

Women's Economic Empowerment and the Regulatory Framework of Extractives in Ghana

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ROADMAP

- Does the legal and regulatory framework for extractives in Ghana **directly** empower women?
- Does the legal and regulatory framework for extractives in Ghana **Indirectly** empower women?
- Are there any **opportunities** for strengthening the legal and regulatory framework for extractives in Ghana to empower women?
- Are there any **limitations** to this agenda?

Does the legal and regulatory framework for extractives in Ghana directly empower women?

No.

Our extractives laws generally contain no provisions dedicated to WEE.

All the laws are expressed to apply equally to men and women-gender neutral.

Does the legal and regulatory framework for extractives in Ghana INdirectly empower women?

YES

There are other laws, which read together with the legal and regulatory framework for extractives, lead to WEE.

Let us look at these laws.

The 1992 Constitution

□ *Economic Rights of all Citizens*, Article 24:

- ❖ What it does is to guarantee the right to work under satisfactory, safe and healthy conditions, and
 - In *Commission on Human Rights and Administrative Justice v Norvor* 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 safe working environment.
- ❖ The right to receive equal pay for equal work done.

❑ ***Prohibition Against Forced Labour, Article 16.***

- ❖ Any work or service not done voluntarily, but exerted from the person under a threat of a penalty (Section 117 of Labour Act, 2003 (Act 651)).
- ❖ This provision is important in that, women cannot be forced to do certain types of work which they do not want to undertake.
- ❖ An attempt to improve women's economic empowerment should therefore not lead to forced labour.

□ ***Rights of Women, Generally, Article 27.***

- ❖ This provision guarantees the equal right of women to training and promotion in any work they undertake.
- ❖ Provision is also made for pregnant and nursing mothers in respect of work:
 - The Constitution thus requires that special care be given pregnant and nursing mothers and they shall be entitled to paid leave which shall be in addition to any leave they are entitled to.

□ ***Women's Economic Opportunity***, Article 36(6).

- ❖ This article enjoins the State to afford equality of economic opportunities and ensure the full integration of women into the mainstream of economic development.
 - This provision thus imposes a duty on the state to ensure that women are integrated into all aspects of the economy including the extractive industry.

Labour Laws

□ ***The Labour Act, 2003 (Act 651)***

- ❖ Section 14(e) prohibits employers from discriminating against persons who seek employment or who are already in their employment on the grounds of gender.
- ❖ Section 68 also reiterates the constitutional requirement of equal pay for equal work without a distinction of any kind.

- ❖ The Labour Act also contains special provisions on women, although not specifically in the extractive industry.

- ❖ These provisions are focused on pregnant women and nursing mothers only.
 - Employment of pregnant women at night-No
 - Assigning pregnant women outside their place of residence-Limited
 - Maternity leave
 - Provision for nursing mothers – a nursing mother is entitled to an additional hour break to nurse her baby
 - Termination due to pregnancy or maternity – Employers are generally prohibited from dismissing women while they are on maternity leave

❑ ***The Labour Regulations, 2007 (LI 1833)***

- ❖ The regulations make provision for the employment of young persons in hazardous work and persons with disability but makes no provision for the employment of women in hazardous work.
- ❖ There are however general provisions for the protection of the health of workers generally.
 - Regulation 19 for example requires periodic medical examination for persons engaged in hazardous work.

- ❖ The Minister is 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.

Petroleum (Local Content and Local Participation) Regulations, 2013 (LI 2204)

- This is the only legislation which deals directly with employment and labour issues in the extractive industry.
- ❖ The purpose of the law is to maximise job creation through the use of local expertise in the petroleum sector and to achieve a minimum local employment level in the sector.
- ❖ The law does not make any special provision for women.

- ❖ Its focus is on achieving employment for Ghanaians in the sector, irrespective of gender.
- ❖ Several provisions are thus made for the employment of locals but not necessarily women.
- ❖ So no special provision is made for the employment of women, although the realisation of local content will definitely include the employment of women.
- ❖ The absence of special regulations regarding the employment of women shows that nothing is done to redress gender imbalance regarding employment in the sector.

Mineral and Petroleum Laws

- ❑ The Minerals and Mining Act and the Petroleum (Exploration and Production) Act deal generally with the licensing regime of the mining and petroleum sectors respectively, and how to carry on the extraction of these two precious commodities.
- ❑ 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 and prohibits discrimination on grounds of race, tribe, nationality or gender but requires all persons engaged in petroleum activities to employ Ghanaian citizens in any category or function that may be prescribed.

