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“Growth in West Africa: impacts of extractive industry on women’s economic empowerment in Cote d’Ivoire & Ghana”

“Women’s Economic Empowerment and the Regulatory Framework for Extractives in Ghana”

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ABSTRACT

Women are often regarded as the linchpins of their communities, with key roles in ensuring the upkeep of the family unit, and addressing issues concerning the well-being of all persons in the societies they live in. Across communities and industries, women take up the role of assuring their participation is not only essential for their own development, but also for the socio-economic development of the larger unit. Despite this, women are often not given the opportunity to contribute to the development of the major sectors and industries that are considered the most crucial to society. Whether it be governance or representation in the mining or oil and gas industries, women are disproportionately marginalized in areas that men have identified as key to their retention of the ultimate patriarchal power of shaping the future. The year 2015 marked a defining moment and a turn in the global development effort with the adoption of the Sustainable Development Goals (SDGs) in September. Of particular interest is Goal 5, which bears the crucial aim of achieving gender equality and empowering all women and girls. In as much as the world view of extractives is turning and a larger focus is being placed on renewable forms of energy, oil undeniably still runs world affairs – not to mention the continuing value of gold and other precious minerals. Thus, the continued exclusion of women from these industries is at odds with the aims of empowering women and giving both genders equal opportunity. Aside what is fair and equitable, the benefits of the economic empowerment of women extend far beyond gender equality and impact on the global economy. Women represent a vast and untapped cache of fresh perspectives and innovative solutions to much of the challenges that we face in the extractive sector. It is therefore in the best interest of all concerned to have a proper appreciation of what is being done and what more can be done to empower women in that sector.

Keywords: Ghana • Women in Extractive Sectors • Regulatory Framework

1. INTRODUCTION

As far back as the colonial era, gold, bauxite, manganese, and other minerals have been extracted from Ghana's soil, earning the nation its reputation as favoured with an abundance of natural resources, and its former name, the "Gold Coast". In the 1970s, the country acquired a new wealth of natural resources upon the discovery of commercial quantities of offshore oil reserves. Ghana was quick to begin exploration and plans for production of oil in commercial quantities, and the Military Government of the day enacted legislation to govern all aspects of oil exploration. The second commercial find of oil in 2007 resulted in significant addition to the laws regulating the petroleum sector and a significant revision to most of the existing laws that regulate the extractive sector in the country.

Centuries of mining, a decade of pumping out oil, and after multiple changes in governments that have claimed to champion women's rights and economic empowerment, the extractive sector is still disproportionately male-dominated. It is safe to assume that in the excitement of reaping oil benefits and claiming riches from mining, not enough attention has been given to employment and labour issues in the extractives industries, especially with regard to women. And in the revelry of the collective gains Ghanaians as a whole were sure to experience, the importance of ensuring women's economic empowerment was overlooked.

This report will examine the legal and regulatory framework that governs the extractive sector in Ghana, as well as employment and labour issues – particularly as they affect the economic empowerment of women. The report will consider whether the legal and regulatory framework of Ghana provides any direct or indirect economic empowerment for women in the sector; whether there are opportunities to ensure that the legal and regulatory framework actually empowers women in the sector; and whether there are any limitations or barriers to the goal of having a legal and regulatory framework in the sector that empowers women. Before we turn to these however, it is important to examine who owns these extractive resources under Ghana's law.

2. OWNERSHIP OF NATURAL RESOURCES

The 1992 Constitution of Ghana vests all natural resources in their natural state in the President in trust for the people of Ghana.³ No private person can thus have access or be engaged in the extraction of minerals without authorisation from the President or his representative in government. This is so even if the mineral or natural resource is found on land belonging to an individual citizen or a group of persons. Thus, in Ghana, the maxim "*cuius est solum eius est usque ad coelum et ad inferos*"_does not apply where minerals are concerned. The maxim loosely translates to "whoever owns the soil, owns everything all the way to Heaven and all the way to Hell". However, in respect of minerals in their natural state, the Ghanaian Constitution

³ 1992 Constitution of Ghana, Article 257(6)

disrupts the rights of the owner and places the minerals in the care of the President to be held in trust for all the people of Ghana. As an extension of the constitutional adjustments made to the common law rules of ownership of what is found in the land, the legal Latin maxim “*quicquid plantatur solo solo cedit*” is equally not applicable where minerals are concerned. Ordinarily, the operation of the maxim would have entailed that anything that is attached to the land becomes part of the land and by reason of its attachment to the land, that thing would have been the property of the land owner. The Constitution has, however, made that an impossibility where minerals are concerned. The Supreme Court emphatically affirmed this position when it stated that, “*minerals in stool land are not part of the land.*”⁴

In the above case, the Plaintiffs had argued that since the Constitution of Ghana vests stool lands of the appropriate stools in trust for their subjects, they were entitled to royalties paid by extractive companies. The Court held that as the Constitution vests these minerals in the President as a trustee, and “[s]ince it is the Trustee that administers the Trust property it is the President, being the Trustee of minerals in their natural state who should administer the same, ...on behalf of, and in trust for the people of Ghana”.⁵

In order to extract these minerals which are the property of the Republic of Ghana, the Minerals and Mining Act, 2006⁶ and the Petroleum (Exploration and Production) Act, 2016⁷ authorise the compulsory acquisition or occupation, by the Government of Ghana, of any land for the purposes of extracting minerals. This acquisition or occupation is however subject to the prompt payment of fair and adequate compensation and the re-settlement of persons who may be displaced by such acquisition, on suitable alternative land with due regard for their economic well-being and social and cultural values.⁸ In Ghana, this often benefits men who are predominantly the land-owning gender.

The trust position of the President has however been held not to be enforceable by private citizens. Thus, although the President holds the land in trust for the people of Ghana, this trust cannot be enforced against the President by the beneficiaries so as to compel him to act in a certain manner. It has been described to be a trust in the higher sense of the term not enforceable by the beneficiaries.⁹

To ensure that the interest of the people of Ghana for whose benefit the minerals are vested in the President is protected, the Constitution requires that any transaction or undertaking involving the grant of a right over a natural resource be subject to Parliamentary ratification.¹⁰ Any such

⁴Okofe Sobin Kan and Others v Attorney General and Others, WRIT No. J1/2/2012. At p.11

⁵ Ibid.

⁶Minerals and Mining Act 2006 (Act 703), s.2

⁷ Petroleum (Exploration and Production) Act 2016 (Act 919), s.72(2)

⁸1992 Constitution of Ghana, Article 20(2) and (3); see also Kpobi Tetteh Tsuru v Attorney General [2010] SCGLR 904 at 957 – 958

⁹Adjaye v Attorney General (Unreported), Suit No. C144/94 dated 30th March 1994, High Court per Aryeetey J.; Tito v Waddell (No. 2) [1977] Ch 106

¹⁰1992 Constitution of Ghana, Article 268

agreement which does not receive ratification will therefore be void,¹¹ unless Parliament by a resolution exempts such transaction from the requirement of ratification.¹² The Constitution also provides for the establishment of Commissions to manage and regulate the utilisation of Ghana's natural resources.¹³

3. ECONOMIC EMPOWERMENT OF WOMEN WITHIN GHANA'S LEGAL FRAMEWORK

3.1 Protection of the Economic Rights of Women Under the 1992 Constitution of Ghana

The 1992 Constitution of Ghana contains several general provisions on employment and the rights of women. Most of these provisions appear under Chapter Five of the Constitution, which contains provisions on fundamental human rights. The rights enumerated within the Chapter are generally only enforceable by persons whose rights have been, are being, or are likely to be breached¹⁴ - except where one seeks to enforce such rights in the public interest.¹⁵ As the Constitution serves as the supreme law of the nation, this feature serves as an archetype to which all other legislation affecting the lives of women and their conditions of employment must conform.

