution to promoting an inclusive, rights-based society, and they hope the

opportunity to discuss the issues laid bare in this Brief, would be discussed dispassionately in pursuit of social justice, and our collective well-being. The Policy Brief forms part of a bigger project, dubbed "#GetUsIncluded", being implemented by VOICE Ghana with funding support from the Africa Centre for Energy Policy (ACEP), which works to influence energy sector policies in Africa. The project is intended to promote diversity, equity, and social inclusion in Ghana.

VOICE Ghana was established in 2002, and is headquartered in Ho, Volta Region. It 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 people with disabilities including people with mental health conditions in Africa, particularly Ghana, through research, policy advocacy, and public consultations.



Supported by ACEP



**Africa
Centre for
Energy Policy**

**Voice of People with
Disability Ghana (VOICE Ghana)**

P.O. Box HP 843,
Ho - Volta Region

Tel: 0207984633

Email: info@voiceghana.org /
voiceghana1@gmail.com

Website: www.voiceghana.org