- ❑ Thus, it is required that Ghanaians who have the requisite qualification and expertise are employed in the various levels of activities.
- ❑ In addition to this such persons are required to **prepare and implement plans and programmes** to train Ghanaian citizens in all aspects of the petroleum activities.
- ❑ This programme must be drawn in consultation with the Petroleum Commission.
- ❑ 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 petroleum activities.
- ❑ This will ensure that more women have the requisite qualification and will be eligible for employment by the extractive companies.

- ❑ 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.
- ❑ **These proposals can be made to support WEE.**

Women in Governance of Extractive Industry

- ❑ There are some provisions in extractives laws that seek to ensure the involvement of women in the governance of extractives regulatory bodies.
- ❑ The current legislative trend is to ensure that any statutory body established shall include at least one woman.
- ❑ This current trend is very recent and thus is missing in older legislation in the extractive industry like the Precious Minerals Marketing Corporation Act, 1989 (PNDCL 219).
- ❑ This law establishes the PMMC Limited. The governing authority of the company is a 9-member Board but there is no provision for the inclusion of women on this Board.

❑ Likewise, the Ghana National Petroleum Corporation Act, 1983 (PNDCL 64) which established the GNPC to undertake the exploration, development, production and disposal of petroleum makes no provision for women on the governing authority of the corporation comprising of an 8-member Board.

❑ Recent legislation has however been consistent in reserving at least one or two places for women on all governing boards:

- ❖ *Petroleum Commission Act, 2011 (Act 821)*

- ❖ *Minerals Commission Act, 1993 (Act 450)*

- ❖ *Petroleum Revenue Management Act, 2011 (Act 815) as amended by Act 893*

- ❖ *EXCEPTION: Energy Commission Act, 1997 (Act 541) makes no provision for women*

Soft Law on WEE

□ *National Gender Policy, 2015*

- ❖ The aim of this policy is to mainstream gender equality concerns into national development processes for equitable livelihood for women and men by improving the social, legal, civic, political, economic and socio-cultural conditions of persons particularly women and children.
- ❖ The **key areas it focuses on include women empowerment and livelihood**, women's rights and access to justice and gender roles and relations.
- ❖ **The Policy has several policy objectives that seek to empower women economically.**
- ❖ **While most of these relate to women economic empowerment generally, they remain relevant for women economic empowerment in the extractive industries.**

❖ The policy objectives include:

➤ *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 of women economic empowerment, mobilising funding for women's support, reviewing and **developing gender equality and women empowerment laws and policies across all sectors and to monitor their enforcement, promotion of new learning around the concepts of women empowerment and gender equality,** and allocation of 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, implementing measures to close the differences in access to economic opportunities and earnings,** develop a database on employment to track the employment records of men and women in the formal and informal sectors, and promote job security for women on maternity leave.

- **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.**
- *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, to partner with private sectors for women economic empowerment and enforce policies that improve women's access to economic opportunities in wage employment.
- *To transform inequality 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.**

❑ ***Affirmative Action Bill, 2016***

- ❖ This is a Bill which, among others, seeks to tackle gender inequality through affirmation action.
- ❖ The Bill has been drafted and received Cabinet approval, but it is yet to go through Parliament for the formal processes of passage into law.

International Laws on WEE Applicable in Ghana

□ *International Instruments Ratified by Ghana*

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

- Article 11 of the Convention dealing with employment enjoins State parties to take appropriate measures to eliminate discrimination against women in the field of employment and ensure the equality of men and women to the same rights to work, to choose a profession freely, promotion, job security, equal remuneration, 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.
- These are covered by our Constitution and labour laws.
- 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.

❖ ***Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW – OP), 1999 [Signed: 24 February 2000]***

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

❖ ***International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 [Ratified: 7 December 2000]***

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

- It 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 the Labour Act.

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

- The Convention requires at least 24 consecutive hour rest weekly 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 workers of the undertaking.
- These provisions have been domesticated in the Labour Act and increased the 24 hours to 48 hours.

❖ ***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 resort to other labour actions.
- It is instructive to know that the Constitution and the labour laws of Ghana prohibit forced labour generally for whatever purpose.