Article 24 of the Constitution guarantees equal economic rights for all persons. It must be emphasised that the economic rights guaranteed here are equal for all persons, both men and women. Though it is not a provision which speaks specifically to women's rights, nor directly to the extractive sector, it is one upon which women can comfortably stand to claim equal opportunity and treatment in that extractive sector. To be clear, the provision does not guarantee the right to work per se. What it guarantees is the right to work under satisfactory, safe and healthy conditions, and the right to receive equal pay for equal work done. In *Ghana Lotto Operators Association v National Lottery Authorities*¹⁶ the Supreme Court of Ghana recognised the non-existence of the right to work in Chapter Five and would have likely imported it into the Constitution under the omnibus provision in Article 33(5)¹⁷ if sufficient justification had been established for such importation. The Court stated that:

¹¹Attorney General v Faroe Atlantic Co. Ltd [2005 – 2006] SCGLR 271; Attorney General v Balkan Energy [2012] 2 SCGLR 998; Amidu v Attorney General, Waterville and Woyome (No.1) [2013 – 2014] 1 SCGLR 112 and on review in (No. 2) [2013 – 2014] 1 SCGLR 606; Amidu v Attorney General and Isofoton (No. 1) [2013 – 2014] 1 SCGLR 167

¹² 1992 Constitution of Ghana, Article 268(2)

¹³1992 Constitution of Ghana, Article 269(1)

¹⁴1992 Constitution of Ghana, Article 33(1)

¹⁵Adjei-Ampofo v Accra Metropolitan Assembly [2007 – 2008] 1 SCGLR 611; Federation of Youth Associations of Ghana (FEDYAG) v Public Universities of Ghana [2010] SCGLR 265

¹⁶[2007 – 2008] SCGLR

¹⁷ Article 33(5) of the 1992 Constitution of Ghana allows for the inclusion and protection of rights which are not explicitly enumerated in Chapter 5 of the Constitution but are inherent in a democracy and intended to secure the freedom and dignity of man.

The right to work may be a human right that international human right instruments recognize... However, the plaintiffs do not show with any clarity the extent to which such a right should be imported into Ghanaian law.

The right protected by Article 24(1) may be put in two forms:

1. The right to a safe, healthy and satisfactory working environment; and
2. The right to receive equal pay for equal work done without distinction of any kind. The first right enjoins employers to ensure that the environment provided for work is suitable for that type of work and poses no hazard to the employee, taking into consideration the special needs of the employee in question. These considerations must be carefully made, especially in the case of female employees. Where, for instance, the presence of other employees poses some threat to a particular employee so as to inhibit her work and force her out of work, the employer will be deemed to have breached the employee's right to work.

In *Commission on Human Rights and Administrative Justice v Norvor*¹⁸ the respondent was alleged to have sexually assaulted the complainant, a female worker on several occasions. The court held that such sexual harassment amounted to a breach of the right to a safe working environment. The Court reasoned thus:

*I have endeavoured to say that sexual harassment constitutes a violation of fundamental human rights. When carried out in the workplace, it creates a hostile and offensive environment for members of one sex. It makes the working place demeaning, disconcertingly harsh, for a female employee has to contend with sexual demands. Nothing is more worrisome than for a woman to always go to work with the fear of having to contend with importunate sexual demands from a person she has no liking or love for hanging around her neck. It creates unnecessary fear, tension, anxiety, embarrassment, humiliation and the lowering of the person's self-esteem. The combined effect of all this is that the person's fundamental right to work in a conducive atmosphere is violated.*¹⁹

The other aspect of the right protected under Article 24 deals with discrimination. It prohibits different payments for persons doing the same type or amount of work. Thus, where two or more people do work of the same nature, they are entitled to equal pay irrespective of gender or some other consideration. It is instructive to note that aside the prohibition from discrimination with respect to economic rights, the Constitution generally prohibits discrimination based on gender.²⁰ Thus, a person may not use gender as a ground to either refuse to employ a person, or for wage discrimination. The provision admits some exceptions, including redressing social and economic imbalances.

¹⁸[2001 – 2002] 1 GLR 78

¹⁹ Commission on Human Rights and Administrative Justice v Norvor [2001 – 2002] 1 GLR 78 at 91

²⁰1992 Constitution of Ghana, Article 17

Despite the above, the Ghanaian courts have taken the view that not every differential treatment of persons based on some considerations will amount to discrimination. In the view of the Court, a certain amount of discrimination is inherent in society and cannot be dealt with, and such discrimination may be lawful. In *Nartey v Gati*,²¹ the Supreme Court explained this as follows:

To our mind, it is clear what article 17 does not mean. It certainly does not mean that every person within the Ghanaian jurisdiction has, or must have, exactly the same rights as all other persons in the jurisdiction. Such a position is simply not practicable. Soldiers, policemen, students and judges, for instance, have certain rights that other persons do not have. The fact that they have such rights does not mean that they are in breach of article 17. The crucial issue is whether the differentiation in their rights is justifiable, by reference to an object that is sought to be served by a particular statute, constitutional provision or some other rule of law. In other words, article 17(1) is not to be construed in isolation, but as part of article 17. This implies that the equality referred to in article 17(1) is in effect freedom from unlawful discrimination. Article 17(2) makes it clear that not all discrimination is unlawful. It proscribes discrimination based on certain grounds. The implication is that discrimination based on other grounds may not be unlawful, depending on whether this Court distils from article 17(1) other grounds of illegitimate discrimination which are not expressly specified in article 17(2).

Similarly, in *Asare v Attorney General*,²² the Supreme Court stated:

the mere fact that “sole” citizens and dual citizens are treated differently is not necessarily a breach of article 17 of the Constitution. The determinative issue is whether the differentiation in their rights is constitutionally justifiable by reference to the object that is sought to be served by the Constitution of the Republic of Ghana (Amendment) Act, 1996 (Act 527) In short, inequality in rights simpliciter is not a sufficient basis for declaring the unconstitutionality of the rights complained of. One needs to undertake a further inquiry.

To be able to show that different treatments given to different persons amounts to unlawful discrimination therefore, it must be shown that such discrimination is arbitrary or unreasonable. The Court reasoned that no two human beings are the same and accordingly, to treat all human beings equally will result in inequality. It however recognised that to treat equals unequally will also amount to unlawful discrimination. This is so because the concept of equality requires that equals are treated equally, while ‘unequals’ are treated unequally. In *Nartey v Gati*²³ it stated that:

Accordingly, it is widely recognized that equality before the law requires equal treatment of those similarly placed, implying different treatment in respect of those with different

²¹[2010] SCGLR 745

²²[2012] 1 SCGLR 460

²³Op.cit, note 19.

characteristics. In simple terms, equals must be treated equally, while the treatment of unequals must be different. The law must be able to differentiate between unequals and accord them the differentiated treatment which will result in enabling them, as far as practicable, to attain the objective of equality of outcomes or of fairness. In effect, equality of opportunity will often entail the law treating people differently in order to give them a fighting chance of attaining equality of outcomes or of fairness.

It is axiomatic that men and women are legally equal in all respects. However, the biological make-up of the two sexes, for example, are different, such that on the authority of the above cases, it may not be unlawful to provide differential treatment to men and women based on their biological characteristics. The decisions of the Supreme Court seem to imply that there is justifiable room for discriminating against women, for example, in certain sectors of work, thus limiting their opportunities for economic empowerment in those fields. Such discrimination is especially likely in extractives, where a greater prevalence of manual labour and a mistaken assumption that men are more physically suited to manual labour, may operate to discriminate against women's access to work and remuneration at work.

While Article 24 of the Ghana Constitution does not speak directly to the economic right of women, it makes special provision for the rights of women generally in Article 27. This provision guarantees the equal right of women to training and promotion in any work they undertake. Thus, a woman cannot be denied training or promotion solely on the basis of her gender. This particular provision stands to soften the position that women's roles in extractives can be pre-determined in a limited fashion. So far as a woman is willing and capable of receiving training in a particular field, she may not be prevented from any such undertaking or be discriminated against whilst engaging in it.

Provision is also made for pregnant and nursing mothers in respect of work. The Constitution requires that special care be given pregnant and nursing mothers. It includes that they be entitled to paid leave which shall be in addition to any leave they are entitled to. In the competitive and much sought-after jobs in the extractive sector, this provision enables women to retain the option to start a family without fear of losing their jobs.

All the above provisions fall under Chapter Five of the Constitution on Fundamental Human Rights, a breach of which entitles a person to seek redress from the High Court.²⁴ However, other provisions in Chapter Six on the Directive Principles of State Policy are also relevant in discussing matters on labour and in particular Women's Economic Empowerment. The justiciability of these provisions have been subject to some judicial challenge.²⁵ It is however

²⁴1992 Constitution of Ghana, Article 33(1)

²⁵NPP v Attorney General (31st December Case) [1993 – 94] 2 GLR 35; NPP v Attorney General (CIBA Case) [1996 – 97] SCGLR 729; Ghana Lotto Operators Association v National Lottery Authority [2007 – 2008] 2 SCGLR 1088

now settled that all these provisions are presumed justiciable²⁶ and this is more so if linked with other provisions in Chapter Five.²⁷

Article 36(6), which forms part of the Directive Principles, enjoins the State to afford equality of economic opportunities and ensure the full integration of women into the mainstream of economic development. In addition to this, the State is required to ensure the health, safety and welfare of all workers. This provision directly and indirectly impacts the ability of women in Ghana to achieve economic empowerment, by imposing a duty on the state to ensure that women are integrated into all aspects of the economy, including the extractive sector.

3.2 Protection of the Economic Rights of Women in Substantive and Subsidiary Legislation generally

The Constitutional provisions discussed above form the general foundation for the protection and promotion of women's economic empowerment in the extractive sector. Though the provisions do not speak directly to the sector, the actual realisation of these rights and objectives was intended to be achieved through legislation; both substantive and subsidiary.

A review of the legal regime of the sector however shows that there is little that is specifically dedicated to women's economic empowerment within the extractives laws of the country. Legislation on the sector relevant to this topic is limited to ensuring local participation of both men and women in the petroleum subsector, and thus applies generally to all persons in the subsector.

Despite the absence of specific legislation on women's economic empowerment in the extractive sector, it is not the case that there is no protection for women within the sector. The cumulative effect of laws and policies that affect the sector add up to make a visible impact on women's economic empowerment in the sector.

3.2.1 Labour Laws

The labour laws of Ghana are general and apply to all persons working in Ghana, male or female. In that way, they fulfil the Constitutional requirement of equality and non-discrimination. However, as discussed above, the concept of equality does not necessarily imply "same treatment". Thus, certain provisions, while ensuring equality, take into consideration the special position of women. These provisions however do not relate only to the extractive industry, but to labour and industrial relations generally. We will look at these provisions under this section.

3.2.1(a) The Labour Act, 2003 (Act 651)

²⁶Ghana Lotto Operators Association v National Lottery Authority [2007 – 2008] 2 SCGLR 1088

²⁷NPP v Attorney General (CIBA Case) [1996 – 1997] SCGLR 729

This is the main piece of legislation on labour matters in the country. It does not specifically provide for employment in the extractive sector but for employment generally. It provides the general framework for employment and labour relations in the country and thus applies generally to all persons working in Ghana, men and women. Hence, the provisions on annual leave,²⁸ sick leave,²⁹ the maximum working hours,³⁰ periods of daily and weekly rest,³¹ apply equally to men and women.

In spite of the generality of the law, some special provisions are made for women, although they are not exclusive to women in extractives. Again, these provisions tend to focus on pregnant women and nursing mothers only. They are:

1. Employment of pregnant women at night – the Act requires that no pregnant woman is employed or assigned work between the hours of 10:00pm and 07:00am unless they consent. Likewise, employers are prohibited from engaging pregnant women and nursing mothers in overtime work except with their consent.³² The assignment of night duties and overtime work to pregnant women is not totally prohibited. All the law requires is that the consent of the pregnant women is sought. Depending on the station in life and other circumstances of the pregnant woman, she may consent to the assignment of such duties for the monetary gain or other gain, without considering the health implications of her actions. And there is no obligation on the employer to consider such health issues.
2. Assigning pregnant women outside their place of residence –a pregnant worker after the fourth month of her pregnancy shall not be assigned to a place of work outside her place of residence. This however applies only where in the opinion of a medical practitioner such assignment will be detrimental to her health.³³ Unlike the above provision, this provision makes the woman's health (and not her consent) paramount. Thus, where a medical practitioner certifies that such an assignment will be detrimental to the health of the woman, she cannot purport to consent to the assignment.
3. Maternity leave – the Act requires employers to grant a minimum of 12 weeks maternity leave to a female worker who shows proof of expecting a baby. She shall be entitled to her remuneration while on leave. She is also entitled to paid leave for any illness suffered as a result of the pregnancy, provided this is certified by a medical practitioner.³⁴

²⁸ Labour Act 2003, s.20

²⁹ Labour Act 2003, s.24

³⁰ Labour Act 2003, s.33

³¹ Labour Act 2003, s.40 – 44

³² Labour Act 2003, s.56

³³ Labour Act 2003, s.57

³⁴ Labour Act 2003, s.58

4. Provision for nursing mothers – a nursing mother is entitled to an additional hour of break time to nurse her baby.³⁵
5. Termination due to pregnancy or maternity – Employers are generally prohibited from dismissing women while they are on maternity leave. To dismiss or terminate a person's employment due to pregnancy or absence due to maternity leave amounts to unfair termination. It also amounts to unfair termination to terminate a person's employment solely on the grounds of gender.³⁶

Apart from these provisions on women, there are other provisions in the Act that seek to ensure equality by prohibiting discrimination on grounds of gender. Section 14(e), for example, prohibits employers from discriminating against persons who seek employment or who are already in their employ, on the grounds of gender. Thus, where two people apply for the same job with the same qualification, the employer shall not use as one of his criteria for employment, the gender of the persons involved. Section 68 also reiterates the constitutional requirement of equal pay for equal work without distinction of any kind.

3.2.1(b) The Labour Regulations, 2007 (LI 1833)

These Regulations make provision for the employment of young persons in hazardous work³⁷ and the employment of persons with disability,³⁸ but make no provision for the employment of women in hazardous work. There are however general provisions for the protection of the health of persons in hazardous work. Regulation 19, for example, requires periodic medical examination for persons engaged in hazardous work. The Minister is also authorised under the Regulations to direct the Chief Labour Officer to determine shorter working hours for manual labour and other work injurious to the worker. Although a general provision, it appears the determination is to be made on a case by case basis. Such an interpretation will allow taking into consideration the special circumstances of a particular employee including the special needs of women.

4. THE LEGAL REGIME FOR THE EXTRACTIVE SECTOR IN GHANA

4.1 The Mining Sector

The Minerals and Mining Act, 2006 (Act 703) is the main legislation that deals with minerals and mining in Ghana, including small scale mining. It covers matters such as qualification for acquiring mineral rights, the procedure for the grant of the rights, requirements for mining,

³⁵ Labour Act 2003, s.57(6)

³⁶ Labour Act 2003, s.63

³⁷ Labour Regulations 2007, Regulation 7

³⁸ Labour Regulations 2007, Regulations 12 – 17

industrial minerals rights, and small-scale mining. One of the prime purposes of the new law was the consolidation of all laws relating to minerals and mining.

Other relevant legislation include the Minerals Commission Act, 1993 (Act 450). This law establishes the Minerals Commission as a body corporate to regulate and manage the utilisation of minerals in Ghana. The Precious Minerals Marketing Corporation Act, 1989 (PNDCL 219) also establishes the Precious Minerals Marketing Corporation to assay, value, buy and sell precious minerals. This Corporation was converted into a limited liability company by the Statutory Corporations (Conversion to Companies) Act, 1993 (Act 461) and is now known as the Precious Minerals Marketing Company Ltd, although the State owns the shares of the Company.