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

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

➤ A revised version of this Convention, Maternity Protection Convention, 2000 is yet to be ratified by Ghana.

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

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

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

❖ ***The Vienna Declaration on Human Rights, 1993***

- The Declaration affirms the inalienable rights of women to participate in social, political, economic and social life at the national, regional and international levels.

❖ ***African Charter on Human and Peoples' Rights (ACHPR)***

- 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.

❖ ***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]***

- **State parties are required to promote these rights through legislation including constitutional provisions.**
- **Economic & 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 informal sector.

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

- The strategies adopted to achieve this included the provision of special measures by governments for the **advancement of women in all types of employment** (paragraph 132);
- Implementation of policies to enable women obtain **more responsible jobs** (paragraph 133);
- The **elimination of all forms of employment discrimination** through legislation (paragraph 137); 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** (paragraph 147).
- Other strategies include the **participation of women in industry** (paragraph 189) and ensuring the expansion of women employment opportunities (paragraph 193)

❖ *Beijing Declaration and Platform for Action, 1994*

- **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** (paragraph 16).
- It enjoins states to design, implement and monitor programmes to ensure empowerment and advancement of women (paragraph 19), promote women's economic independence including employment (paragraph 26) and ensure women's equal access to economic resources (paragraph 35).
- **The Platform for Action** annexed to 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 legislation.

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

- **The Convention generally prohibits the employment of women in underground work on any mine (article 2).**
- 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 for 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 (article 7), 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 it has the health of women as its object, 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.**

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

- The provisions of this Convention have substantially been reproduced in Constitution and the Labour Act.
- It is however worth noting that the Convention permitted some form of forced labour which was to be progressively abolished (article 7ff).
- The Constitution and the Labour Act do not contain any provisions permitting such forced labour.
- However, Article 16(3) of the 1992 Constitution provides some exceptions (communal labour, E.G).
- The import is that forced labour has eventually been abolished by Ghana.
- **Under the Convention, even where forced labour was permitted, it was restricted only to able-bodied male adults between the ages of 18 and 45 (article 11) and was prohibited for underground works in mines (article 21).**

NOTE:

- ❖ 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) to consider all rights that are inherent in a democratic state.
- ❖ It is therefore usual for courts to adopt or rely on some of these international instruments in construing legal rights or obligations in Ghana.
- ❖ **AND REMEMBER THAT OUR SUPREME COURT HAS RECENTLY DISTINGUISHED BETWEEN CONVENTIONS, TREATIES, ETC RATIFIED BY ACT OF PARLIAMENT AND THOSE RATIFIED BY RESOLUTION.**

Are there any opportunities for strengthening the legal and regulatory framework for extractives in Ghana to empower women?

- ❑ Focus attainment of WEE on both **technical** provisions and **governance** provisions:
 - ❖ And extend beyond women representation on governance and regulatory institutions to include institutions interested in WEE.
- ❑ Elaborate on the antidiscrimination clause of our Constitution and apply it liberally to WEE.
 - ❖ Note that the provisions in Article 17 of our Constitution admits of some exceptions, including steps aimed at redressing social and economic imbalances.

- Elaborate on the Lotto Operators Case which equalises Civil and Political Rights and Economic and Social Rights, and apply it liberally to WEE.
- Work for the passage of the Affirmative Action Act.
- Work for the full implementation of the National Gender Policy.
- Work for the application of the Gender Policy and the Affirmative Action Act to the non discrimination provisions of the Minerals and Mining Act and the Local Content provisions of the Petroleum Exploration and Production Act.
- Work to reverse the laws that discriminate against men, for no justifiable reason, in order to avoid the application of the principle of equalisation in LAW and PRACTICE, leading to discrimination against women.

Are there any limitations to this agenda?

- ❑ A key risk in working within the realm of natural resources is that it is a high stakes area (resources, money; so interests, contestations, etc), and concerns for WEE would be correspondingly minimal.
- ❑ Flowing from the above, implementation will be contested.
- ❑ It is for this reason we are not recommending the amendment of Extractives Laws to incorporated WEE specific wording.

CONCLUSION

- Does the legal and regulatory framework for extractives in Ghana directly empower women? **NO**
- Does the legal and regulatory framework for extractives in Ghana Indirectly empower women? **YES**
- Are there any opportunities for strengthening the legal and regulatory framework for extractives in Ghana to empower women?
YES
- Are there any limitations to this agenda? **YES**