4.2 The Petroleum Industry

The Petroleum (Exploration and Production) Act, 2016 (Act 919) regulates the upstream sector of the industry. Its main object is to provide for safe, secure, sustainable and efficient petroleum activities in order to achieve optimal long-term resource exploitation and utilisation for the benefit and welfare of the people of Ghana.³⁹ To achieve this, it requires that the management of petroleum resources must be in accordance with principles of good governance, including transparency and accountability.

The Act covers matters such as the right to explore and produce petroleum, the licensing regime for exploration and production, local content, and health and safety in exploration and production. The Petroleum Commission Act 2011 (Act 821) establishes the Petroleum Commission, which is responsible for the regulation and management of petroleum resources. The Petroleum Revenue Management Act 2011 (Act 815) as amended by the Petroleum Revenue Management (Amendment) Act 2015 (Act 893), regulates the collection, allocation and management of revenue accruing from the petroleum upstream sector. Another critical piece legislation covering the sector is the Ghana National Petroleum Corporation Act 1983 (PNDCL 64) which establishes the GNPC to undertake exploration, development, production and disposal of petroleum on behalf of the State. The GNPC also holds the carried interest of government in petroleum exploration and production.

The downstream sector of the petroleum industry is regulated largely by the National Petroleum Authority Act, 2005 (Act 691). This Act establishes the NPA as a regulatory body for the downstream petroleum industry to, among others things, issue licences for petroleum downstream activities.

There are other subsidiary legislation which deal with the petroleum industry. The most relevant for our purposes is the Petroleum (Local Content and Local Participation) Regulations, 2013 (LI

³⁹Petroleum (Exploration and Production) Act 2016, section 2

2204). This law provides for the employment of Ghanaians generally in the petroleum upstream sector.

5. WOMEN'S ECONOMIC EMPOWERMENT IN THE EXTRACTIVE SECTOR

5.1 Direct Economic Empowerment in the Extractive Sector

It is quite disappointing that there are very few laws and regulations mandating the inclusion of women in key positions of power in the extractive sector. And this is despite the fact that the Constitution of Ghana recognises that special provision needs to be made to ensure women benefit equally in the resources and benefits of a democratic nation.

The legislative trend in Ghana merely ensures the involvement of women in the governance and regulatory bodies of extractives by mandating that such bodies include at least one – and at times, two women.

5.1.1 Petroleum Commission Act, 2011 (Act 821)

As previously noted, this Act establishes the Petroleum Commission to regulate and manage the utilisation of petroleum resources. The governing body of the Commission is a Board which consists of a Chairperson and some appointed representatives from various institutions relevant to the sector. The Board also comprises three other persons appointed by the President. Of the three persons appointed by the President, one of them is required by the Act to be a woman.⁴⁰

5.1.2 Minerals Commission Act, 1993 (Act 450)

This Act establishes the Minerals Commission to regulate and manage the utilisation of mineral resources in Ghana. The Commission is made up of 9 members comprising the Chairperson, the Chief Executive and seven other members appointed by the President. The Act requires that of the seven members, at least two shall be women.⁴¹

5.1.3 Petroleum Revenue Management Act, 2011 (Act 815) as amended by Act 893

This Act primarily deals with the management of revenue accruing from the petroleum upstream sector. It establishes an Investment Advisory Committee to advise the Minister on the general performance and management of the Petroleum Funds which comprise receipts from the upstream petroleum sector.⁴² The Committee is a 7-member team to be appointed by the President following nomination by the Minister. The law requires that at least two of the 7 members should be women.⁴³ It is worth noting that the law originally required that of the 7-member Committee, one of them must be a woman. The minimum requirement of female

⁴⁰Petroleum Commission Act 2011, s.4

⁴¹Minerals Commission Act 1993, s.3

⁴²Petroleum Revenue Management Act 2011, s.29

⁴³Petroleum Revenue Management Act 2011, s.31 as amended by Act 893

representation on the Committee was increased to two by the Petroleum Revenue Management (Amendment) Act, 2015 (Act 893).

This Act also establishes a Public Interest and Accountability Committee⁴⁴ to monitor and ensure compliance with the Act, by government and other stakeholders.⁴⁵ The Committee is composed of 13 members, largely representatives from various institutions. The only institution with representation on this Committee - which is made up of only women - is the Association of Queen Mothers.⁴⁶

5.2 Indirect Economic Empowerment of Women in the Extractive Sector

As regards the employment of women, the Petroleum (Local Content and Local Participation) Regulations, 2013 (LI 2204) provides exclusively for employment of Ghanaians. The purpose of the law is to maximise job creation through the use of local expertise in the petroleum sector and to achieve a certain minimum level of local employment in the sector. Due to the general nature of the provisions regarding the employment of Ghanaians, the law does not make any special provision for women. Its focus is on achieving employment for Ghanaians irrespective of gender. Several provisions are thus made for the employment of locals, but not necessarily women.

Regulation 3 requires all stakeholders in the petroleum industry to include local content as part of its activities. Local content here includes local personnel involved in such activity. The local content levels required are specified in a schedule to the Regulations, which requires that they be achieved within a stated period.⁴⁷ The Regulations also require five percent local equity participation in a company before the grant of a petroleum licence or contract to such company, although the Minister may vary such percentage.⁴⁸ Where an indigenous Ghanaian company competes with a foreign company for a petroleum license, the regulation favours a discrimination in favour of the indigenous Ghanaian company⁴⁹; a non-indigenous Ghanaian company which intends to provide petroleum related goods or services to a contractor, a subcontractor, licensee, the national oil company (GNPC) or any other allied entity within the country, shall incorporate a joint venture company with an indigenous Ghanaian company and afford that indigenous Ghanaian company an equity participation of at least ten percent.⁵⁰

It is required that all industry players in the sector submit a local content plan for approval by the Petroleum Commission.⁵¹ Junior or middle positions, which include foremen and supervisors,

⁴⁴Petroleum Revenue Management Act 2011, s.51

⁴⁵Petroleum Revenue Management Act 2011, s.52

⁴⁶ Petroleum Revenue Management Act 2011, s.54 as amended by Act 893

⁴⁷Petroleum (Local Content and Local Participation) Regulations 2013, Regulation 10

⁴⁸Petroleum (Local Content and Local Participation) Regulations 2013, Regulation 4(2)

⁴⁹Petroleum (Local Content and Local Participation) Regulations Regulation 4(1)

⁵⁰Petroleum (Local Content and Local Participation) Regulations Regulation 4(6)

⁵¹ Petroleum (Local Content and Local Participation) Regulations Regulation 17

shall be reserved for Ghanaians only.⁵² Where legal⁵³ or financial services⁵⁴ are required in Ghana, the law requires that only the services of Ghanaian legal practitioners or firms and financial institutions are employed.

The Petroleum Commission is charged with the responsibility of monitoring local content performance to ensure compliance.⁵⁵ A breach of any of the regulations relating to local content carries with it a penalty payable to the Commission and where the breach relates to fraudulent misrepresentations or connivance, the person commits an offence punishable by a fine or a term of imprisonment or both.⁵⁶

The local content mandate, while ensuring that Ghanaians will play an active role in the exploitation of oil, could very well have the unintended effect of prompting Ghanaian women in the industry, as is illustrated below.

Unlike the Petroleum Regulations, both the Minerals and Mining Act and the Petroleum (Exploration and Production) Act contain no direct provisions on gender or women's economic empowerment. They deal generally with the licensing regime of the mining and petroleum sectors respectively and how to carry on the extraction of these resources. They grant equal rights to all persons seeking mineral rights and petroleum rights.

Not much has therefore been done through these legislation to secure women's economic empowerment. Nonetheless, they contain some provisions on the employment of Ghanaians in mining and petroleum activities. These provisions are as general as the provisions of the Local Content Regulations and apply equally to men and women.

The Petroleum (Exploration and Production) Act contains several provisions that seek to protect the economic interest of indigenous Ghanaians. Section 60 deals generally with the employment of Ghanaians in petroleum activities. It prohibits discrimination on grounds of race, tribe, nationality or gender⁵⁷ and requires all persons engaged in petroleum activities to employ Ghanaian citizens in any category or function that may be prescribed.⁵⁸ Thus, it is required that Ghanaians who have the requisite qualifications and expertise are employed in the various levels of activities identified in the law.⁵⁹ In addition to this, persons engaged in petroleum activities are required to prepare and implement plans and programmes to train Ghanaian citizens in all aspects of petroleum activities. This programme must be drawn up in consultation with the Petroleum Commission.⁶⁰ In drawing the programme therefore, the Commission may require the inclusion of programmes that seek to train women specifically in the various levels of the

⁵²Petroleum (Local Content and Local Participation) Regulations Regulation 19

⁵³Petroleum (Local Content and Local Participation) Regulations Regulation 29

⁵⁴Petroleum (Local Content and Local Participation) Regulations Regulation 31

⁵⁵Petroleum (Local Content and Local Participation) Regulations, Regulation 44

⁵⁶Petroleum (Local Content and Local Participation) Regulations, Regulation 46

⁵⁷Petroleum (Exploration and Production) Act 2016, s.60(3)

⁵⁸Petroleum (Exploration and Production) Act 2016, s.60(2)

⁵⁹Petroleum (Exploration and Production) Act 2016, s.60(1)

⁶⁰Petroleum (Exploration and Production) Act 2016, s.60(4)

petroleum activities, as a measure to equalise the disproportionate number of men in the sector. This will ensure that as many women as possible will have the requisite qualification and be eligible for employment by extractives companies.

In addition to the employment of Ghanaians, section 61 requires that contractors use materials provided by indigenous Ghanaian companies and use local service providers as far as they are available. An indigenous Ghanaian company is a company incorporated in Ghana with Ghanaians owing at least 51 percent of the shares and holding at least 80 percent of the executive and senior management positions and 100 percent of non-managerial positions.⁶¹ These are to be supplemented by the preparation and implementation of a local content plan to be approved by the Petroleum Commission to ensure adequate local content, and an annual report on the plan shall be submitted highlighting the achievements made so far.⁶²

The Act also establishes a Local Content Fund⁶³ to provide financial resources for citizens and indigenous Ghanaian companies engaged in petroleum activities for education, training, research and development purposes. The Fund may also grant loans to small and medium scale industries to support their petroleum activities.⁶⁴ The issue of local content and local participation in the petroleum sector has been very prevalent since the discovery of oil in commercial quantities. Indeed, the Petroleum Commission Act, 2011 (Act 821) requires the Board of the Commission to establish a Local Content Committee to deal with matters of local content and local participation.⁶⁵

Similar provisions on local content are contained in the Minerals and Mining Act, 2006 (Act 703). Section 105 of the Act enjoins holders of mineral rights to, in their dealings, give preference to materials and products made in Ghana and goods and services provided by agencies owned by Ghanaians. It also requires them to give preference to the employment of Ghanaians to the maximum extent possible. The Act also requires that an application for a mineral right shall include particulars of proposals for the employment and training of Ghanaians in the mining industry.⁶⁶

All these provisions are general and apply to all Ghanaians without regard to gender. Nonetheless, women will find some indirect benefit in provisions applying to all Ghanaians. This is because the laws of Ghana, when read together with other national policies and international laws to be discussed below, are to the effect that women's economic empowerment could be secured by these general provisions.

⁶¹Petroleum (Exploration and Production) Act 2016, s.95

⁶²Petroleum (Exploration and Production) Act 2016, s.63

⁶³Petroleum (Exploration and Production) Act 2016, s.64

⁶⁴Petroleum (Exploration and Production) Act 2016, s.65

⁶⁵Petroleum Commission Act 2011, s.8(2)

⁶⁶Minerals and Mining Act 2006, s.11(d)

6. SOFT LAWS ON WOMEN'S ECONOMIC EMPOWERMENT IN THE EXTRACTIVE INDUSTRIES

Apart from the established legal framework on women's economic empowerment in the extractive sector, there are certain policies and conventions that relate to women's economic empowerment in the extractive sector. These instruments are not strictly binding as they are not law per se. However, they set the goals and give the policy directions on enacting laws and implementing strategies to achieve gender balance. This section will discuss these soft laws on gender, paying particular attention to their relevance in the extractive sector.

6.1 National Gender Policy, 2015

The National Gender Policy was conceived with the aim of mainstreaming gender equality concerns into national development processes for equitable livelihood of women and men, by improving the social, legal, civic, political, economic and socio-cultural conditions of all persons, particularly women and children.⁶⁷ The Policy has several objectives that seek to empower women economically. These include women's empowerment and livelihood, women's rights and access to justice, as well as gender roles and relations.⁶⁸ While most of these relate to women's economic empowerment generally, they remain relevant for women's economic empowerment in the extractive industries. Among its objectives, the Policy seeks:⁶⁹

1. *To accelerate efforts and commitments of government in empowering women to have a safe and secure livelihood, access to economic opportunities and decent work to improve earnings as well as address disparities in education, socio-economic and cultural issues.*

Measures to achieve this include: engaging the corporate world on matters concerning women's economic empowerment; mobilising funding for women initiatives; reviewing and developing gender equality and women's empowerment laws and policies across all sectors and to monitor their enforcement; promoting new learning around the concepts of women empowerment and gender equality; and allocating adequate resources to address gender disparity in schools. In the area of employment, the measures include: promotion of employment policies for greater inclusion of women in employment and labour issues; implementation of measures to close the gender differences in access to economic opportunities and earnings; development of a database on employment to track the employment records of men and women in the formal and informal sectors; and promotion of job security for women on maternity leave.

⁶⁷Government of Ghana. National Gender Policy 2015, p. 8

⁶⁸Government of Ghana. National Gender Policy 2015, p. 10

⁶⁹Government of Ghana. National Gender Policy 2015pp. 27 – 48

2. *To speed up domestication and enforcement of ratified international treaties, policies and strategies adopted by the Government to tackle violence, discrimination and promote gender equality and women’s economic empowerment nationwide.*

This objective is very necessary because, as a dualist nation, international treaties entered into by Ghana are not binding domestically, unless domesticated by legislation.⁷⁰ There are several international treaties which Ghana has ratified⁷¹ on the international plane but which have not been domesticated. Article 75 of Ghana’s Constitution requires that any international treaty executed by the Executive must be subjected to parliamentary ratification either by an Act of Parliament or by a Resolution. The interpretation put on this Article by the Supreme Court is that unless the ratification is done by an Act of Parliament, which re-enacts the treaty or incorporates the treaty into Ghanaian law, the treaty is not binding in the domestic setting.⁷² In the *Republic v High Court (Commercial Division), Accra; ex parte Attorney General (NML Capital Ltd Interested Party)*,⁷³ Date-Bah JSC explains as follows:

... treaties, even when the particular treaty has been ratified by Parliament, do not alter municipal law until they are incorporated into Ghanaian law by appropriate legislation. This position of the law is usually referred to as reflecting the “dualist” school of thought, as distinct from the monist approach followed by some other States.... The mere fact that a treaty has been ratified by Parliament through one of the two modes indicated above does not, of itself, mean that it is incorporated into Ghanaian law. A treaty may come into force and regulate the rights and obligations of the State on the international plane, without changing rights and obligations under municipal law. Where the mode of ratification adopted is through an Act of Parliament, that Act may incorporate the treaty, by appropriate language, into the municipal law of Ghana.... The need for the legislative incorporation of treaty provisions into municipal law before domestic courts can apply those provisions is reflective of the dualist stance of Commonwealth common law courts and backed by a long string of authorities,

To achieve this objective therefore, the Ministry seeks to enforce the implementation of international instruments on gender equality and women’s economic empowerment by working for the domestication of such instruments and the enactment of the Affirmative Action Law.

3. *To support the passage and implementation of an Affirmative Action Law.*

⁷⁰1992 Constitution of Ghana, Article 75

⁷¹These treaties are discussed below

⁷²*Republic v High Court, Commercial Division; ex parte Attorney General (NML Capital Ltd – Interested Party)* [2013 – 2014] 2 SCGLR

⁷³*Republic v High Court, Commercial Division; ex parte Attorney General (NML Capital Ltd – Interested Party)*

To this purpose, an Affirmative Action Bill was drafted and approved by Cabinet. The Bill was expected to be laid before Parliament by the end of September, 2016 and was expected to be passed before the end of the year.⁷⁴ The Bill is yet to be passed.

4. *To improve women's economic opportunities including engendering macro-economic and trade policies.*

Measures here include a review and enforcement of gender responsive budgeting across all sectors; to mainstream gender equality and women empowerment issues into employment conditions; and to enforce legislation that reserve economic rights for indigenous Ghanaian men and women. Other measures include the promotion of economic environments that ensure equitable access to income for men and women; partnership with the private sector to achieve women's economic empowerment; and the enforcement of policies that will improve women's access to economic opportunities in wage employment.

5. *To transform inequality in gender relations in order to improve women's status relative to that of men.*

To achieve this objective, the Ministry will liaise with appropriate institutions to facilitate the balancing of women's responsibilities with their economic empowerment.

6.2. Affirmative Action Bill, 2016

This is a Bill which, among others, seeks to tackle gender inequality through affirmation action. The Bill has been drafted, received Cabinet approval and was expected to be laid before Parliament in September last year, for the formal processes of passage into law to commence. It was hoped that the Bill would be passed into law by the end of 2016.⁷⁵ Unfortunately, this did not happen before the change of government in January 2017, meaning the Bill has to be considered by the new Cabinet and then sent on to Parliament for passage. The current Gender Minister has announced her intention to launch a "HeforShe" campaign in December 2017, with support from UN Women⁷⁶. It is hoped that the Campaign will create an enabling environment for the passage of the Affirmative Action Bill.

⁷⁴Jasmine Arku. "Affirmative Action Bill for Parliament by September", Daily Graphic. 24 July 2016. <https://www.graphic.com.gh/news/general-news/affirmative-action-bill-for-parliament-by-september.html>

⁷⁵ Jasmine Arku "Affirmative Action Bill for Parliament by September"

⁷⁶ "Gender Minister Launches Campaign to push for passage of Affirmative Action Bill" MyJoyOnline. 16th November 2017. <https://www.myjoyonline.com/news/2017/November-17th/gender-ministry-launches-campaign-to-push-for-passage-of-affirmative-action-bill.php>

6.3 International Instruments Ratified by Ghana

As discussed above, until domesticated by legislation, these instruments which Ghana has ratified bind it only on the international plane. They do not create rights enforceable by the municipal courts. Nonetheless, the courts are empowered by Article 33(5) of the Ghana Constitution to consider all rights that are inherent in a democratic state as part of the bundle of rights available to persons in Ghana. It is therefore usual for courts to adopt or rely on some of these international instruments in construing legal rights or obligations in Ghana.⁷⁷ In this section, we will look at some of these international instruments as they relate to women's economic empowerment in the extractive sector.

6.3.1 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) [Signed by Ghana: 17 July 1980; Ratified by Ghana: 2 January 1986]

This Convention was adopted in 1979 and entered into force in 1981. One of the issues that informed this Convention was the acknowledgement of the existence of extensive discrimination against women and the fact that such discrimination violates the principles of equality of rights and respect for human dignity.⁷⁸ It condemns all forms of discrimination against women,⁷⁹ that is, any distinction or exclusion or restriction based on sex which impairs the enjoyment of their human rights, including economic rights.⁸⁰ State parties are enjoined to take appropriate measures including legislation to ensure the full development and advancement of women.⁸¹

Article 11 of the Convention, in dealing with employment, enjoins State parties to take appropriate measures to eliminate discrimination against women in the field of employment and to ensure the equality of men and women to the same rights: to work, to choose a profession freely, to promotion, to job security, to equal remuneration, to social security and to safe working conditions. They are to prohibit dismissal on grounds of pregnancy, maternity leave or marital status, to provide special care for pregnant women during work and to guarantee maternity leave with pay.

Most of these rights are covered by the Constitution and the labour laws of Ghana, especially the rights to equal pay and to promotion, and protection against dismissal on grounds of maternity leave or pregnancy.

⁷⁷ See cases like *Mensah v Mensah* [2012] 1 SCGLR 391; *Ghana Lotto Operators Association v National Lottery Authority* [2007 – 2008] 2 SCGLR 1088; *Adofo v Ghana Cocoa Board* [2013 – 2014] 1 SCGLR 377; where a lot of reliance was placed on international instruments.

⁷⁸Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Preamble.

⁷⁹Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Article 2

⁸⁰Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Article 1

⁸¹Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Article 3

In addition, Article 14 charges State parties to take into account the particular problems of rural women and ensure provision is made to cater for them, while article 10 requires equal rights of men and women to education.

6.3.2 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW – OP), 1999 [Signed by Ghana: 24 February 2000 and ratified 3 February 2011]

By this protocol, State parties agreed to submit to the jurisdiction of the Committee on the Elimination of Discrimination against Women, established to address matters relating to breaches of the CEDAW submitted to it.

6.3.3 International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 [Signed and Ratified by Ghana: 7 September 2000]

The Convention seeks to ensure the enjoyment of equal economic, social and cultural rights by both men and women.⁸² Most of these rights are guaranteed by the Constitution of Ghana and Ghana's labour laws. They include, the right to work, including the right to equal opportunities to work and to earn a living⁸³; the right to enjoyment of just and favourable conditions of work, including the right to fair and equal remuneration for both men and women for the same work done; and the right to education.⁸⁴

6.3.4 Hours of Work (Industry) Convention, 1919 [Ratified: 19th June, 1973]

The Convention fixes the maximum working hours for workers in an industrial undertaking at 8 hours a day and 48 hours a week, except for managers and supervisors and workers running on a shift or in other cases of emergency. These provisions are captured in Ghana's Labour Act.⁸⁵

6.3.5 Weekly Rest (Industry) Convention, 1921 [Ratified: 19th June, 1973]

This Convention requires at least 24 consecutive hours of rest every week for all workers of an industrial undertaking, which includes mines, quarries and any undertaking for the extraction of minerals. It requires that if possible this period of rest be granted to the entire workforce of the undertaking. These provisions have been domesticated in the Labour Act, which increases the 24-hour rest period to 48 hours.⁸⁶

6.3.6 Abolition of Forced Labour Convention, 1957 [Ratified: 15th December, 1958]

The Convention seeks to prohibit the use of forced labour for political, social or other economic purposes, or as a means of punishment for exercising the right to strike or similar labour actions.

⁸² International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Article 3

⁸³ International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Article 4

⁸⁴ International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Article 13

⁸⁵ Labour Act 2003, ss.33 – 39

⁸⁶ Labour Act 2003, s.42

It is instructive to know that the Constitution and the labour laws of Ghana prohibit forced labour generally for whatever purpose.⁸⁷

6.3.7 Discrimination (Employment and Occupation) Convention, 1958 [Ratified: 4th April, 1961]

The Convention prohibits discrimination of all sorts, including on grounds of gender in employment. Ghana's Constitution and Labour Act substantially cover the terms and purposes of this Convention.⁸⁸

6.3.8 Maternity Protection Convention (Revised), 1952 [Ratified: 27th May, 1986]

The provisions of the Convention, which seek essentially to protect pregnant women and nursing mothers, have been captured in the Labour Act.⁸⁹ It guarantees the right of a woman to paid maternity leave, to time to breastfeed the child during working hours, and to the protection of her employment while on leave. A revised version of this Convention, Maternity Protection Convention, 2000 is yet to be ratified by Ghana.

6.3.9 Equal Remuneration Convention, 1951 [Ratified: 14th March, 1968]

The provisions of this Convention have been domesticated in the Constitution and the Labour Act of Ghana. Essentially, it requires equal remuneration for men and women for equal work done.⁹⁰

6.3.10 Night Work (Women) Convention (Revised), 1948 [Ratified: 2nd July, 1959]

The Convention prohibits the employment of women during the night in any industrial undertaking, unless only members of the same family are employed in such undertaking.⁹¹ Industrial undertaking is defined to include mines, quarries and work involving the extraction of minerals from the ground. It however does not include managerial or technical positions nor health and welfare services in such undertakings.⁹² For all other underground works in industrial undertakings, unless in emergency situations,⁹³ women are not to be employed for night work except with their family.

6.3.11 Labour Inspection Convention, 1947 [Ratified: 2nd July, 1959]

⁸⁷1992 Constitution of Ghana, Article 16; Labour Act 2003, ss.116 and 117

⁸⁸1992 Constitution Articles 17 and 24; Labour Act 2003, ss.14(e) and 127(1)

⁸⁹ Labour Act 2003, ss.55

⁹⁰1992 Constitution of Ghana, Article 24; Labour Act 2003, s.68

⁹¹ Night Work (Women) Convention (Revised), 1948, Article 3

⁹² Night Work (Women) Convention (Revised), 1948, Article 8

⁹³ Night Work (Women) Convention (Revised), 1948, Article 4

The Convention provides for the appointment of labour inspectors in industrial workplaces⁹⁴ to secure the enforcement of laws relating to the conditions of work and the protection of workers.⁹⁵ It permits the exemption of mining industries from the application of the Convention.⁹⁶ However, when the provisions were domesticated in the Labour Act, no exemption was made for mining industries.⁹⁷ Thus, labour inspection in Ghana applies to all industries, including the extractive industry.

6.3.12 The Vienna Declaration and Programme of Action, 1993 [adopted by the World Conference on Human Rights in Vienna on 25 June 1993]

The Declaration affirms the inalienable rights of women to participate in social, political and economic life at the national, regional and international levels. It abhors gender-based violence and discrimination based on gender.⁹⁸ It reiterates the equal rights of men and women and the need to eliminate violence against women.

6.3.13 African Charter on Human and Peoples' Rights (ACHPR) [signed 24 January 1989 and ratified 3 July 2004]

This Charter enjoins State parties to ensure the elimination of all forms of discrimination against women and ensure the protection of their fundamental rights. It also guarantees the right to work under satisfactory conditions and the right to equal pay for equal work done.

6.3.14 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa [Signed: 31 October 2003; Ratified: 13 June 2007]

The Protocol reiterates some of the provisions contained in other similar international instruments, including the elimination of discrimination against women;⁹⁹ the right of women to education and training;¹⁰⁰ and the right to economic and social welfare for women.¹⁰¹ State parties are required to promote these rights through legislation, including constitutional provisions. The economic and social welfare rights of women include the right to equal access to employment, equal remuneration for equal work done, transparency in recruitment and promotion, and the creation of conditions necessary to support the occupation of women, especially in the information sector.

6.3.15 The 1985 Nairobi Forward Looking Strategies for the Advancement of Women (NFLS)

⁹⁴ Labour Inspection Convention, 1947, Article 1

⁹⁵ Labour Inspection Convention, 1947, Article 3

⁹⁶ Labour Inspection Convention, 1947, Article 2

⁹⁷ Labour Act 2003, ss.122 – 126

⁹⁸ Vienna Declaration on Human Rights 1993, Article 18.

⁹⁹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 2

¹⁰⁰ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 12

¹⁰¹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 13

The period between 1976 and 1985 was proclaimed “the UN Decade for Women” to promote equality between men and women. The focus of the decade was on equality, development and peace.¹⁰² The Forward Looking Strategies therefore provide concrete measures for the advancement of women and was to be implemented between 1986 and 2000.¹⁰³ The strategies adopted to achieve implementation included the provision of special measures by governments for the advancement of women in all types of employment;¹⁰⁴ implementation of policies to enable women obtain more responsible jobs;¹⁰⁵ the elimination of all forms of employment discrimination through legislation;¹⁰⁶ and the creation of new employment opportunities for women. It also required special attention to be given to women in the marginal job market, especially those in unstable temporary employment or unregulated part-time work.¹⁰⁷ Other strategies included the participation of women in industry¹⁰⁸ and ensuring the expansion of women employment opportunities.¹⁰⁹

6.3.16 Beijing Declaration and Platform for Action, 1994

Among the aims of the Beijing Declaration was the advancement of equality, development and peace for all women in the interest of humanity.¹¹⁰ It affirmed previous Conventions on similar matters including the UDHR and the CEDAW, and committed to the full implementation of the rights contained in those instruments. It declared that the eradication of poverty requires the involvement of women in economic and social development and equal opportunities and equal participation for both men and women.¹¹¹ It enjoins states to design, implement and monitor programmes to ensure empowerment and advancement of women¹¹², to promote women’s economic independence, including through employment¹¹³ and to ensure women’s equal access to economic resources.¹¹⁴

The Platform for Action annexed in the Declaration was aimed at accelerating the implementation of the Nairobi Forward-Looking Strategies. It provides several measures to be undertaken by governments to achieve the objectives, including through legislation.

6.3.17 Underground Work (Women) Convention, 1935 [Ratified: 20th May, 1957]

¹⁰²1985 Nairobi Forward Looking Strategies for the Advancement of Women (NFLS), Paragraph 2

¹⁰³1985 Nairobi Forward Looking Strategies for the Advancement of Women (NFLS), Paragraph 6

¹⁰⁴ 1985 Nairobi Forward Looking Strategies for the Advancement of Women (NFLS), Paragraph 132

¹⁰⁵ 1985 Nairobi Forward Looking Strategies for the Advancement of Women (NFLS), Paragraph 133

¹⁰⁶ 1985 Nairobi Forward Looking Strategies for the Advancement of Women (NFLS), Paragraph 137

¹⁰⁷ 1985 Nairobi Forward Looking Strategies for the Advancement of Women (NFLS), Paragraph 147

¹⁰⁸ 1985 Nairobi Forward Looking Strategies for the Advancement of Women (NFLS), Paragraph 189

¹⁰⁹ 1985 Nairobi Forward Looking Strategies for the Advancement of Women (NFLS), Paragraph 193

¹¹⁰ Beijing Declaration and Platform for Action 1994, Paragraph 3

¹¹¹ Beijing Declaration and Platform for Action 1994, Paragraph 16

¹¹² Beijing Declaration and Platform for Action 1994, Paragraph 9

¹¹³ Beijing Declaration and Platform for Action 1994, Paragraph 26

¹¹⁴ Beijing Declaration and Platform for Action 1994, Paragraph 35

The Convention generally prohibits the employment of women in underground work on any mine.¹¹⁵ Article 1 defines mine to include any undertaking, whether public or private, for the extraction of any substance from under the surface of the earth. The only mining related work which women were permitted to do are management jobs that do not involve manual work, health and welfare services, underground training, or any other non-manual work to be done occasionally. Although the Convention allows member States to denounce it after 10 years of ratification,¹¹⁶ Ghana has not exercised this right to denounce this Convention. Only three African countries (Djibouti, Zambia and Zimbabwe) have denounced this Convention although several European, American and Asian countries have denounced it. This Convention, although has the health of women as its objective, appears to restrict the kind of work women generally can undertake without regard to the specific woman in question. The Convention has not been domesticated by legislation although it binds Ghana internationally. Again, it appears that the general antidiscrimination clause in our Constitution will make this Convention unconstitutional.

6.3.18 Forced Labour Convention, 1930 [Ratified: 20th May, 1957]

The provisions of this Convention have substantially been reproduced in Ghana's Constitution and the Labour Act.¹¹⁷ It is however worth noting that the Convention permitted some form of forced labour which was to be progressively abolished.¹¹⁸ Under the Forced Labour Convention, even where forced labour was permitted, it was restricted only to able-bodied male adults between the ages of 18 and 45¹¹⁹ and was prohibited for underground works in mines.¹²⁰ The Constitution and the Labour Act do not contain any provisions permitting such forced labour. What Article 16(3) of the 1992 Constitution rather does is to eliminate certain acts from being considered as forced labour.¹²¹

6.3.19 United Nations Sustainable Development Goals

Of the 17 Goals set by the international gathering of Nations, the 5th Goal is gender equality and the empowerment of all women and girls. The United Nations recognises that "Gender equality is not only a fundamental human right, but a necessary foundation for a peaceful, prosperous and sustainable world." And that "Providing women and girls with equal access to education, health

¹¹⁵ Underground Work (Women) Convention, 1935, Article 2

¹¹⁶ Underground Work (Women) Convention, 1935, Article 7

¹¹⁷ 1992 Constitution of Ghana, Article 16; Labour Act 2003, ss.116 and 117

¹¹⁸ Forced Labour Convention, 1930, Article 10

¹¹⁹ Forced Labour Convention, 1930, Article 11

¹²⁰ Forced Labour Convention, 1930, Article 21

¹²¹ For the purposes of article 16, "forced labour" does not include (a) any labour required as a result of a sentence or order of a court; or (b) any labour required of a member of a disciplined force or service as his duties or, in the case of a person who has conscientious objections to a service as a member of the Armed Forces of Ghana, any labour which that person is required by law to perform in place of such service; or (c) any labour required during any period when Ghana is at war or in the event of an emergency or calamity that threatens the life and well-being of the community, to the extent that the requirement of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purposes of dealing with the situation; or (d) any labour reasonably required as part of normal communal or other civic obligation.

care, decent work, and representation in political and economic decision-making processes will fuel sustainable economies and benefit societies and humanity at large.”¹²²

7. STRENGTHENING THE LEGAL AND REGULATORY FRAMEWORK IN THE EXTRACTIVE SECTOR IN GHANA IN RESPECT OF WOMEN’S ECONOMIC EMPOWERMENT.

The quest to ensure effective and fair female participation in the extractive sector should go beyond their mere representation in governance and regulatory institutions. There must be resourcing and retooling of institutions engaged in advocacy for women’s economic empowerment. It is crucial that institutions dedicated to women’s empowerment are given a shot in the arm in championing this cause. In essence, efforts centred on advocacy must be scaled up. This can be realised through constant engagements with governmental institutions and relevant stakeholders.

There must also be an elaboration of the anti-discrimination clause in Ghana’s Constitution and the courts should apply it liberally in pursuance of the agenda of women’s economic empowerment.

The strategies for the attainment of women’s economic empowerment must be waged in two respects. These are in the areas of technical and governance provisions. Legislations and policies must be fashioned out to contain firm provisions for securing effective women’s participation in the extractive sector. Further, there must be sanction regimes accompanying the non-enforcement and non-compliance with these legal and regulatory provisions.

There must also be a concerted effort aimed at the passage of the Affirmative Action Bill. The foundation for this in Ghana is not only in our national laws but also in our international treaty obligations. One of the most significant of these is the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which Ghana signed in 1980 and ratified in 1986 without reservations.

We must similarly step up efforts at ensuring full implementation of broad policy objectives of the National Gender Policy which focuses on women’s empowerment and livelihoods; women’s rights and access to justice; women’s leadership and accountable governance; and economic opportunities for women. Most importantly, the implementation of these national policies must find concrete expression in the non-discriminatory provisions of the Minerals and Mining Act and the Local Content provisions of the Petroleum Exploration and Production Act.

In Ghana’s bid to achieving women’s economic empowerment, efforts must equally be focused on reversing the laws and practices that discriminate against men¹²³ for no justifiable reason, in

¹²² “Sustainable Development Goals: Gender Equality”. United Nations. 2015
<http://www.un.org/sustainabledevelopment/gender-equality/>

order to avoid the application of the principle of equalisation in Law and Practice leading to discrimination against women. In Ireland, the Paternity Leave and Benefit Act 2016, entitles new parents (not being the mother of the child) to statutory paternity leave of two weeks from employment or self-employment following birth or adoption of a child¹²⁴.

8. LIMITATIONS TO THIS AGENDA

It is worth mentioning that there is a key risk in working within the realm of natural resources due to the high stakes involved in respect of resource generation and appropriation. The prevailing situation in this sector has been that a focus on women's economic empowerment has been relegated to the background as women's issues have had to compete with interests of making profit and having access to resources. A holistic appreciation of these limitations would ultimately better inform efforts at finding lasting solutions to the incidents of the under-representation of women in the extractive sector.

9. CONCLUSION

In the grand design for securing an enabling environment for the empowerment of women in Ghana, and particularly in the extractive sector, what is of utmost importance is the determination of the questions, which point to the status of women in the sector within the existing legal framework.

If one were to ask "Does the legal and regulatory framework for extractives in Ghana directly empower women?", the answer would have to be a sad "Not necessarily". It only does so indirectly through the implementation of the rule to include at least one woman in the governing bodies in the extractive sectors, the compliance with Goal 5 of the Sustainable Development Goals, and the compliance with article 36(6) of the 1992 Constitution, that the legal framework for extractives in Ghana directly empowers women.

If the question was "Does the legal and regulatory framework for extractives in Ghana indirectly empower women?", thankfully, the answer would be "Yes". Fortunately, the vast majority of the legal and regulatory provisions in Ghana have the effect of indirectly empowering women. Ghana's Constitution makes vast provision for the equality of both men and women in the workforce, as do many of the laws and regulations that govern extractive sectors in Ghana. It is unfortunate that more of them do not recognise the need to cater specifically for the economic empowerment of women; nonetheless, the collective effect of all the laws including the policies

¹²³ The Property Rights of Spouse Bill received a huge pushback due to some unfair and discriminatory provisions it contained against men. This resulted in the reconsideration of the Bill for certain amendments to be effected.

¹²⁴ "Paternity Leave" Citizen Information. 30 August 2016. http://www.citizensinformation.ie/en/employment/employment_rights_and_conditions/leave_and_holidays/paternity_leave.html

and the international instruments discussed above, show that there is a ripe legal regime for women's economic empowerment in the extractive sector. While the presence of special legislation for such an important aspect of development would have been best, the absence of it does not preclude the protection of these rights. It is believed, however, that the Affirmative Action Bill when passed into law, would provide a robust legal regime for women's economic empowerment, including in the extractive sector.

As to whether or not there are any opportunities for strengthening the legal and regulatory framework for extractives in Ghana to empower women, some hope can be found in the vast array of soft laws and international conventions to which Ghana is a party. These provide an abundance of opportunity for Ghana to strengthen its legal and regulatory framework with respect to the economic empowerment of women. All that is needed is for Parliament to enact the relevant laws to give them life.

History also points to another potential for women empowerment. In 1975, the National Redemption Council established the National Council on Women and Development by the National Council on Women and Development Decree, 1975 (NRCD 322). Core among the functions of this Commission were; to advise the government on matters relating to the full integration of women in national development; to advise the government on specific areas where participation by women may be strengthened or initiated; and to make proposals for the large-scale economic training of women to raise their living standards.¹²⁵ This Commission was dissolved by the repeal of NRDC 322 by the National Council on Women and Development (Repeal) Act, 2005 (Act 693). After its dissolution, the council was designated a decentralised department of the Ministry of Women and Children's Affairs (now Ministry of Gender, Children and Social Protection). The Ministry therefore has all the powers that were hitherto vested in the National Council on Women Development and could do a lot to help achieve this feat. Perhaps, some work by the Ministry specifically on women's economic empowerment in the extractive sector would be in the right place.

The only limitations to this agenda stem from the possible contest of the economic empowerment of women by those who perceive that they stand to lose money, access to resources, and power.

¹²⁵National Council on Women and Development Decree, 1975, s.2

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 - Article 20(2) & (3)
 - Article 24
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 - Article 75
 - Article 257(6)
 - Article 268
 - Article 269
- **Labour Act, 2003 (Act 651)**
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 - s.40 – 44
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 - s.63
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- **Labour Regulations 2007, (LI 1833)**
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- **Discrimination (Employment and Occupation) Convention, 1958 [Ratified: 4th April, 1961]**
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